

## Review of the legal status of surrogate wombs in Iran and France and its positive and negative consequences

Siamak Arianpoor

PhD student of law, Dushanbe, Tajikistan  
Arianpoors@gmx.com

**Abstract:** Many couples all around the world are suffering from infertility, so that doctors in different countries are trying to treat it. Different methods of infertility treatment have made many couples able to have children or to be hopeful about the future. One method is “renting a womb” which has had positive and negative consequences. Donating the embryo or gamete donation to married couple was passed by the Islamic Parliament in July 19, 2003 and the Guardian Council approved of it in the July 29, 2004. According to this law, the permission of breeding an embryo of a mother’s egg and a father’s sperm in a surrogate woman’s womb was issued in exchange of some money. But the law of embryo donation or surrogate womb has solved some of these problems and has let the mothers, who cannot carry their child in their womb for different reasons, bear their child in a surrogate womb under certain conditions. Therefore lots of problems have been solved. This article aims to express the legal status of renting a womb in Iran and France and to compare its positive and negative consequences.

[Siamak Arianpoor. **Review of the legal status of surrogate wombs in Iran and France and its positive and negative consequences.** *Life Sci J* 2012;9(3):2220-2224] (ISSN:1097-8135). <http://www.lifesciencesite.com>. 319

**Keywords:** surrogate womb, rights, positive and negative consequences

### 1. Introduction

Marriage is one of the most important affairs emphasized in different religions, thoughts, ideologies, etc. One of the most significant features that religions raise in support of marriage is reproduction and development of human generation, so that this matter has affected other aspects of marriage and sometimes the couple’s infertility has led to an unpleasant life and even divorce. Infertility is a common worrisome problem for couples and nearly 15% of couples are suffering from it. According to available reports, it is increasing in human societies. According to American National Center of health statistics, infertility is increasing. Infertile couples have increased from 14.4% in 1965 to 18.5% in 1995. Therefore, we are facing some obstacles in promoting legal and newly established centers of surrogate mothers to reduce the rate of divorce. The importance of the family and its critical role in formation of human societies and the attempts made to keep and protect the family has made any ignorance or indifference about the new matters that arise in this area unjustifiable. One of these matters is artificial fertilization (James S.et.al.2010). The right of having a child for infertile couples should not make an excuse for ignoring moral principles or for having a child through abnormal ways or out of the framework of marriage ethic traditions. Gamete and embryo donation and other artificial methods are the matters that have been discussed in details by scientists and physicians in recent years. In earlier years that medical science had not progressed so well, it was not possible to diagnose which one of the couple was infertile, but due to the patriarchal culture

ruling the societies, women were often considered faulty and thus the first remedy for bearing a child was the men’s remarriage so that the new wife would bear a child and the infertile wife was responsible to bring him up (Wilson MJW. 2005). This prescription is often against women’s desire, because they have to tolerate the presence of another woman in their lives, which might cause love and interest between the husband and the second wife and therefore endanger the status of the first wife. Over the year’s novel ideas emerged and humanitarian and feminist thoughts offered a solution which of course already existed as well, but was later paid more attention to and it was “child adoption”. It doesn’t seem to be a good solution either, since although it didn’t have the problems of the first solution that is the presence of another woman; it also had some deficiencies which were more complicated than the first one. In the first solution, the child was at least in one aspect attributed to his father and this attribution would reduce the child’s problems, but in the second one, the child is not attributed to any of his parents at all, and this lack of attribution, will consequently cause various problems such as privacy, inheritance, and alimony which in turn cause many problems for both couples and children. As the time passed and the science progressed, the science of medicine attempted to treat infertility and found out some important solutions. Medical breakthroughs would not only help determine the infertile partner, but also sought out the causes and even offered some solutions. In this case, some problems are easily resolved by prescribing some medications but some other problems such as the womb’s inability to carry

a fetus, inability of the woman's eggs to mate with the man's sperm, infertility of the sperm, and etc. are not treated by just taking some medications and need special treatment and operations. Medical breakthroughs have offered some treatment for such diseases in recent years, but after solving these problems new problems emerged which were not solved by doctors. In this regard and with emerge of these new problems, it was necessary for the jurists and scholars to comment about it. Therefore, before making any comments, some researches must be done on the new methods of treating infertility to determine and clarify different aspects of the problem (Lacayo R. 1986).

### **1.1. The view of Jurisprudence on surrogate wombs in Iran**

Whenever, due to sexual dysfunction of the couple or any other problems, it is not possible for a woman to get pregnant through natural methods of sexual intercourse, abnormal methods such as injecting a man's sperm into a woman's egg are used which include certain conditions and sentences which will be discussed in this article.

The religious decree: There isn't much difference between contemporary lawyers and jurists in the permissibility of such insemination. Only a few jurists believe it is impermissible. Famous contemporary lawyers and jurists consider such insemination as quite permissible; because it doesn't ruin the principles and rules governing the legal relationship between spouses at all and moreover, it is compliant with logic and intellect and is socially acceptable and protects public interests. On the other hand, not any Hadith or narration from the religious books or tradition has denied it. The most important reason that the jurists have cited is Esalaholabahe. The point that all jurists have unity on is that during fertilizing sperm with artificial methods, committing acts contrary to chastity is not permitted and the legitimacy of the goal doesn't justify the illegitimate device.

### **2.1. Posted decree: The child resulting from this method**

There are fewer differences in views regarding the legality of the child born by this method, in other words although there are some differences in religious decrees about the above mentioned method, there is little difference in terms of the child parents and its legitimacy and his attribution to the couple, since even those scholars or jurists who consider artificial insemination impermissible, don't hesitate over the relative legitimacy of this method as the child has all the necessary conditions for accession to the legal

parentage of the sperm owners such as the legal parental relationship between the man and the woman and the birth of the child during their legal marriage with regard to the bearing time and other relative matters. The only criticism of this method of reproduction might be that in this situation, the common method of sexual intercourse between the married couple is not followed, while it is not the only way of legitimate relationship particularly that there is no doubt in legitimacy of the ways in which the child is born by a married couple or even in a surrogate womb. The difference between this method in which a fetus is carried and grown in a surrogate womb out of his mother womb and the first method is that in the first one only insemination is done artificially while in the latter one the fetus spends all or part of his life in a surrogate womb out of his mother's womb until he is born. Whenever a fetus cannot grow in his mother's womb because of the dysfunction of the mother's womb, and therefore grows in a surrogate womb, the religious and posted decrees do not differ a lot from those of the first situation. But it could be said that in this case if fertilization is done naturally and if the sperm is fertilized through the couple sexual intercourse, and then the fetus is grown out of the mother's womb in a surrogate womb or in vitro or places like that, the possible accession of child's birth to the couple is stronger and the this procedure is more legitimate. Scholars and jurists have not expressed any opposite views over this assumption especially that couples seldom resort to such actions without necessity or urgency. The necessity of preserving a fetus life and not violating any principles of legitimate action and the accession of child to his parents are the best reasons for implementing the above mentioned religious and posted decrees.

### **3.1. The law of surrogate womb in Iran**

Renting a surrogate womb is one of the methods of treating infertility which has developed recently all around the world and in Iran. Renting a womb is transferring one or more fetuses, resulting from the fertilization of eggs and sperms of infertile couple, to the womb of a surrogate woman. In this case, the womb of the surrogate mother is only a host for the fetus and genetically has no similarity to the created embryo. Only those couples do so whose wives do not have uterus or their uterus has been removed by surgery or cannot carry the fetus because of various diseases like diabetes, heart disease, hypertension, or malignant diseases. In fact in renting a womb, there is in vitro fertilization of mother's egg and father's sperm and the created fetus is then replaced in the womb of a surrogate mother who is fertile and the infant who is born will inherit genetic

characteristics of his own parents. Of course, according to doctors, although the surrogate mother does not affect the fetus physically or genetically or in appearance, she might sort of affect the fetus spiritually or mentally. Couples who are willing to donate embryo, should be carefully examined by doctors for infectious diseases such as HIV+, viral or genetic diseases, and physical health and if there is no problem in these matters, their embryos will be used. The text of the embryo donation to infertile couples is as the following:

**Article 1:** According to this article, all the infertility treatment centers are permitted to transfer the embryos created by in vitro fertilization of legal and legitimate couples to the wombs of surrogate women who have been proved to be infertile themselves or their husbands or both after getting married and according to medical tests, while observing the religious rules and principles and the conditions mentioned in this law. So that, the embryo of a fertile couple through in vitro fertilization is placed in the womb of a surrogate woman to continue his natural life and grow and be born.

**Article 2:** Embryo donation request should be commonly made by the couple and must be submitted to the court and in case of being qualified; the court will let them to get such donation to have a child. The conditions of donating embryo to infertile women are as following:

- A:** According to valid medical certificate, the couple is not able to have a baby but the wife is capable of carrying an embryo.
- B:** The couple must be morally qualified.
- C:** The couple must not be separated.
- D:** None of the couple must have refractory diseases.
- E:** None of the couple must be addicted to drugs.
- F:** The couple must have Iranian nationality.

**Article 3:** Duties and responsibilities of the couple receiving the embryo and the born child is like those of parents and their children in terms of custody, training, alimony and respect.

**Article 4:** Applicants qualification will be examined by the family court out of turn and without considering the process of civil procedures and the couple disqualification is revisable.

**Article 5:** The regulation of this law will be prepared by the ministry of Health and medical training and in collaboration with the ministry of justice and will be approved of by the cabinet. Therefore it can be implied that according to Iranian law, whenever the

sperm of a foreigner in injected to the womb of a woman who has a legal husband, and is capable of being fertile by her own husband, the created child belongs to her legal husband, but if she is not able to be fertile by her husband or if we make sure that the embryo is not of her husband's sperm, then certainly the child doesn't belong to her husband (Ferash Law), since it is a religious famous sign and reasoning and its validity is against uncertainty and in above discussion we are sure that the husband of surrogate woman had no role in the creation of the child and the created embryo has been transferred to the womb of surrogate woman.

#### 4.1. Surrogate womb in French laws

The child belongs to applicant couple and includes all the terms and conditions of legitimate relationship such as inheritance, alimony, guardianship, custody, marriage prohibition, respect, and so on. In fact the relationship between the children who is reproduced by medical aids of applicants, on contrary to traditional rules, is not the result of natural and biological fact, but is due to the law. French legislator has cited the child to applicant man and woman and has required identifying this relationship and has rejected the parental denial.

**Table 1: legal status of surrogate womb in Iran and France**

	France	Iran
The legal status of surrogate womb in Iran and France	<ol style="list-style-type: none"> <li>1. The child belongs to applicant couple</li> <li>2. The effects of legitimate relationship such as inheritance, alimony, guardianship, custody, marriage prohibition, respect, and so on are undertaken by the child applicant couple.</li> <li>3. In fact the relationship between the children who is reproduced by medical aids of applicants is due to the law.</li> <li>4. It has cited the child to applicant man and woman and has required to identify this relationship and has rejected the parental denial</li> </ol>	<ol style="list-style-type: none"> <li>1. Embryo donation request should be commonly prepared and submitted by the couple who are applying for a child.</li> <li>2. Duties and responsibilities of the couple receiving the embryo and the born child is like those of parents and their children in terms of custody, training, alimony and respect.</li> <li>3. The couple must have Iranian nationality.</li> <li>4. According to valid medical certificate, the couple is not able to have a baby but the wife is capable of carrying an embryo.</li> <li>5. Applicants qualification will be examined by the family court out of turn and without considering the process of civil procedures and the couple disqualification is revisable.</li> </ol>

### 5.1. Positive and negative consequences of surrogate womb

Using a surrogate womb is common in most countries. It's common in Iran as well and has been legalized since 2003 and is increasing. Although the history of these laws in foreign countries goes back to the last few decades, it is relatively novel in our country and people do not know much about this topic. But many couples are suffering from infertility. Doctors in different countries are trying to treat it. Different methods of infertility treatment have made many couples able to have children or to be hopeful about the future. One method is "renting a womb" which has had positive and negative consequences.

#### 6.1. Positive consequences

**First:** Reduction of divorce rate in country and solving the problem of infertile couples.

**Second:** A righteous child has genetically all the characteristics of the parents who own the semen and is preferred to illegitimate methods or adoption.

**Third:** This method helps women who do not have problems in ovulating and their infertility is due to other factors. Therefore a high percentage of infertility problems are solved.

**Fourth:** Surrogate womb has been studied psychologically and psychiatrically for about 15 years (nearly 4000 cases) and the possible damage to the volunteers has been investigated, but no damage has been reported so far.

**Fifth:** In terms of jurisprudence the child who grows in a surrogate womb is legitimate and legal.

#### 7.1. Negative consequences

**First:** This approach is not culturally acceptable by all people and most of them are unaware of it, therefore there isn't a good opinion about a person who grows in a surrogate womb.

**Second:** The possibility of transmitting diseases like AIDS and Hepatitis and so on from the surrogate mother to the infant

**Third:** The possibility of transmitting infectious diseases (such as AIDS, Hepatitis, and so on) and viral diseases from embryo donating couples to the embryo and then the surrogate mother.

**Fourth:** The child awareness of this medical process and his attitude towards this issue.

**Fifth:** Possibility of various abuses of this method such as financial abuses.

**Sixth:** Family dissatisfaction especially the children and spouses of "volunteers for surrogate womb"

**Seventh:** Legally, there are still some problems in applying this method (Louw A. 2007)

### 2. Conclusion:

Considering what was stated in the lines and pages of this article, it could be concluded that:

Various assumptions are rising under the title of artificial insemination and the religious decree of the majority of them is permissible according to majority of the researchers and thus there will be a legitimate relationship as the posted decree. Although this phenomenon has certain positive consequences and has kept the families together, the vast and unconditional use of this method will be followed by looking at the surrogate mother as a tool and the possible reduction of two-parent families.

Moreover, the concept of family will become meaningless, and it will be used to clone human beings and to do researches while making some genetic changes in cells. Therefore, there must be some restrictions to limit this method only to those couples who can't be naturally and safely fertile. Justice is another moral point which is raised in this technology. Economic use of surrogate mothers will cause the use of human as a tool and the exploitation of low-income women and will serve and benefit the rich. Determining some ways to control the payment in exchange for surrogate motherhood and converting it to a humanitarian action rather than an income source, can remove this moral defect. Another moral point is protecting the rights and safety of those involved in this process specially the child who is born in this way. Considering full advice and consultation for those engaged in this process by independent experts and advisors can keep the autonomy right of people in choosing this method freely and consciously. It can sort of guarantee the acceptance of the child and the protection of his rights during pregnancy and after birth. To observe the principle of non-harm it is necessary to do all the relevant medical tests and cares to prevent any hurt to the surrogate mother and the child. Expressing medical issues in this matter is of great importance. It could be understood from the jurists' points of view that some of them are not justified sufficiently on the grounds of some actions, therefore expressing medical issues will not only justify the jurists but also will cause the researchers to comprehend various aspects of the matter.

**Table 2: positive and negative consequences of surrogate womb**

	Negative consequences	Positive consequences
positive and negative consequences of surrogate womb	1. This approach is not culturally acceptable by all people; therefore there isn't a good opinion about a person who grows in a surrogate womb. 2. The possibility of transmitting diseases like AIDS and Hepatitis and so on from the surrogate mother to the infant. 3. The possibility of transmitting infectious diseases (such as AIDS, Hepatitis, and so on) and viral diseases from embryo donating couples to the embryo and then the surrogate mother. 4. The child awareness of this medical process and his attitude towards this issue. 5. Possibility of various abuses of this method such as financial abuses. 6. Family dissatisfaction especially the children and spouses of "volunteers for surrogate womb" 7. Legally, there are still some problems in applying this method.	1. Reduction of divorce rate in country and solving the problem of infertile couples. 2. A righteous child has genetically all the characteristics of the parents who own the semen and is preferred to illegitimate methods or adoption. 3. This method helps women who do not have problems in ovulating and their infertility is due to other factors. Therefore a high percentage of infertility problems is solved. 4. Psychologically and psychiatrically no damage has been reported so far. 5. In terms of jurisprudence the child who grows in a surrogate womb is legitimate and legal.

**Acknowledgements:**

An author is grateful to the persons for financial support to carry out this work.

**Corresponding Author:**

Siamak Arianpoor

E-mail: [Arianpoors@gmx.com](mailto:Arianpoors@gmx.com)

**References**

1. James S, Chilvers R, Havemann D, Phelps JY. 2010. Avoiding legal pitfalls in surrogacy arrangements. *Reprod BioMed Online*; 21: 862-7.
2. Lacayo R. 1986. Is the womb a rentable space? *Time*; 128: 36.
3. Louw A. 2007. Surrogate motherhood. In: Davel CJ, Skelton AM, eds. *Commentary on the Children & #x2019; s Act*. Cape Town: Juta, 19-8 (loose-leaf).
4. Shenfield F, Pennings G, Cohen J, Devroey P, de Wert G, Tarlatzis B. ESHRE Task Force on Ethics and Law 10: surrogacy. *Hum Reprod* 2005; 20: 2705-2707.
5. Wilson MJW. 2005. Pre-commitment in free-market procreation: surrogacy, commissioned adoption, and Limits on human decision-making capacity. *J Legis*; 31: 329-37.

8/25/2012