

## Controversial Issues Regarding Conceiving Children through Sperm Donation: A Shia Perspective

Fatemeh Ghodrati (PhD)<sup>1\*</sup>

<sup>1</sup> Association Professor, Department of Islamic Jurisprudence and Law, Hazrat-e- Masoumeh University, Qom, Iran

---

### ARTICLE INFO

---

Article type:

Commentary

Article History:

Received: 01-Oct-2022

Accepted: 13-Nov-2022

---

► Please cite this paper as:

Ghodrati F. Controversial Issues Regarding Conceiving Children through Sperm Donation: A Shia Perspective. Journal of Midwifery and Reproductive Health. 2023; 11(4): 4001-4005. DOI: 10.22038/JMRH.2022.67342.1972

---

In the religious texts of Islam, procreation and having children are things that are praised, and there has been a lot of emphasis and encouragement in this regard. Also, the most important function of the family is to bear children, and there are many hadiths encouraging men to get married to women who are capable of bearing children (1). On the other hand, the financial, psychological, and physical challenges caused by assisted reproductive technologies probably put additional stress on infertile couples (2). It is estimated that infertility affects 8–12% of couples of reproductive age worldwide. The prevalence of infertility in Iran has been reported to range from 10.3% to 24.9% (3-4). Also, the infertility rate in South and West Asia is up to 30% (5). In Indonesia, it is about 10-22% (6). About 20–30% of cases are infertile due to male factors; however, a study by Vander Borght et al. showed that overall, 50% of infertility is caused by male factors (5). Another study showed that infertility affects about 70 million people worldwide. The World Health Organization (WHO) estimates that 9% of couples around the world struggle with fertility problems, and the male factor accounts for 50% of these cases (7). The most important cause of male infertility is low sperm concentration (oligospermia), poor sperm motility (asthenospermia) and abnormal sperm morphology (teratospermia). Other factors less related to infertility include: seminal fluid volume and other seminal markers of epididymal function (8).

While assisted reproductive technologies (ART) have been available for more than three

decades and more than 5 million children worldwide have been born from ART interventions such as in vitro fertilization (IVF), these technologies are still largely unknown in many regions due to their high cost and some cultural attitudes in developing countries. Studies on the possible relationship between male infertility and oncological, cardiovascular, metabolic, chronic, and autoimmune diseases predict hospitalization and mortality (9).

The religion of Islam recognizes infertility as a fundamental problem and encourages its believers to seek treatment for infertility as with any other illness. Therefore, if any form of ART is accepted as a legal and ethical treatment in the Islamic framework, Muslims are allowed to use it (10). Basically, reproduction using the donation of gametes or embryos from people other than the spouse is considered new and is one of the novel issues in Muslim societies. The Iranian Parliament passed the law governing the donation of embryos to infertile couples in 2003, and its executive regulations were passed and implemented in 2004. Among the various fertility methods, this law deals only with embryo donation and says nothing about other insemination methods (egg and sperm donation, etc.) (11). Due to the lack of a law, according to Article 167 of the Constitution, it is possible to refer to the fatwas of Marjas (religious scholars) (12). According to the opinion of many Marjas of Islamic jurisprudence, donating gametes and embryos is considered permissible, but it is necessary to observe some Shari'a prerequisites for performing the procedures, including non-permissible touching and looking, as well as the

---

\* Corresponding author: Fatemeh Ghodrati, Association Professor, Department of Islamic Jurisprudence and Law, Hazrat-e- Masoumeh University, Qom, Iran. Tel: 00989171193365; Email: fatima.arta2@gmail.com

presence of privacy during insemination between sperm and egg (13). The process of justifying ART interventions generally began in Shia Muslim countries when Ayatollah Khamenei (the political-religious leader of Iran) issued a fatwa that allowed gamete donation by third parties. This legal approach paved the way for the legal approval of gamete donation, including egg, sperm, and embryo donation to infertile spouses (14-15).

Using donated sperm is one of the assisted reproductive methods used to help infertile couples. In this method, the semen of a third party is transferred to a woman's uterus during IUI or through IVF. Regarding sperm donation, there are different opinions; Sunni scholars are completely against it, and among Shia scholars, many support it and some are against it. Therefore, the opinions of the Sunni scholars will be explained, and then we will discuss the points of view of the Shia scholars. Sunni Muslim jurists also consider this type of sperm donation to be haram (not permissible) and argue that, firstly, without a doubt, this action leads man to the circle of animals and plants and excludes him from humanity and civil society; it is an ugly crime and a great sin, which has the same nature as adultery, and their result (intentionally depositing a man's semen in the womb of a woman that is not his wife) is the same (16-17). Secondly, it is inferior in comparison with adoption, which is forbidden in Islam, because in adoption, it is known that this child belongs to another person, but in a gamete or embryo donation, it is not known and a foreign party enters the lineage. Citing the Quran verse (Ahzab: 5), they believed that, as God says in this verse, children are attributed to their fathers, while in this type of insemination, mixed lineage occurs. In embryo donation, the child is attributed to the couple while it is not formed from the father's sperm, and he knows that this child does not belong to him, and as a result, he must reject the child, otherwise, there will be a problem in the lineage (18).

There is a difference of opinion among Shia scholars regarding the use of donated sperm. Applying this method, few scholars approve of sperm donation, like Ayatollah Khamenei, Seyyed Mohammad Mousavi Bejnarodi, Ayatollah Mazaheri, Ayatollah Mousavi Ardabili,

etc., and more are opponents (Imam Khomeini, Seyyed Mohammad Reza Mousavi Golpayegani, Mohammad Fazel Lankarani, Hossein Vahid Khorasani, Ayatollah Sistani, Ayatollah Boroujerdi, Ayatollah Makarem Shirazi, Ayatollah Nouri Hamdani, etc.). According to Ayatollah Khamenei's opinion, if the forbidden conditions such as non-permissible looking or touching, etc. do not occur, it is possible to use a third-party sperm (not the husband's) for fertilization with a woman's ovum. However, it is obvious that the woman's spouse will not be the father of the child. As mentioned in the review of other authors based on the above fatwa, "These children are not related to the infertile man" (19). This child is legally eligible for all parental rights and obligations from the sperm donor. According to the verses (Furqan: 54; Sajdah: 8) and traditions, some of the Shia jurists of the past and present believe that the child is related to the owner of the sperm, and in fact, the child's father will be the owner of the sperm. Some other jurists believe that to attribute the child to the owner of the sperm, a child must be born as a result of the intercourse between the woman and her husband (20). If, according to a recent opinion, the owner of the sperm is not related to the child, then who will be the father of the child?

So, if the sperm donor is the true and legal father of the child, he is in charge of all duties, including paying the child's expenses and all fatherly duties such as maintenance, education, care, and love for the child, and he should not fail to fulfill these duties. In this case, no man will enter the sperm donation process to help infertile couples. Also, psychologically, it may not be desirable to have a child with a woman other than one's wife.

For the above reason, in most cases, the sperm sample is taken from the sperm bank (located in the Fertility and Infertility centers), and the donor does not have any information about the recipient couple. An infertile couple can do the paperwork for full custody of their child getting help from a lawyer. In this circumstance, the details of the sperm donor remain confidential with the sperm bank. Of course, the uncertainty of the child's relative relationship with the parents will cause emotional trauma and confusion for the family receiving a gamete and

will cause emotional and psychological trauma, which will be extremely harmful to such a child, the family receiving the embryo, and society. (21). It should be noted that although adoption is another option for infertile couples, it may not be considered a suitable alternative to ARTs (14). Despite the approval of the law for the protection of underprivileged children in 1975 and the legalization of adoption according to the approved conditions, today there are social and cultural resistances against adoption by infertile couples (22).

With the acceptance of embryo donation and the legalization of gamete donation (23), there are still many questions that must be addressed. Adequate counseling should be given to families regarding the complications, possible risks, legal issues, psychological consequences, and genetic characteristics of this procedure. Infertile couples must also get information about the following concerns from specialists in relevant clinics, psychologists, and religious scholars: the inability of the child to know his genetic background if the donor is unknown, Personal and cultural issues such as feeling ashamed or frightened about receiving sperm from unbelieving donors, the future concern for the marriage of the child resulting from fertilization of the embryo or donated gametes with his or her mahram (siblings) (necessity of conducting a DNA test) and the role of religion in sperm donor's and recipient's beliefs regarding the permissibility of this practice.

### Conflicts of interest

Authors declared no conflict of interest.

### References

- Mirhashemi Z, Jalili Kalhori T. Population Increasing in Quran verses and Islamic traditional sources. *Woman and Family Studies*. 2018; 5(2): 153-192.
- Alami M, Amanati L, Shokrabi S, Haghani H, Ramezanzadeh F. Factors influencing quality of life among infertile women. *Iran Journal of Nursing*. 2009; 21(56): 27-35.
- Parsanezhad ME, Jahromi BN, Zare N, Keramati P, Parsa-Nezhad M, Khalili A. Epidemiology and etiology of infertility in Iran, systematic review and metaanalysis. *Journal Womens Health Issues Care*. 2013; 2(6): 1-9.
- Inhorn MC, Patrizio P. Infertility around the globe: new thinking on gender, reproductive technologies and global movements in the 21st century. *Human Reproduction Update*. 2015; 21(4): 411-426.
- Vander Borgh M, Wyns C. Fertility and infertility: Definition and epidemiology. *Clinical Biochemistry*. 2018; 62: 2-10.
- Bennett LR, Wiweko B, Bell L, Shafira N, Pangestu M, et al. Aucky Hinting, Gregory Armstrong, Reproductive knowledge and patient education needs among Indonesian women infertility patients attending three fertility clinics. *Patient Education and Counseling*. 2015; 98(3): 364-369.
- Fainberg J, Kashanian JA. Recent advances in understanding and managing male infertility. *F1000Res*. 2019; 8: F1000 Faculty Rev-670.
- Harris ID, Fronczak C, Roth L, Meacham RB. Fertility and the aging male. *Nature Reviews Urology*. 2011; 13: e184-e190.
- Murshidi MM, Choy JT, Eisenberg ML. Male Infertility and Somatic Health. *Urologic Clinics of North America*. 2020; 47(2): 211-217.
- Saniei M, Kargar M. Modern Assisted Reproductive Technologies and Bioethics in the Islamic Context. *Theology and Science*. 2021; 19(2): 146-154.
- Salehian M, Karimi F Z, Nakhaei S, Khalili sherehjini A. A Review of Embryo Donation to the Infertile Couples in Iran. *Journal of Research in Health and Medical Sciences*. 2022; 1(2) :58-64.
- Kosha A, Ebrahimi A. Citizenship of children born from artificial insemination, *Medical Law Quarterly*, 2011; 5(18): 133-154.
- Barikloo A. Jurisprudential Review of in Vitro Fertilization Law. *Journal of Jurisprudence and Fundamentals of Islamic Law*. 2013; 46(2): 1-8. [Persian]
- Gooshki ES, Allahbedashti N. The process of justifying assisted reproductive technologies in Iran. *Indian Journal of Medical Ethics*. 2015; 12(2): 57-96.
- M. Clarke. Children of the Revolution: Ali Khamenei's 'Liberal' Views on in vitro Fertilisation. *British Journal of Middle Eastern Studies*. 2013; 3(2007): 287-303.
- Khodei Nejad Zanjer Abad M. Examining the legal loopholes and jurisprudential foundations of embryo donation In Iran's domestic law and common law. *The Scientific Research Journal in Jurisprudence and bases of Islamic law*. 2014; 8(2): 39-64.
- Al-Qaradawi Qaradawi Y, al-Halal wa-al-haram fi al-Islam, Egypt, in press al-Maktab al-Islami, 1972. Available at: [https:// books. google. com/ books/ about/ al\\_ Halal\\_ wa\\_ al\\_ haram\\_ fi\\_ al\\_ Islam. ht ml? id= S2OcnQAACAAJ](https://books.google.com/books/about/al_Halal_wa_al_haram_fi_al_Islam.html?id=S2OcnQAACAAJ)
- Khaled al-Husaini S, Al-Talaqih al-Sana'i between

- science and law, Beirut: Dar al-Islamiyya, 1420 AH :84 to 104. [Arabic]
19. Tavakkoli SN. The Lineage of Children Born by Sperm Donation: A Shiite Perspective. *International Journal of Fertility & Sterility*. 2015; 9(3): 403-410.
  20. Al-Hurr Al-'Āmili M. Wasael ush-Shia. Details of the means of Shia to study the issues of Sharia. 1412AH; 28. Qom: Al-Al-Bait Institute, peace be upon them. [Arabic]
  21. Samadi Ahari MS. Rights and Duties of the Children Born from Embryo Donation. *International Legal Research Scientific Quarterly*. 2013; 5(18): 113-138.
  22. Inhorn MC. Making Muslim babies: IVF and gamete donation in Sunni versus Shi'a Islam. *Culture, Medicine and Psychiatry*. 2006; 30(4): 427-450.
  23. The law on how to donate embryos to infertile couples, approved by the Islamic Council of Iran, date of approval: 29/04/2013. Available at: <https://rc.majlis.ir/fa/law/show/93943>