

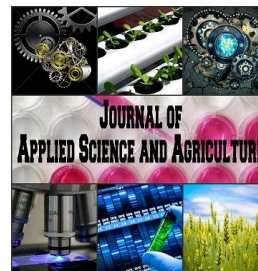


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Reproduction using Surrogacy in jurisprudence and legal ideas

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ABSTRACT

Infertile couples can be cured using different techniques such as insemination outside the uterus and uterus rent. But, therapy using these techniques, especially in the Islam religion where there are wide and comprehensive instructions and marriage and reproduction also occurs according to specific criteria, religious scholars are faced with questions about the legitimacy or illegitimacy of the legal nature of surrogacy contracts and financial and non financial rights beyond it. The great authorities (scholars) are trying to deduce the right instruction on this subject matter from legal sources. Looking at the great authorities' (scholars') prescriptions reminds that, despite differences, some of them made their prescriptions very carefully, but all of them have studied the subject carefully and answered the questions based on Islamic sources (Scripture, tradition, reason and consensus) is described.

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INTRODUCTION

Regarding this point that Surrogacy is interfering a third party in fertilization such that the couples have healthy sperm and Ovum but the wife, due to some reasons, lacks Venter of healthy Venter and they are deprived of having children, so there remains no choice except using a third party in infertile therapy. In this technique sperm and Venter are taken from the couples; and it may occur that both lack healthy sperm and Venter, Hereon the gifted sperm and Venter or Embryo are used for fertilizing the third party who has been Volunteered to do so. Hereupon, such thing requires a contract which defines the legal and moral commitments of parties which are infertile couple and third person while there are some other people such as the husband of the third party, Specialist doctor etc. Which are some how related to this contract.

The rights of children, especially mutual rights of Parents and children, is one of the issues which receive a great attention and importance in Islam religion. As some examples we can mention the right of having qualified parents, Heritage, feeding by mother's milk, father's duties, education, Alimony and Patronage. These are some of many unchangeable rights which are unchangeable in any case of birth, whether natural or unnatural, whether from his own mother or a third party, whether inside the Uterus or outside of it.

Therefore in this article we tried to analyze different dimensions of using new technique of Uterus Replacement in couples' infertalization using Reliable legal and jurisprudence sources to answer the following questions about Uterus Replacement from the perspective of legal and jurisprudence sources:

How the Uterus Replacement is viewed (legal or illegal) in legal and jurisprudence thoughts?

1. Internalization therapy using artificial Insemination from the perspective of Islamic jurisprudence:

Since the issue of Surrogated Uterus (surrogacy) is related to provisory aspect of jurisprudence, it has a crucial importance and the authorities (scholars) are faced with some problems because this issue is a newfound phenomenon which requires serious researches. So before any discussion about Surrogated Uterus (surrogacy) and reviewing the view of authorities (scholars) on this matter, it is worthy to talk about artificial Insemination in general. Infertile couples therapy using artificial Insemination can be studied from two aspects:

Al Sonat authorities (scholars) mostly consider using Surrogated Uterus (surrogacy) as an illegal action. Dr. Yousef Al Qarzavee in legal and illegal actions in Islam has recognized Surrogated Uterus (surrogacy) as Illegal and Quoted from Shikh Shaltoun that he said this is a wrong action and a great sin and is the same as Fornication because a man's Sperm is in the Uterus of a woman who is not his wife legally.

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Being informed of prescriptions 13 and 14 of third Seminar which has been held by the Islamic organization of medical science about the future of Zygote in Kuwait and also the fifth prescription of the first Zygotes, it has been prescribed that:

In the light of scientific progresses related to the possibility of preserving Ovum for further use, we should rely on required Ovum for Cultivation in each Fecundation time in order not to have any extra Zygotes.

If, in any case, there remain extra Zygotes, they should be left without any medical care to die naturally.

The use of Zygotes in any other woman's Uterus is illegal and there should be enough care about preventing the use of Zygotes in illegal pregnancy.

Totally, the Shie authorities (scholars) have different, and in some cases opposite, views about Surrogated Uterus (surrogacy), such that some of them are for and some of the are against the use of Surrogated Uterus (surrogacy) for curing infertile couples and they have their own reasons for accepting or rejecting this new Juridical matter.

A. Those who agree with Surrogated Uterus (surrogacy):

Ayat Allah Mousavi Ardabili

Question: how is the transfer of an Embryo, resulted from the sperm and Ovum of a woman, into the Uterus of a third party in jurisprudence and legal view?

Answer: if she agrees or she is willing to do so and, if she is married, her husband agrees; we can do that.

Ayat Allah Mousavi Ardabili believe that in the case of Uterus renting, the baby belongs to the owners of sperm and Ovum and the third party can not be considered as his \ her Stepmother, but this baby can not marry her in future. If the baby drinks her (the third party) milk, now she is her \ his stepmom. In his view, now the baby has two mothers and there is not a problem with it. The owner of Ovum is considered as the genetic mother of the baby in such a way that the sperm and Ovum are inseminated outside of the Uterus and the Embryo grows out side of the Uterus and is transferred to the (third party's) Uterus and we call them Laboratory babies. Conventionally, the owner of the Ovum is known as the mother despite this fact that he/she is not grown in his Uterus.

On the other hand, the owner of the Uterus (the third party) is known as the biological mother; because on the basis of a verse of Quran (Islam's holy book) we have: «إِنَّ أُمَّهَاتُهُمْ إِلَّا اللَّائِي وَلَدْنَهُمْ» their mothers are no others than those who gave them birth;

On the other hand, the mother who has kept the baby in her Uterus for nine months is somehow the mother of the baby and the father is the owner of the sperm and the other man (the husband of the third party) has no relation with the baby. The parents of the baby, born by Surrogated Uterus (surrogacy), have the full parental rights such as marriage, heritage and Reverence.

Ayat Allah Hoseini Sistani:

He believes that Insemination of a woman using his husband's sperm is permitted, but if doing this requires looking at or touching something which we are not allowed to (in Islam religion), no one except his husband is allowed to do so but in urgent situations in which there is not any other way it is permitted; and the born baby has to receive the full rights as any other naturally born baby. The Insemination of a woman has to be done only using her own husband and it makes no difference whether both parties are agreed or not. On the other hand, he totally believes that if the Zygote of a couple is placed in the Uterus of a third party and grows there and gives birth to a baby, somehow we can call her the stepmother of the baby, but we should be careful.

B. Those who disagree with Surrogated Uterus (surrogacy):

Ayat Allah Araki:

Ayat Allah Araki (Mercy upon him) believes that if the mother dose not have a Uterus and the possibility of growing an Embryo outside of the body exists, we are not allowed to Surrogate and Nurture a laboratory Embryo in the Uterus of his relations or strangers (rental).

He also believes that the use of a stranger's Ovum in the Uterus of a married woman with the purpose of Revival and preventing abortion is not allowed. Transferring the Ovary to an infertile third party, using surgery, is not allowed. If, after surgery, the Ovary is a part of the third party, the baby belongs to the third party. He also believes that Masturbation with the purpose of gathering the required sperm sample to test whether the man is fertile or infertile is not allowed and insemination of a woman with the sperm taken from a stranger is not allowed either.

Ayat Allah Fazel Lankarani:

Question: how is the transfer of an Embryo, resulted from the sperm and Ovum of a woman, into the Uterus of a third party in jurisprudence and legal view?

Answer: the placement of the man's sperm in the Uterus of a strange woman is not allowed.

Ayat Allah Behjat

Question: how is the transfer of an Embryo, resulted from the sperm and Ovum of a woman, into the Uterus of a third party in jurisprudence and legal view?

Answer: If it is clear, we are not permitted.

Ayat Allah Nouri Hamedani:

Question: how is the transfer of an Embryo, resulted from the sperm and Ovum of a woman, into the Uterus of a third party in jurisprudence and legal view?

Answer: it is not allowed and in the case of transfer, the born baby using this method is illegal.

3. The legal nature of Surrogated Uterus (surrogacy) contracts

Human being in his\her everyday life uses his\her parts of body to make money to continue his\her life; for instance, workers use their hand power to make money and some people use their thinking power in the same way. So we generally have the right of using our parts of body and the legal system recognizes this right and donating our parts of body as far as it is not against the morality and public discipline is allowed.

What we mean of rights, can not be exchanged with money and we can not sell them to earn money; so this is not considered as a financial right. In the case of nonfinancial rights, like Protectorate, education etc rights do not match with our meaning of rights. Because this is related to the rights of body parts which refers to his\her personality, so the right of human being to use his\her body parts refers to his\her personality and is supported by the Law makers. In the context of making Surrogated Uterus (surrogacy) contracts we can mention that they are legal for the following reasons: they are not against the general discipline and morality, they are not dangerous to human beings, the third party is aware of the risks and is willing to do so.

Something is legal if it complies with juridical rules and regulations and something is illegal if it violates the juridical rules and regulations. So, when the law abandons something, it is more likely that no one is able to do that. But since the word legal has a broader meaning than lawful and includes a broader scope, an illegal action might be forbidden by law, morality or public discipline.

Law: in our law and regulations, while Surrogated Uterus (surrogacy) contracts are not clearly mentioned, we can consider these contracts valid. According to Article 183 of our law, a contract is result of an agreement between two or more people to guarantee something. The main frame of any contract is the will of parties and their wills rule the contract. This principle has a philosophical root in Individualism and in the current law is known as "Contractual freedom" which is an Adjusted Notion.

And about the "Contractual freedom" principle it is said that: people are free to make any Rational contract unless the content of their contract is illegal and against the law, morality or public discipline. This Principle has been placed in the 10th article of our law. According to the principle of Sovereignty of will, first, people are able to make contracts and determine the results as they wish; second, a contract comes to the reality when the parties agree and it does not have any other Formality; third, after making a contract, the parties are bind to it and they should regard it until it is canceled by another contract; forth, the contracts are only applicable among the parties and their executors. In Surrogated Uterus (surrogacy) contracts, the principle of Sovereignty of will is ready and the parties are willing to do so. The nature of Surrogated Uterus (surrogacy) contracts can be placed in the 10th article of our law.

According to what has been discussed and because the issues related to Surrogated Uterus (surrogacy) contracts are related to private rights, their rules and regulations are a part of our Magisterial law, since there is not any clear rule about the Commitment of the third party (the owner of the Uterus) to born the baby or abandon paying money in this contract, and based on the principle of Authenticity and the 223rd article of our civil law which Resolves that "any contract is authentic unless it becomes clear that it is corrupted", the Surrogated Uterus (surrogacy) contracts are valid.

Public discipline: from the definitions proposed by the lawyers the following things are derived. Firstly, the Public discipline differs from country to country, while they have a lot in common. Secondly, the concept of Public discipline is more than a legal concept which means that this concept is not a Sequent of the law while it is an important part of the legal system. Finally, it can be said that anything is Accordant to the Public discipline while it does not spoil the fundamental values of any society. So, the Public discipline is accepted as a principle in the context of general law and in private and contract laws, the Public discipline has an Exception Condition and the principles of Sovereignty of will and freedom are contractual. In any situation that there is a doubt about the Confliction of contracts with the Public discipline it is considered under the principle of Nonintervention with the Public discipline and the principle of Authenticity. Hence, when the Surrogated Uterus (surrogacy) contracts are not against the Public discipline and Interest, they can be considered valid.

Good morality: Good morality is the general believes outside of the law domination such as regulations, customs and are outside of the pure Sensuality and cooperate with the law for regularizing people's life and achieving the goals of society. The Domain of Good morality and its assumptions are different in different societies and they can not be limited to certain options and count the contrary contracts to them. On this matter, a Jurisconsult recognizes the contracts about illegal Sexual relations, using places for corruption, Gambling, earning money from illegal actions as oppose to Good morality; which does not seem to be correct because they

should be taken into consideration typically and the contrary contracts should be discussed considering time, place and Conventional conditions of each society.

In our country, regarding the religious believes of the society, social customs and because fornication is considered as an objectionable praxis, the issue of pregnancy of a single (not married) woman or pregnancy of a married woman by a stranger can not be accepted by the majority of people and morally it is wrong and contrary to the customs; but this should not be the criteria of our decision making process because people's decisions are mostly based on emotions, while the solution of moral issues should be accompanied with strong theory. As in the discussion about public discipline that this was a new phenomenon in our society (and because there is not a clear rule about it) the moral opinions did not seek to a positive direction, however in our religion we are supposed to follow the prescriptions of our authorities (scholars) and people mostly refer to them in order to solve new problems and do as they say, so their prescriptions can be considered as a valuable solution to this problem. Nowadays, regarding different standpoints of the authorities (scholars) and with regard to this point that most of the authorities (scholars) are agree with the Surrogated Uterus (surrogacy) (Providing that nothing wrong happens), the society has a positive view and attitude toward this action.

4- The study of Postural rules relating to Surrogated Uterus (surrogacy):

We study the Postural rules relating to Surrogated Uterus (surrogacy) in three categories:

1. Relational: one of the major issues in Postural rules, especially about private a family rights, is relation; because it contains so many results and outcome such as heritage, Patronage and intimacy.
2. A) Fatherhood relation in the case of stepmother: Succession in pregnancy (the perfect stepmother): in this case, the sperm and ovum of the infertile parents (Fiat or real parents) are placed in the Uterus of the substitute mother (the third party), whether the Fecundation occurs in laboratory or in the Uterus of the Substitute mother. This is the Minimum troublesome issue because we can have no doubt in relating the baby born by this method to his fiat father. No matter what we consider about the validity and permission to do this, but we should consider the born baby to this man (the owner of sperm) because he is the source of creating this baby.

Amareh Farash is one of the techniques in Islamic jurisprudence to prove the predicted relationship and its equivalent in western countries law is known as the legal Assumption of fiat father.

Farash means what is spread and in legal terms it means that the baby born by a couple is known as the baby of the husband and is related to him.

The word, sexual intercourse in the article 1158 is known as the cause of the coagulation of the semen and the creation of baby and in the artificial insemination the combination of sperm and ovum occurs.

The remained issue is whether the marriage situation of the third party has any effect on this insemination or not? Here there are two assumptions:

a) The third party is single at the moment of birth: if from the perspective of the minimum and maximum time of Transplantation of Embryo in her uterus, the Assign ability exists, the baby belongs to his\her fiat father. But if this possibility does not exist, Amareh Farash is only assigned to the ex-husband of the wife. It is clear that in some cases there is a conflict between the two Amareh Farash. But the Article 1160 has cleared the rule of conflict between two Amareh Farash at time of baby birth after the remarriage of the woman in cases where the baby can be attributed to both husbands (former and current) (the baby is attributed to the second husband). Hence, since we can consider the Amareh Farash resulting from the substitute mother as an Amareh Farash resulting from the correct marriage in case of conflict, we can consider the Amareh Farash of the fiat father prior to any other.

b) The third party (substitute mother) is married at the moment of birth: if from the perspective of the time, the baby can not be attributed to the fiat father, he\she is attributed to the current husband of the woman. But, if from the perspective of the time, the possibility of attributing the baby to the fiat father exists and also it is not possible to attribute the baby to the husband of the substitute mother, he\she strongly belongs to the fiat father and in the case of Amareh Farash which is applicable to both of them, things are to be complicated because unlike the former situation (the woman is single) here we have two families. In this case, if we can attribute the baby to someone using DNA genetic tests every thing would be clear; but if we do not have any access to such tests, if the fiat father can prove that the husband of the wife could not have any sexual intercourse due to being in prison, hospital, on trip and Amareh Farash makes him Void, the baby is attributed to the fiat father.

Some authorities also use Lottery in such cases. But, due to the following reasons the Amareh Farash of the fiat father is prior.

1. The probable guarantee of the substitute mother not to have any sexual intercourse with her husband during the specified period.

2. The pregnancy of the substitute mother after artificial insemination is clear, but we are not sure whether her sexual intercourse with her husband caused any Semen or not.

b) The motherhood in the case of substitute mother: before progresses in medical science this question may seem Irrational, but due to the possibility of substitute mother, not only it is rational but finding the appropriate

answer is also hard. There are three possibilities in this case: a) fiat (genetic) mother, b) substitute mother (the owner of uterus) and c) both of them

A) Fiat (genetic) mother is the legal mother of the baby due to the following reasons:

1. Scientific realities; it is clear that the medical progresses consider the born baby as a result of the sperm and ovum of the fiat parents and does not consider any key role for the uterus of the substitute mother.
2. Tradition; the concept of relationship is a traditional concept and the tradition recognizes the owner of the sperm as the owner of the baby.
3. Similarity with the sperm; the creation of Embryo and baby is always due to sperm and ovum and the owner of the sperm is his\her father, so naturally the owner of the ovum is his\her mother.
4. There are some other reasons which are not out of Contest, like contractual aim, civil law regulations about the plant, policy and welfare of the baby.

B) Substitute mother, the legal mother due to the following reasons:

1. Tradition; according to the medical progresses and information we know that the embryo before Indwelling in the form of an Indistinct cellular mass is able to indwell in any part of the body and if it indwells in any other part of the body, causes damage to the body. The uterus also has many other roles such as transferring vital messages and the formation of the placenta. So, any one who knows this, attributes the baby to the owner of the uterus.

As an answer to this thought, we and the tradition devote a special role to the uterus of the substitute mother but not as high as the owner of the ovum (beside the man's sperm) who has the major role in the creation and formation of the baby attributes.

2. Quran; the 2nd verso of Mujadeleh Sura: «إِنَّ أُمَّهَاتِهِمْ إِلَّا اللَّائِي وَلَدْنَهُمْ» their mothers are no others than those who gave them birth;

As an answer to the reasoning of this verse is has been said that this verse is related to those who claim their wives are their mothers and consequently conclude that they are illegal to them, so it is not related to what are discussing. It is also possible that the word (وَلَدْنَهُمْ) may not have the meaning of Childbirth, because we have the same word for the fathers «وَالِدٌ وَمَا وَلَدَ» which can not be considered as Childbirth. Therefore the aim of this verse may not be Childbirth, but also can be the one, whom is the source of the baby.

3. The Defective cause; it may be said that the Inseminated part is a part of the receiver's body; so the Inseminated part takes the identity of the receiver.

c) The baby has two legal mothers. The foundation of this possibility is known as the tradition and the tradition recognizes both women as the baby's mothers.

It is clear that this argument, despite being strange and unusual, has not any traditional background; because as mentioned before, the tradition recognizes the owner of the ovum as the mother of the baby. Moreover, there are some other unsolvable problems and consequences which appear.

1- Financial effects:

A) Alimony: according to article 1199 the father is responsible for the child's alimony and when the child has lost his father and grand father or when they are unable to feed the child, the mother is responsible for the child's alimony. So, in this case the owner of the ovum is responsible for the child's alimony and this duty would transmit to the family of mother according to the article 1199. About the financial relationship between the child and the owner of the Surrogated Uterus (surrogacy), due to its Novelty, nothing is mentioned in civil law and the authorities and lawyers prescribed nothing. Although it is said that the baby born in Surrogated Uterus (surrogacy) has a blood relationship with the owner of the uterus and somehow is her child, but the law, tradition and contract has not predict any duty on the owner of the uterus, because the duty should be determined by law, tradition or contract and in case of doubt, the principle of Nonentity is applicable. Therefore the owner of the uterus has no duty about Alimony and it relates to the contract of the parties.

B) Heritage: in Islam religion the cause of heritage is relationship. According to articles 861 and 862 the first races who receive heritage are parents, children and grand children. Children in law, tradition and Canon law are those who are created by the sperm and ovum of the man and woman who are the owners of the sperm and ovum and they are her\his parents. Giving birth to a baby as a result of Fornication is forbidden in Islam but according to Islam and Imamyeh jurisprudence in Iran the born baby would receive the heritage. Hence, the baby born through Surrogated Uterus (surrogacy) where there has not been any sexual relationship with the Surrogated mother can receive the heritage and in Islam religion without doubt the baby belongs to the owner of the sperm and would receive heritage.

The heritage between the owner of the ovum and the baby born through Surrogated Uterus (surrogacy): this is one of the fundamental bases of the Embryo and the Surrogated Uterus (surrogacy) is not the owner of the Zygote and it only is the place where the Zygote grows. Somehow we can consider the Surrogated Uterus (surrogacy) as an experimental Cylinder or any other instrument in which the Zygote grows and it is clear that these instruments are not considered as the mother of the baby and we should attribute the baby to the owners of

sperm and ovum and without doubt the owner of ovum is the mother of the baby although she did not grow him/her in her body and did not give birth to the baby and because there is a blood and relational relation between the baby and the owner of the ovum in biological view there is no doubt that there is a heritage between the owner of the ovum and the baby born through the Surrogated Uterus (surrogacy).

The heritage between the baby and the Surrogated mother: if we consider that there is a relation between the baby and the Surrogated mother and traditionally consider them mother and child and believe that there is a common blood running in their vessels which is the cause of their relationship, hence, solving the problem would be easy and according to articles 861 and 862 that claim relationship is the cause of heritage, the baby and the Surrogated mother are Inheritor from each other. The legal effect of this theory is that the baby has two mothers and both of them have blood and Genealogical relationship with the baby and if this child dies before them, both of them would receive an equal heritage as the baby has one mother (the heritage of one mother is shared between them) and in this matter more studies are required.

if we do not consider the surrogated mother as the Genealogical mother with its legal and traditional meaning and consider her as the Fosterling mother whom is the mother of the baby and the baby can not marry her, but has not any relationship which can be the cause of receiving heritage. Therefore, the legal Criteria for heritage have not been prepared between them and they are not Inheritor of each other and the problem of two mothers and heritage would be solved.

There is another idea which claims that the criteria of the fosterling baby have certain limits and characteristics which have been determined by the law and jurisprudence and if he/she would come to life out of these criteria, can not be called the fosterling baby and consequently there is no relationship between them.

3- *Nonfinancial effects:*

A) Marriage: what would be the relationship between the baby and the owners of sperm, ovum and the surrogated mother regarding marriage and Genealogical relation?

1. The relationship between the baby and the owner of sperm: the baby born from a sperm belongs to the owner of the sperm both biologically and naturally. Since according to article 1045 of Iran's law it is forbidden to marry your child (take your child as your wife or husband), in this case the baby belongs to the owner of sperm and any marriage contract between them is illegal and forbidden whether the child is born legally or illegally, because the child has a blood relationship with the owner of the sperm. It may be claimed that this Forbiddance of marriage only applies to situations where the baby is born through natural sexual relationship and in case a baby born through Surrogated Uterus (surrogacy) it is not applicable because the baby is not the legal and Juridical child of the third party, but this is a wrong reasoning; because as it was mentioned before, there is a blood and genetic relationship between the baby and the owner of sperm and due to this the Iranian law makers in article 1045 specified that whether the baby is born legally or through fornication, he/she can not marry his/her parents.

2. The relationship between the baby and the owner of ovum: like the owner of sperm, the owner of ovum has blood relationship with the baby and is not allowed to marry the baby.

3. Prohibition of marriage with the surrogated mother: in the dictionary and the tradition, the word mother refers to the one who gives birth to the baby. From the perspective of logical and legal analysis, the embryo created through the combination of sperm and ovum when is placed in the uterus and grows there, receives nutrition and oxygen through the blood vessels of the owner of the uterus and grows there.

Here we have two viewpoints: 1) the born baby is the result of the primary cells and the growing environment which helped the baby to grow, which is ignored and no biological relationship between the embryo and the owner of the uterus is considered. 2) Although the primary cells are the primary cause of the embryo but the further growth of the embryo is done through the nutrition absorbed from the body of the owner of uterus, thus the owner uterus has a crucial role and works as a supplementary operant.

The acceptance of any of these viewpoints has different consequences: it is not easy to opine on this issue and it becomes more complex in religious societies. It can be claimed that the surrogated mother is not strange to the baby and her milk is the best food for the baby especially during the first 3 days of the birth which is full of useful nutrition for the baby. The baby is feed through the blood vessels of the surrogated mother for months; and the baby's blood, skin, bones etc are formed through her blood, and thus he/she can not marry this woman and her husband.

B) Patronage: according to article 1168 of Iran's civil law, parents are responsible for the Patronage of their children and it should be determined whether the surrogated mother is known as the child's mother or not? If, as mentioned earlier, the surrogated mother is not known as the mother of the child, according to article 1169 she has not the permission to patronage the child for at least 7 years unless the owner of ovum dies or get mad or due to any reason has not the qualifications to keep the baby, hereon the surrogated mother can patronage the baby and the Wage of this patronage is duty of the owner of the sperm; Howbeit the acceptance of such viewpoint is not easy because it is out of the contract but the Interest of the baby may Justify this viewpoint and the opposite viewpoint also seems rational. But if the surrogated mother wants to have the patronage right of the

baby instead of any wage, maybe for the interest of the baby we can give her the right of patronage but it seems injustice to prevent the surrogated mother to meet the baby.

Because the owners of sperm and ovum are the parents of the baby, thus according to article 1168 the patronage of the baby belongs to the owner of ovum for 7 years and then belongs to the owner of sperm. If the owner of ovum dies, gets divorce, marry someone else or gets mad hereon the patronage of the baby belongs to the owner of the sperm (article 1170).

C) Guardian: according to article 1180, the father and grandfather are the guardians of the child so neither the owner of the sperm, nor the surrogated mother have the guardianship of the baby born through Surrogated Uterus (surrogacy). And the husband of the surrogated mother has no right for guardianship of the baby and the father and grandfather are the only guardians of the child until he/she gets mature. This viewpoint is acceptable if we attribute the baby to the father (the owner of sperm), but how about those who do not attribute the baby to the owner of sperm, hereon who has the guardianship of the baby?

7. Conclusion:

The most important conclusions of this discussion are as follows:

The legal nature of these contracts, since they are perfectly related to the rights of human being, should not be contrary to the rights and contracts relating to the personality of human being; these contracts are not Species of renting contracts, trust contracts, loan contracts and guarantees in favor of the third party and they should be attributed to the personal contracts made under the 10th article of Iran's civil law.

Since the Surrogated Uterus (surrogacy) contracts, like any other contract, come into existence as a result of will and agreement, the general rules of contract, insofar as are not contrary to fundamental rights of the family, govern them. In order to validate these contracts the basic qualifications of contracts, mentioned in article 190 of Iran's civil law, should be taken into consideration and the contract is invalid unless the parties have willing and agreement to do so. Nothing about bona fide is mentioned in Iran's law, but in foreign law some qualification such as specified age for the owner of uterus, a certificate made by a specialist that the couple are infertile, their marriage, the owner of uterus should be healthy and has the experience of pregnancy, etc are considered crucial. These limitations are for crucial social interests and protecting public discipline.

This contract is necessary that might be classified as promise or gratuitous contracts. In Iran's law, if the assurance of the surrogated mother is friendly, paying her is based on compromise, and in other contracts the amount of money paid to the surrogated mother has a contractual root. If the payment, whether in friendly or common contracts, is done in a controlled manner, insofar as it is not against the public discipline and good morality, is valid and no one can oppose to it.

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