

Access to Fertility Treatments for Homosexual and Unmarried Persons, through Iranian Law and Islamic Perspective

Reza Omani Samani, M.D.^{1*}, Ahmad Vosough Taghi Dizaj, M.D.^{1,2},
Mohammad Reza Rezania Moalem, M.Sc.¹, Seyed Taha Merghati, Ph.D.¹,
Leila Alizadeh, B.Sc.¹

1. Ethics Department, Royan Institute, Royan Institute

2. Andrology Department, Reproductive Medicine Research Center, Royan Institute

Abstract

Background: A family traditionally consisted of a married man, his wife, and their children. The new reproductive technologies including use of the third party as egg, sperm and embryo donation and also surrogacy have changed the traditional meanings of lineage, ancestry and family. The increasing number of lesbians and gays in addition to single women requesting fertility treatment from IVF centers in the world has brought a debate: "Can fertility treatment be offered to single persons or homosexuals?" According to ASRM and ESHRE taskforces, there is no such limitation, but as legislations and law, also ethical and social considerations depending on the culture, beliefs and religion of societies must be considered as limitations in some contexts like Iran.

Materials and Methods: In this study we review the Iran law and also some Islamic resources about offering the fertility treatment to single mothers or homosexuals.

Results: Homosexuality is not accepted in Islamic contexts and is considered as a crime. Children should have a family with both mother and father, unless they lose one of them or both. In the latter situation Islamic court will hand over the custody of the child to someone else like uncle or grandfather.

Conclusion: We concluded that according to Islam and Iran's law, fertility treatment cannot be offered to single mothers and homosexuals mostly because of welfare of the child.

Keywords: Fertility Treatment, Unmarried, Homosexual, Islamic Perspective

Introduction

A family traditionally consisted of a man, his wife, and their children. The father was the provider, and the mother stayed at home to raise coitally conceived children. There are many definitions of family including: "A fundamental social group in society typically consisting of one or two parents and their children", "husband, wife and children", "all blood relations", "All the members of a household under one roof", "A group of persons sharing common ancestry". The new reproductive technologies including use of the third party as egg, sperm and embryo donation and also surrogacy have changed the traditional meaning of lineage, ancestry and family. The increasing number of lesbians and gays in addition to single women requesting fertility treatment from IVF centers in the world has brought a debate: "Can fertility treatment be offered to single persons or homosexuals?" According to human fertilization and embryology authority (HEFA) in UK, during 2000 to 2005, the number of IVF treatment for single mothers has

been increased to 2.5 folds and for lesbian couples to 4 folds (1). Currently in the United States, there are an estimated 6 to 14 million children being raised by at least one gay or lesbian parent, usually as a result of a heterosexual relationship (2). As fertility treatments are somehow new, maybe there are not exact rules and regulations on them in many countries. On the other hand, family and lineage importance and definition varies in different contexts, we tried to find proofs and documents in Iran's law and also Islamic resources about limitation of unmarried and homosexuals in access fertility treatments. First we review the situation in the world.

Materials and Methods

In this study we reviewed law vision of some countries and also Islamic resources about offering the fertility treatments to single mothers or homosexuals.

Received: 26 Oct 2007, Accepted: 19 Dec 2007

* Corresponding Address: P.O.Box: 19395-4644, Ethics Department, Royan Institute, Tehran, Iran
E.mail: info@royaninstitute.org



Royan Institute
Iranian Journal of Fertility and Sterility
Vol 1, No 3, Nov-Dec 2007, Pages: 127-130

America

In the USA, in all states it's allowed for unmarried persons, including gays and lesbians, to be foster parents, and all the states but one allow single persons and gays and lesbians to adopt children (3). Currently, in Argentina, Mexico, USA and Canada a stable relationship (not registered marriage) is necessary for requesting fertility services (4). In a survey of ART centers' directors, 19.3% and 27.5% had an idea to prevent single women and lesbian couples from treatment respectively (5). In the last ethical committee report of American Society of Reproductive Medicine (ASRM) it has been stated that: *Programs should treat all requests for assisted reproduction equally without regard to marital status or sexual orientation* (6). American Psychological Association opposes any discrimination based on sexual orientation in matters of adoption, child custody and visitation, foster care, and reproductive health service (7). Although, there is no obligation for physicians to offer fertility treatment to singles or homosexuals in spite of their ideology or religion.

Europe

Under the Europe Convention, a single woman or even a lesbian couple is entitled to have children, even though these children may have no legal father (European Convention 1978). It seems that marriage is required for fertility treatment in Israel, Cyprus, Germany, Hungary, Georgia, Poland, Slovenia and Turkey but some other countries such as Denmark, Austria, Norway, Sweden, Portugal, Finland, Italy, Belgium, Belarus, Croatia, France, Greece, Iceland, Netherlands, Russia, Spain, Ukraine, Ireland, Switzerland, and Czech Republic require just a stable relationship between couples [4]. Fertility treatment is offered to single women in Israel, Belarus, Italy, Netherlands, Russia, Spain, Ukraine, UK and Finland (4). In UK, HEFA just asks the IVF centers to recommend any woman, requesting treatment, to provide a supportive father for her child (1). European Society of Human Reproduction and Embryology (ESHRE) has released its 13th task force on ethics and law about the welfare of the children in 2007 in which there is no limitation for offering fertility treatment services unless the welfare of the child is in danger; but there is no strict criteria for evaluation of the child's welfare in this task force (8). On the other hand, in this task force, the responsibility of child's welfare has been put on the physician, and the physician is free to accept or deny a patient upon his or her ideology. So, there is no obligation to

accept lesbians or single women if the physician thinks that it is against the welfare of the child, and these people can be referred to other centers by the physician.

Australia

Australian federal government has limited IVF treatment to heterosexual couples that caused some protests (9), but a stable relationship is enough for requesting fertility services (4).

Other countries

Marriage is required in Taiwan, Hong Kong, Saudi Arabia, Korea and Japan. Information about other countries is not available (4). To our knowledge none of 57 Islamic countries offer fertility treatment to single women or homosexuals.

Iran's Law

There are more than 50 active infertility clinics in Islamic Republic of Iran; none of them accepts single women or homosexual couples.

Article number 10 of Iran constitution says: "Since the family is the fundamental unit of Islamic society, all laws, regulations, and pertinent programs must tend to facilitate the formation of a family, and to safeguard its sanctity and the stability of family relations on the basis of the law and the ethics of Islam."

So, family is recognized as the fundamental unit and it should be protected. According to Iran's civil law article no: 1105 family means wife, husband and children. Article no: 997 and 998 of Iran's civil law defines the family as a group of persons related together by marriage and lineage. There is no child bearing, accepted out of the married couples, although, as the Islamic marriage can be unregistered, children with unknown fathers can be registered and get the ID. If we accept that the mother can refer her child to the registration administration and the office must register the baby and give the ID card (Registration Administration Rule article 16 -note), so, single mother (without registered marriage) is accepted in Iran.

The question is if the single mother is accepted, why the infertility treatment is limited to the married couples? The answer is; the basis for accepting a fatherless child for registry and giving the ID is the welfare of the child and prevention of any possible psychological and social problems for the child in the future, considering that fatherless child is a social fact that can not be prevented. On the other hand, efforts to make a fatherless child are completely against the welfare of the child

and as mentioned before, a program is legal if it safeguards the family (Iran Constitution Article 10).

As we know, among the Islamic countries, just Iran and Tunisia have legal child adoption. In other Islamic countries, child adoption is forbidden. In the Iranian adoption law it is mentioned that the couple requesting the child must be legally married and infertile for five years (Child adoption law 1975).

In the recently approved law entitled “the embryo donation law” (Passed in 2004), it is mentioned that the couple requesting the embryo must be infertile confirmed by IVF center, and the request must be signed by both husband and wife (Article no 1 and 2 of Embryo Donation Law). As we can see in any related law about giving a child to a family, it is limited to the legal married couples who are infertile as a “treatment” protocol. Also a careful review of Iran’s civil law (articles: 1035, 1158, 1165, 1166, 1167, 1168, 884) reveals that procreation is allowed only inside the family and outside the family it’s forbidden.

About the homosexuality, in Iran, it is a crime and no homosexual family can be recognized as legal. So, in addition to the previous statements, putting a child in an illegal or criminal family is completely against the welfare of the child. Presence of gays or lesbians is a social fact too, but in a society like Iran, they are condemned, so any try to give them a child puts the child in a disgraced family. Even when homosexual act of a person can be proven, they will be punished even sentenced to death. (Iran Islamic Criminal Law, Article no: 108-128 for gays and 127-134 for lesbians).

Ethical concerns regarding welfare of the child

The most frequent argument is that the best rearing environment for a child is a two-person, married, heterosexual family and are reluctant to assist or facilitate any different arrangement. Those clinicians who do not treat single females, for example, may believe that fertility treatments should be restricted to married couples, or treatment should be given to the infertiles only, or that children need a father and a “normal upbringing” (9, 10). Others may believe that children of homosexual mothers will experience social isolation and gender-identity or sexual-orientation problems (11, 12). The above mentioned problems are more severe in the religious societies like Iran. As said before, in this society putting a child in this type of family is completely against welfare and even a potential danger for the child.

Islamic Survey

In Iran, law and religion are joined together and can not be separated. Every legislation approved by parliament is precisely checked by Islamic clergies upon the Islamic resources and if it is against Islam it will be rejected by Iran’s Guardian Council (Article 4 and 91 of Iran Constitution). Even when nothing can be found about a subject in our current law, then a clergy leader’s decree (Fatwa) will be the base of our rules (Article 167 of Iran Constitution). So, in the new items like assisted reproductive techniques, there have been many decrees that accept the base of using these techniques for treatment of infertility, but different ways like using the third party are in controversy. As the interpretation of the Islamic resources (Manabe Fiqh) can be debated between clergy leaders, the followers of any of them can rely on his Fatwa.

Marriage and raising a family is highly recommended in Islam. The prophet Muhammed says: “Marriage is my tradition; whoever rejects it, is not close to me”. Sexual action is encouraged between husband and wife not only as a step toward procreation, but also as a completely natural activity within marriage. On the contrary, it is condemned outside marriage and between same sexes (17).

It is mentioned in Holy Quran: “Wealth and progeny are the allurements of this world” (13) and in the other place it says: “And those who pray, Our lord, grant us spouses and offspring who will be the comfort of our eyes” (14) indicating the importance of offspring in Islam. Also the famous stories of two prophets, Abraham and Zachary who were infertile for a long time (15, 16) indicates that infertility is explained in the holy Quran as a hard situation. The infertile couples’ treatment is the only aim considered for assisted reproduction techniques, so, these techniques should be used just for treatment and nothing more. In the third conference of the Islamic Fiqh Council (held in Amman, Jordan, October 11 – 16, 1986) the Council accepted assisted reproductive techniques only between husband and wife and banned all kinds of donations. So, proper marriage is necessary for offering fertility services in the Islamic world.

In addition, protection of the family is very important in Islam and parent-child rights and relations are enormously discussed in it. The necessity of having a family is recommended and underlined for the children and upon many references; it is an obligation to protect the family. For example there is a rule in Islam (Ferash) coming from a very famous saying of holy prophet Muhammed (Hadith Ferash) in which, it is mentioned that if

a rape happens to a married woman and a child is born; the child belongs to the family. It is well clear that all efforts are for protecting the family and the child welfare. So, the need of a father for a child prevents any try to have a child outside the family. Dr. Serour mentioned in his papers (23,24) that if the marriage contract has come to an end because of divorce or death of the husband, medically assisted conception can not be performed on the ex-wife even if the sperm comes from the former husband, as confirmed by many clergy leaders gathered in Rezanian Moalem's book (22). Also both Rezanian and Serour have mentioned that frozen embryos must not be used after death of husband. So, it seems that Islam does not accept giving a child to a single mother or widow (25-30).

From Islamic point of view, homosexuals are condemned both gays (Islamic Term: Levat) (20, 21) and lesbians (Islamic Term: Mosahegheh) (18, 19). So, there is no right to produce homosexual families having children.

Conclusion

It seems that upon Iranian law, fertility treatment is restricted to heterosexual married couples. Islamic survey also confirms this restriction.

Acknowledgements

We dedicate this paper to our late colleague Dr. Saeid Kazemi Ashtiani, the founder of Royan Institute and pioneer of Ethical research in this field, may he rest in peace.

References

1. Human Fertilization and Embryology Authority: <http://www.hefa.org.uk>
2. Patterson CJ. Children of lesbian and gay parents. *Child Dev* 1992; 63: 1025-1042
3. Robertson JA. Gay and lesbian access to assisted reproduction. *Case West Reserve Law Rev* 2004; 55: 323-372
4. Jones HW Jr, Cohen J. IFFS surveillance 01. *Fertil Steril*. 2001 Nov; 76(5 Suppl 2): S5-36
5. Stern JE, Cramer CP, Garrod A, Green RM. Attitudes on access to services at assisted reproductive technology clinics: comparisons with clinic policy. *Fertil Steril*. 2002; 77(3): 537-41
6. Ethics Committee of the American Society for Reproductive Medicine: Access to fertility treatment by gays, lesbians, and unmarried persons. *Fertil Steril*. 2006; 86(5): 1333-1335
7. ESHRE Task Force on Ethics and Law including, Pennings G, de Wert G, Shenfield F, Cohen J, Tarlatzis

- B, Devroey P. ESHRE Task Force on Ethics and Law 13: the welfare of the child in medically assisted reproduction. *Hum Reprod*. 2007; 22(10): 2585-2588
8. Zinn C. Australia acts to restrict IVF treatment to heterosexual couples. *BMJ* 2002; 324: 1054
9. Dunstan GR. Ethical aspects of donor insemination. *J Med Ethics* 1975; 1: 42-44
10. Fletcher JC. Artificial insemination in lesbians: ethical considerations. *Arch Intern Med* 1985; 145: 419-420
11. Avison WR. Single motherhood and mental health: implications for primary prevention. *Can Med Assoc J* 1997; 156: 661-663
12. Cairney J, Boyle M, Offord DR, Racine Y. Stress, social support and depression in single and married mothers. *Soc Psychiatry Psychiatr Epidemiol* 2003; 38: 442-449
13. Holy Quran 14:46
14. Holy Quran 25:74
15. Holy Quran 3:38
16. Holy Quran 51:28
17. Husain FA. Reproductive issues from the Islamic perspective. *Hum Fertil (Camb)*. 2000; 3(2): 124-128
18. Holy Quran 23: 5-6
19. [Khomeini Ayatollah, Tozeeolmasael (Islamic rules), Article No: 2438] in Farsi
20. Holy Quran 7: 80-81
21. Nahj Albalagheh of Emam Ali, Rezaniya Moallem MR. Forensic pregnancies in accord with law and Islamic Jurisprudence. 2006; Boostan Ketab Ghom, Iran, ISBN: 964-371-787-9
22. Serour GI, Aboulghar MA, Mansour RT. Bioethics in medically assisted conception in the Muslim world. *J Assist Reprod Genet*. 1995; 12(9): 559-565
23. Serour GI, Dickens BM. Assisted reproduction developments in the Islamic world. *Int J Gynaecol Obstet*. 2001; 74(2): 187-193
24. Zuhur S. Of milk-mothers and sacred bonds: Islam, patriarchy, and new reproductive technologies. *Creighton Law Rev*. 1992; 25(5): 1725-1736
25. Inhorn MC. Making Muslim babies: IVF and gamete donation in Sunni versus Shi'a Islam. *Cult Med Psychiatry*. 2006; 30(4): 427-450
26. Dutney A. Religion, infertility and assisted reproductive technology. *Best Pract Res Clin Obstet Gynaecol*. 2007; 21(1): 169-180
27. Hathout H. An Islamic perspective on human genetic and reproductive technologies. *East Mediterr Health J*. 2006; 12(2): S22-28
28. Yeprem MS. Current assisted reproduction treatment practices from an Islamic perspective. *Reproductive BioMedicine Online* 2007; 14(1.1): 44-47
29. Schenker JG. Assisted reproductive practice: religious perspectives. *Reprod Biomed Online*. 2005; 10(3): 310-319
30. American Psychological Association (APA): <http://www.apa.org/pi/lgbcpolicy/parents.html>