Bi-quarterly Scientific Journal of Family Law and Jurisprudence Journal

Promotional Article

# A Comparative Jurisprudential and Legal Study of Embryo Donation in Imami Jurisprudence and Sunni Islam

Mohammad Hadi Rostami[1] Mohammad Zaman Rostami[2]

DOI:
10.30497/flj.2026.248550.2206

CC BY NC

## Introduction

Novel avenues for the treatment of infertility have been uncovered by advancements in reproductive technologies and medical science, particularly in vitro fertilization (IVF) and embryo donation. However, the transfer of embryos from the gametes of donor couples into the uterus of another woman is a novel phenomenon that has inspired a variety of jurisprudential debates. On the one hand, this apparent conflict is a result of the medical necessity and the preservation of family survival. On the other hand, it is necessary to maintain lineage purity (hefz al-nasl), exercise caution regarding bodily integrity and sexual organs (dima' va furuj), and comply with the rule that prohibits the commingling of lineages (ekhtelat al-ansab).

The legislature's silence on matters of personal status, such as the determination of true lineage, inheritance, corrective guardianship (velayat-e qahri), and the registration of biological identity, has left courts facing legislative vacuums. Nevertheless, the "Act on Embryo Donation to Infertile Couples" (2003) and its Executive Bylaws (2004) represent a step toward the legitimization of this technology.

The objective of this study is to illustrate how the capabilities of ejtehad can resolve ambiguities arising from this technology by conducting a comparative analysis of primary rulings (ahkam-e taklifi) and consequential legal effects (athar-e vaz'i) of embryo donation in Islamic jurisprudence.

The fundamental research inquiries are as follows:

1. On the basis of which arguments is the primary ruling (hukm-i taklifi) of embryo donation explicated?
2. To whom do the maternal and paternal lineages derived from this process belong from a jurisprudential and legal perspective?
3. What is the status of financial effects, inheritance, matrimonial prohibited degrees (mahramiyyat), guardianship (velaya), and custody (hezana)?
4. How can the child's rights be balanced with the concealment of identity?

---

1. (Corresponding Author) Assistant Professor, Department of Islamic Jurisprudence and Law, Faculty of Islamic Sciences and Research, Imam Khomeini International University, Qazvin, Iran. rostami@isr.ikiu.ac.ir

2. Associate Professor, Department of Islamic Economics, Faculty of Economics and Administrative Sciences, University of Qom, Qom, Iran. mz.rostami@qom.ac.ir

The hypothesis is that jurisprudence has the ability to acknowledge conditional legitimacy by utilizing secondary titles (anavin-e thanawiyyah), the principle of permissibility (asl al-ebahah), and the rules of alleviating hardship (nafi-e haraj) and necessity (zarurah).

**Research Background**

Modern reproductive technologies have been the subject of numerous legal and jurisprudential investigations. Mousavi Bojnourdi & Jabbar (2009) believed that the legitimate lineage of a child born through artificial insemination belonged to the gamete owners. Abbasi & Rezaei (2012) underscored the importance of acknowledging lineage effects and financial rights in the child's favor, with a focus on the child's best interests. In light of the right to health and family needs, Zabihi (2020) demonstrates that courts tend to issue permissive rulings. Zarvandi Rahmani (2021) criticized the need for caution in relation to the prohibitive doubts surrounding surrogate reproduction and deemed insemination permissible while maintaining collateral regulations. The conditional legitimacy of assisted reproductive processes was investigated by Sahraei, Khodayar, & Honarvar (2021). By employing a comparative approach, the current study examines the conflicts between the 2003 Act and the jurisprudential foundations of lineage and inheritance and analyzes artificial insemination in the context of jurisprudential arguments.

**Research Methodology**

The descriptive-analytical method employed in this study was implemented through a library research approach. The critical analysis of jurisprudential texts, religious inquiries (estefta'at), jurists' edicts (fatava), principles of inference, and statutory laws and regulations was employed to collect and extract data. Following thematic categorization, these data were evaluated in a comparative manner.

**Research Findings**

The primary rulings and subsequent legal consequences of embryo donation are explicated in accordance with four axes:

1. Primary Ruling (Hukm-e Taklifi): Imami jurisprudence posits that the embryo donation process is devoid of the nature of adultery (zina) due to the absence of sexual intercourse (muwaqa'ah). It asserts conditional legitimacy, which is based on the principle of permissibility (asl al-ibahah), the rule of necessity, and the rule of alleviating hardship. This legitimacy is contingent upon the following criteria: the attribution of gametes to lawful spouses, the genetic safety of the procedure, the avoidance of preliminary prohibitions (such as unlawful touching and gazing), and the verification of the moral competence of the recipients (Makarem Shirazi, 2006).

2. The Definition of Motherhood and Lineage: According to mainstream jurisprudence, the ontological and legal criteria for establishing lineage are the owners of the sperm and the ovum, while the uterus serves as solely an incubator (Sistani, 2004). As a result, the child's lineage is attributed to the biological owners of the gametes, and no lineage relationship is established between the child and the recipient couple.

3. Inheritance, Financial Obligations, and Guardianship: The law of succession is contingent upon the establishment of genetic lineage. Consequently, the child does not

inherit from the recipient couple, nor do they inherit from the child. The right of inheritance remains intact between the child and the biological owners of the gametes (Montazeri, 2006). The 2003 Act's Article 3 imposes the responsibilities of custody, upbringing, financial maintenance (nafaqah), and respect on the recipients, in a manner similar to that of parents and children. It has established a quasi-adoption structure by refraining from discussing inheritance. Corrective guardianship (velayat-e qahri) is the responsibility of the biological father and paternal grandfather, while the recipient husband is not granted this status (Mofid, 1992).

4. Prohibited Degrees (Mahramiyyat) and Biological Identity: Mahramiyyat is not established through gestation or childbirth, and matrimonial prohibitions between the child and the recipient family are not established unless lawful fosterage (riza') is conducted in accordance with all of its conditions (Sanei, 2001). Conversely, the child's natural and legitimate right to know their biological and genetic identity is in conflict with the rule of confidentiality in Clause (T) of Article 6 of the 2003 Executive Bylaws, which is based on the concealment of the donors' identity.

**Conclusion**

By utilizing rational principles, secondary titles, and jurisprudential maxims, jurisprudential ejtehad has offered a legitimate solution to the infertility crisis. However, the Embryo Donation Act (2003) is confronted with specific gaps. This law necessitates the revision of four axes:

1. Final determination of lineage through genetic and jurisprudential connections;
2. The organization of financial obligations and inheritance effects that result from the negation of succession;
3. Clarification of the corrective guardianship structure and the provision of appropriate legal authority to adoptive/custodial parents; and
4. To guaranty the confidential archiving of genetic information and the conditional recognition of biological identity for the child upon reaching the age of majority.

*Keywords*: Artificial Insemination, Embryo Donation, Inheritance, Lineage (Nasab), Surrogate Uterus.