

## DISCUSSION ON LEGAL ISSUES OF ARTIFICIAL REPRODUCTION

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### Abstract

With the application and development of technology, artificial reproductive technology has been known and applied more and more by people. At the same time, it's also produced some problems. As an important modern medical treatment of infertility, artificial reproduction has a significant remedial effect on traditional way of natural reproduction. Through the article the author is about to introduce the original development of artificial reproduction and propose relevant legal issues further. Moreover, through the comparison of applications at home and abroad, the author makes an analysis, and then layouts issues and gives suggestions. Artificial reproduction after all is different from natural reproduction because this behavior involves multiple parties. Therefore, it should establish the appropriate law to put this issue into the legal environment so this law can be used to adjust the interests of all parties, especially to protect the legitimate interests of children of artificial reproduction.

**Key words:** Legal status of artificial reproduction; Type; Comparison; Surrogate mother

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### INTRODUCTION

Artificial reproductive technology is to separate the reproduction from sex and make use of artificial way to achieve pregnancy purpose. Its main function is to make infertile couples get baby by this technology. The key of human society endless is that human beings continue to multiply baby. Having children is not

only basic premise of social development, but also is the traditional Chinese culture family's responsibilities and burden. However, as the rapid development of social society, human's pressure for survival is increasing constantly so the delay marriage and child bearing become a common phenomenon. The development of the science and technology has brought environmental degradation. So many uncontrollable effects make the high proportion of infertile couples. The infertility issue becomes more and more serious so that artificial reproduction finally appears.

Artificial reproductive issue actually originated from a novel which called *Brave New World*. The Writer described that human's reproductive process is completely controlled by human who manipulate the combination and growth of ovum and sperm in the vessel in order to response to the different needs of society to produce different types of people in batches. In 1890, the American doctor, Du Laimu Johnson, did an insemination clinical application first time. Then the application of artificial insemination has been used in the world. Unlike other science technologies, artificial reproductive changed the traditional natural reproductive way that is to be pregnant by having sex and gained the achievement of getting children conceived by artificial, which becomes reality to people. This big change has brought significant impact to our traditional concept and the legal system. Especially artificial insemination process may use third person to complete that, so there has surrogate mothers and donors of perm come into being. It is these people who make artificial reproductive problems more complicated. For instance, how to recognize the legal status of artificial insemination children? Do they have right to know that? Should surrogate mother be legalized?

Domestic jurisprudence pays attention to artificial reproductive technology later than other countries, so studies of artificial reproduction are not thorough enough and the classifications of artificial reproductive technology are different. Some scholars divide artificial reproductive technology into two categories that are artificial insemination and out of body fertilization according to the provision of "The Management Approach of Human Reproductive Technology Assistance" in China. Because current law prohibits surrogate and asexual reproduction, they are excluded from the scope of the study.

The Artificial reproduction, as an important modern medical way to cure infertility, has a significant remedial effect to the traditional natural reproduction. Artificial reproduction not only has big offensive to traditional ethical concepts, but also challenges to the existing legal system. Most people subjectively believe that reproductive right is the fundamental right to human, so prohibiting artificial reproduction is a violation to people's reproductive rights. In our country, related issues are only presented in the "Woman's Rights and Interests Protection Law" and "Population Family Planning Law".

Therefore, comparative law research method and empirical analysis method are mainly adapted to study major legal issues of artificial reproduction. Through making a comparison of the USA, the UK and the European common laws and civil laws in all countries laws enacted artificial reproduction or check references to the relevant views and research.

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# 1. COMPARATIVE LAW STUDY OF ARTIFICIAL REPRODUCTION

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## 1.1 Research of USA, UK, and European Laws

In these countries, England is the first country of test-tube baby born through in vitro fertilization. After that there are ten thousands artificial reproduction children born by adapted this reproductive while using other artificial reproductive technologies to make babies are even more countless. England promulgated the "Surrogacy Arrangements Act" in 1985, which shows British Medical technology's rapid development. Since artificial reproduction sparked intense controversies in law, moral, religion and other aspects, the British government established a special investigation committee in July 1982, which included legislators, physical workers, gynecologists, counseling workers, and Sociologist and other components. Through two years of research, they submitted a report to government in June 1984. In the report, some relevant provisions are made for the qualification of artificial reproduction medical institutions, and the written consents that must be gotten from the couple who accept the operation and the donor either in vivo or in vitro fertilization inseminations.

The United States is a federal state, and every state's legislation on the artificial reproduction is different. In 1973, the "unification Family Law" had passed, and the Article 5 of it stipulated the problem of artificial insemination. But it is only a template and do not have mandatory. This law has made specific provision for the legal relations between children, husband and wife, and the sperm donor, all of whom participate in artificial reproduction, but has not given clearly define land legal social status of the surrogate children. As artificial reproductive surgery and Surrogacy behaviors are popularize in the 1990s, the United States amended this Act in 2000 and added the content about the legal status of surrogacy contract and surrogate children.

## 1.2 Research of Civil Law Countries

In civil law countries, Germany began to implement a revised "adoption agency law" on December 1, 1989, which added the provisions of prohibiting agency surrogate mother. German opposed asexual reproduction and on January 1, 1991, promulgated the "embryonic protection Law", which aimed to maintain German Basic Law on the protection of human life and dignity through the legislative protection for fertilized ovum and embryo and meanwhile to prevent the artificial reproductive technology from being abused.

Artificial insemination started earlier in France. In 1973, France founded a research center to store sperms and eggs. Meanwhile, the new code of conduct within the center lays down the ground rules for implementation of artificial reproduction. In 1982, the first case of test-tube baby was born in France, which has been led to an animated discussion about relevant legislate. In 1984, France set up a National Ethics Advisory Committee, and this committee mainly discusses the relative issues on genetics, reproductive and legal. The report named Life Science and Ethics of 1988 and the draft of life science and human rights in 1989 lay the foundation for the relevant legislation for artificial insemination. Until now, France does not complete the reproductive legislation, but a standardize guideline about the sperm donation is proposed.

Sweden is one of fewer countries to first establish the legislation about artificial reproductive in the world. As early as 1981, they founded Swedish Council to discuss relative issues about artificial insemination. Furthermore, they also discussed the necessity about the legislation of artificial insemination and the legal status of the children born of artificial insemination method. In 1984, Sweden presented three acts to the congress: namely "Artificial insemination Act", "The Amendment Paternity Law" and "Secrets Protection Act". The first two acts began to work on March 1, in 1985.

At present, Japan does not enact the laws of artificial reproduction. However, in recent years, Japan lunched a legal seminar about reproductive medical and some preparations for the legislation of artificial reproduction. In 2002, Japan's ministry of justice convenes a meeting specially to discuss "assisted reproductive health" problem. In this meeting, it defines the relationship between father and child, mother and child, and define the donator of the sperm; meanwhile it proposes the forced unclaimed and surrogacy contract.

In Taiwan region of China, "Taiwan Health Department approach" and "assisted reproduction technology management approach" in November 1994 regulated implementing conditions and management measures to artificial reproduction. Several years later, the people of Taiwan for the artificial reproduction special legislation have very high requires. Health Department drafted "Artificial Reproduction Act" draft which has been passed by "Executive Yuan" and is waiting for the check of "Legislative Yuan".

Generally speaking, the common law system is much faster than the pace of civil legislation. Despite numerous research reports being introduced in civil law countries and regions, the real legislation is limited to a few countries and regions.

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## 2. RECOMMENDATIONS AND SUGGESTIONS FOR ARTIFICIAL REPRODUCTION PROBLEMS IN OUR COUNTRY

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### 2.1 The Confirmation of Parties Involving in Artificial Reproduction

In legal relationship of artificial reproductive children, it must be clear for the clients that include infertile couples, people who donate cell germ, the implementation of artificial reproductive surgery medical institutions and germ cell storage agencies, surrogacy contract parties to make artificial reproduction.

According to China Ministry of Health's "Restriction for the Human Assisted Reproductive Technology", there are limitations for the people to get the treatments of artificial insemination, but for medical experiment, it is impossible to have the alternative surgery objects. In 1996, Taiwan's Department of Health founded Artificial Reproductive Technology Advisory Committee, which mainly discussing the draft of "Artificial Reproduction Act". The draft limited the candidates of the surgery and they must meet the specific conditions. The conditions include age, mental, physical examination to determine suitability for surgery, the couple whether suffering from incurable diseases or genetic disorders on reproduction issues, whether one of the spouses has healthy germ cells or whether need to accept donated sperm or living eggs. Our country can learn from abroad to draft the restriction in China to limit the couple taking artificial reproductive process.

During the process of the implementation of artificial reproductive surgery, the help of the sperm or egg's donor is necessary. When the wife cannot ovulate or husband cannot be able to discharged sperm, either in vivo or in vitro fertilization insemination requires assistance from donor to achieve fertility through artificial reproductive technologies to achieve the purpose of having children. The donation of Sperm and the donation of egg all belong to provide germ cells, so the donors are kind of parties.

Based on Taiwan's Assist Reproduction Technology Management Approach, the article 4 says: Medical institutions should ask health authorities to approve before they perform artificial reproductive technology, exclusive of spouses sperm implantation. Procedures and standards approved by the central competent health authority. According to this provision, the implementation of homogeneity in vivo fertilization surgery is an exception, which can be operated in any medical institution. And the rests are subject to special approval procedure through the Department of Health. This provision also has been agreed by the foreign legislative and scholars and experts. They generally believe that medical institutions need to have some qualified medical equipment, qualified doctors, and there should be counseling experts in order to fully understand whether the parties are suitable to receive artificial reproductive surgery. China also can adapt to such a requirement in the legislation of artificial reproduction.

## **2.2 Artificial Reproductive Children'S Right to Know**

"United Nations Convention on the Rights of the Child" Article 7 states: "Children have possible to know who are their legal parents." "Family Code of the Russian Federation" on page 54 states: "Every child has right to as much as possible to get family life and education from parents, have right to know their parents, have entitled parental care and have right to live together with their parents, but these situations except when they have interests conflict between parents and children " while artificial insemination have right to let children to know, the exercise of rights should be certain restrictions. Only when they became a adult and face to wedding event can request the authorities to inform their sources of information related to origin, in order to avoid parents' marriage; In addition, only when they need to treat disease may request inform the relevant information about their parents. Even children know the identity of their parents' origin, which is also based on the law that cannot be recognized on the parent-child relationship pedigree parents filed the complaint. On the other hand, in order to avoid using hybrid artificial insemination makes it difficult to determine the true source to their ancestry. Legislation should legislate against artificial insemination using mixed semen in the future, in order to avoid controversy.

## **2.3 The Confirmation of Legal Status of Children of Artificial Reproduction**

Based on the specific different ways of artificial reproductive surgery, the artificial reproduction can be divided into artificial body of artificial reproduction and artificial insemination in vitro fertilization. The different ways should use the different confirmations.

The legal status of children born naturally: children born in normal way, that couple must be the child's parents. Born out of wedlock is common known as illegitimate child, which refers to the children who are given birth by no marriage

relationship between men and women. The status of illegitimate children is different not only because of different countries and the times are different, but also because of different religions, and morality and habits. In our country, It can through to the approach of identify and claim to determine the legal status for children.

The legal status of children born from artificial insemination: Artificial insemination inhuman (AIH), also called Artificial insemination by husband, that is, husband's sperm injected into the womb of his wife, and the wife's egg fertilization and then pregnancy and childbirth. In this case, according to the principles of *jus sanguinis* and presumption of wedlock, though the children are born from artificial insemination, their parents are still their own parents. There is no controversy about the children born form artificial insemination inhuman (AIH). Compared with other methods of artificial reproduction, homogeneity without third party intervention in fertilization process, sperm and egg are from infertile couples, the legal status of children is clear in the law and then there is less legal ethics controversy involved.

Artificial Insemination by Donor (AID), means that husband's sperms are incapable to fertilize or no sperm, in this situation we will manually inject the donator's sperm into the female's womb and fertilize to achieve the reproduction purpose. In this case, children are born with two fathers: one sperm donor, one is raising father. According to the traditional rules of *jus sanguinis*, sperm donors should be identified as the father in this time. According to the presumption of wedlock, children are born during the marriage between husband and wife: the husband will automatically become the father of the children. *Jus sanguinis* principle and the existing parent-child system on artificial insemination father identification caused inconsistent conflict: who is more suitable to become the child's father? The author of this thesis believes that the identification of father depends on the purpose of the artificial insemination surgery. If we simply rely on the principle of *jus sanguinis* and legitimate system to infer the child's presumed father and the mother, which is incorrect. Until now, civil law still not adopted the idea that blood relations can lead to relations of parents and children. In order to prevent husband regrets about the artificial insemination, he needs to sign a consent form before surgery, and he cannot deny children as illegitimate, and consent to his legitimate right of veto constraints. Presumption and denied the use of legitimate system allows an infertile husband and children born form AID to make up a parent-child relationship without blood ties, which violets the traditional concept of *jus sanguinis* to some extent. However, considering the infertile couples, they have enough reparation both for economic substance and mental before the artificial insemination surgery. They need to regard the children born from the artificial insemination as their legitimate children. It is best choice to protect the best interests of the children from the artificial insemination

The legal status of children born from the artificial insemination in vitro: there is no difference whether eggs are fertilized in vitro or in the womb of wife, and just the difference about insemination place, and the legal status of children born from the artificial insemination can refer to the heterogeneity in vivo fertilization

The legal status of children of IVF egg donation has a problem on how to make sure the child's mother. Based on the principle of "deliveries is the mother," in English common law, it is certain that women who are pregnant and childbirth are considered as children born mother. Now there are three ways to identify who is the children's mother. First, wife is child's legal mother, the physical contact of

factors more important than genetic lineage ties since the wife should be the mother of their children. Second, who donated egg will be legal mother of children. Third, in order to determine who is a legal mother to children, we need to ask parties meant. I believe that the first opinion is the proposition that the wife is pregnant mother to their children's point is preferable.

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### **3. LOW-LEVEL EFFECTIVENESS OF PROVISIONS AND LIMITED FUNCTIONS**

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In accordance with the provisions of the law in our country, the Ministry of Health's file is a specificity administrative regulation. It is just a judicial reference rather than the norm that must comply with. Artificial reproduction problem is a major issue involving human fertility difficult to be standardized by administrative regulations. It is not only difficult to cover all needs in content, but also the force of law is weak, hard to play its role. Based on the fact of the low-level effectiveness of administrative regulations, the author recommends that establish a special legislation regulating assisted for reproductive technology.

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### **4. PENALTIES FOR THE ILLEGAL IMPLEMENTATION OF ARTIFICIAL REPRODUCTION**

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According to China's "Administrative Punishment Law," and "medical institution regulations", "medical institution regulations implementing rules" and penalties, physicians and medical institutions for their illegal acts will be confronted with warning, a fine of less than 10,000 RMB and administrative sanctions such as fines and penalties. In the face of the temptation of huge profits in artificial reproduction, these administrative penalties against offenders are very limited, difficult to play a role in real restriction and supervision, which put a dangerous precedent for the normal application of artificial reproduction. The Government should pay more attention to this issue. The legal issues caused by the abuse of these artificial reproductions not only need legislative attention, but also a more proper legislative treatment through legislation is expected.

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### **CONCLUSION**

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In summary, with the development of society, and increasing social pressure, artificial reproduction has solved infertile couples' problem, while still has a great challenge to ethical and legal norms. In view of this, China should deal with these issues and solve them right away. On the one hand, we should make reproductive children grow physically and mentally. On the other hand, harsh punishment to those people who abuse human reproduction to make benefits, which brings bad impact on society. Measures need to improve in accordance with each problem.

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