



## A Comparative Jurisprudential and Legal Analysis of Embryo Donation in Imami (Twelver Shi'i) and Sunni Jurisprudence

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### 1. Introduction

Recent developments in reproductive medicine and biotechnology have significantly transformed conventional understandings of human reproduction. Among these developments, embryo donation represents one of the most important and controversial assisted reproductive technologies. This method provides a possibility of parenthood for couples suffering from infertility; however, it simultaneously raises complex jurisprudential, legal, ethical, and social questions, particularly within Islamic legal systems.

The complexity of embryo donation arises from the involvement of several biological components, including sperm, ovum, and uterus, each of which may influence the determination of legal and social concepts such as lineage (*nasab*), parental status, inheritance, guardianship, and prohibited degrees of marriage (*mahramiyyah*). In Islamic jurisprudence, lineage constitutes one of the fundamental objectives of Sharī'a, as numerous family and financial rulings are based upon it. Therefore, any reproductive method that

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creates uncertainty regarding biological and legal parenthood requires careful jurisprudential examination.

At the same time, Islamic law emphasizes principles such as the preservation of human dignity, removal of excessive hardship (*raf' al-haraj*), and facilitation of legitimate human needs. Infertility, particularly in societies where having children has significant religious, cultural, and social importance, may impose considerable psychological and social burdens on couples. Consequently, embryo donation represents an intersection between the necessity of infertility treatment and the requirement to preserve the foundations of family and lineage.

In Iran, the enactment of the “Act on Donation of Embryos to Infertile Couples” in 2003 and its executive regulations in 2004 demonstrates the legal acceptance of embryo donation within the Islamic Republic of Iran. Nevertheless, the legislation primarily addresses procedural matters and does not provide comprehensive solutions regarding lineage attribution, inheritance rights, guardianship, and the child's biological identity.

This research examines embryo donation from the perspectives of Imami (Twelver Shi'i) and Sunni jurisprudence and evaluates its legal consequences within the Iranian legal system. The study seeks to answer three main questions: first, whether embryo donation is permissible according to Islamic jurisprudential principles; second, how lineage should be determined in cases of embryo donation and what consequences follow for inheritance and family relations; and third, whether Iranian legislation has successfully reconciled infertility

treatment with the preservation of Sharī'a-based family principles.

## **2. Theoretical Foundations**

The study hypothesizes that Imami jurisprudence, due to its reliance on dynamic principles of *ijtihād* and legal maxims such as the removal of hardship, necessity, and consideration of the child's welfare, has the capacity to recognize the conditional permissibility of embryo donation. Conversely, many Sunni jurists have adopted a more restrictive approach, primarily due to concerns regarding lineage preservation and the protection of marital boundaries.

## **3. Research Methodology**

Previous studies have extensively examined assisted reproductive technologies from jurisprudential, legal, and bioethical perspectives. A significant portion of Imami scholarship has focused on determining the lineage of children born through artificial reproductive methods. Some scholars emphasize genetic contribution and attribute lineage to the providers of sperm and ovum, considering the uterus primarily as a biological environment for fetal development. Others emphasize the role of the gestational mother based on customary understandings of motherhood.

Legal studies concerning Iranian embryo donation legislation have also identified several unresolved issues, particularly regarding inheritance, guardianship, registration of identity, and access to biological information. Meanwhile, many Sunni jurisprudential studies have generally approached embryo donation with caution due to concerns about lineage confusion and disruption of the traditional family structure.

Despite these valuable contributions, a comprehensive comparative study integrating jurisprudential reasoning, legal consequences, and biomedical considerations remains limited. This research attempts to address this gap through an interdisciplinary comparative approach.

This study employs a descriptive-analytical and comparative methodology. Data have been collected through library research and documentary analysis, including Qur'anic verses, jurisprudential texts, authenticated traditions, contemporary legal opinions (*fatwas*), Iranian legislation, judicial materials, and relevant biomedical studies.

The comparative analysis focuses on the principles of legal reasoning employed by Imami and Sunni jurists, their understanding of lineage, and the objectives of Islamic law. Furthermore, findings from reproductive medicine and genetics are considered in order to clarify the biological roles of sperm, ovum, and uterus in human reproduction.

#### **4. Research Findings**

The findings indicate that the dominant position among Imami jurists tends toward the conditional permissibility of embryo donation. Many Imami scholars distinguish between genetic lineage and gestational contribution. According to this approach, the genetic parents are the providers of sperm and ovum, while the woman carrying the embryo has a significant biological role without necessarily acquiring genetic motherhood.

This interpretation allows many legal issues, including inheritance and prohibited degrees of marriage, to be addressed through established jurisprudential mechanisms such as milk kinship (*radā'*), contractual arrangements, and specific legal regulations.

In contrast, many Sunni jurists have traditionally adopted a restrictive position regarding embryo donation. Their primary concerns relate to possible confusion of lineage, violation of marital exclusivity, and uncertainty regarding parental identity. Nevertheless, some contemporary Sunni scholars have accepted limited forms of assisted reproduction when the genetic materials belong exclusively to the legally married couple and no third party is involved.

From a legal perspective, the Iranian Embryo Donation Act represents an important legislative development; however, it does not fully resolve several fundamental consequences of embryo donation. In particular, ambiguity remains concerning inheritance rights, guardianship, and the child's access to biological identity. These unresolved issues may create future legal disputes and social challenges.

## **5. Conclusion**

Embryo donation represents a complex contemporary issue located at the intersection of medicine, jurisprudence, and law. The analysis demonstrates that Imami jurisprudence, through its flexible methodology of *ijtihad* and reliance on principles such as necessity and removal of hardship, has greater capacity to respond to modern reproductive technologies while maintaining the essential objectives of *Sharī'a*.

Although Sunni jurisprudence generally adopts a more cautious approach due to concerns regarding lineage and family stability, contemporary discussions within Sunni thought also demonstrate attempts to address new medical realities.

From a legal perspective, Iran's embryo donation legislation requires further development, particularly regarding lineage

attribution, inheritance, guardianship, and identity registration. A comprehensive legal framework should seek equilibrium between facilitating infertility treatment, protecting the rights of children, and preserving the fundamental principles of Islamic family law.

Ultimately, the regulation of embryo donation in Islamic legal systems requires an interdisciplinary approach that integrates medical knowledge, jurisprudential reasoning, and ethical considerations in order to protect human dignity and respond effectively to contemporary reproductive challenges.

#### **6. Keywords**

Embryo donation; Assisted reproductive technology; Artificial insemination; Lineage; Inheritance; Islamic jurisprudence; Comparative family law.