

Research Paper: Jurisprudence-Legal Consideration of Single-Status Childbearing



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ABSTRACT

Background: Among the achievements of modern fertility technologies available to contemporary humans, we could mention the freezing technique to fertility preservation, and subsequently, unmarried childbearing. The only way for having children was having sexual intercourse with the opposite gender in the past years; however, with the advent of this technology, even without such a relationship, it is possible to have a child. This process could be termed unmarried childbearing or single-status fertilities. This is one of the recent subjects in medical fertility; however, there is no research in this field, in Iran.

Methods: This was an applied and theoretical research in the theology field; thus, no research material was implemented. The main method of this research was the bookcase approach.

Results: In countries such as the USA, UK, and Australia, where there are more coherent laws about employing modern fertility techniques, this issue is addressed and specific laws exist in this regard. However, despite widespread use of this technique in Iran, we have no law in this respect except for the Fetal Donation Act of 2003, which only covers the general issues. In other words, the social fertility mandate has remained silent given permission, prohibition, and its conditions and effects on the child lineage in Iran's laws. Freezing gametes is practiced in our country for a wide range. Besides, single-status fertility is occurring worldwide.

Accordingly, this seems to be among the problems facing our society, and may also be illegally conducted in some cases, in Iran. In Islamic law, the permissible instances of reproductive rights include births through marriage, not otherwise, as well as births employing reproductive aids in terms of meeting the Islamic law. On the other hand, some individuals believe that this case can be regarded as some kind of inoculation with the involvement of a donor agency, and some jurists have voted to allow it. Therefore, these jurists explicitly accepted the use of donor gamete in the form of marital relations. The legislature of the Islamic Republic of Iran also emphasizes on donation to lawful couples in the law of donation approach. Therefore, using donated gametes for childbearing is excluded in singles. Additionally, Judaism and all branches of Christianity, except for the liberal protestant denomination prohibit unmarried childbearing. While the approach to the issue differs from one country to another, the USA Supreme Court has recognized

Keywords:

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and protected free relationships, family formation, and decisions on births, as freedom rights. The UK law has subjected the provision of services to single women to the welfare of children resulting from the process. However, in France, the provision of infertility treatment services to single individuals is prohibited. According to Australia law, any single or heterosexual individual without receiving medically-assessed services, i.e., referred to as “clinically infertile” cannot use this technology for having children.

Conclusion: In some countries, like the USA, bearing a child at a single status is legal; however, in some other regions, like the UK and Australia, it is permitted under special conditions. In some countries, like France, this action is prohibited. There is no law about this matter in Iran. The 167 article of the constitution addresses considering the Islamic verses and narrations on preserving the destination of the generation or acquiring the benefits and disposing of the corruption. In conclusion, the only way to have a child and to realize the principle of reproduction is permitted in the framework of religious marriage; thus, bearing a child at a single status is illegal and prohibited, in Iran.

1. Introduction

Fertility and childbirth have constantly been a challenge of human societies as a life aspect. This issue has been changed basically due to modern fertility technologies. Implementing these methods facilitated childbirth for many infertile couples. Subsequently, it has led to numerous problems, including the complex issues of jurisprudence, social, and so on. Over time, the basic and simple methods of modern reproductive technologies have become sophisticated. As these approaches improved, they have made major alternations in human life. The only way for fertility was having sexual intercourse with the opposite gender in the past years. However, with the advent of this technology, even without such a relationship, it is possible to have a child; this practice could be termed as unmarried childbearing or single-status fertilities [1].

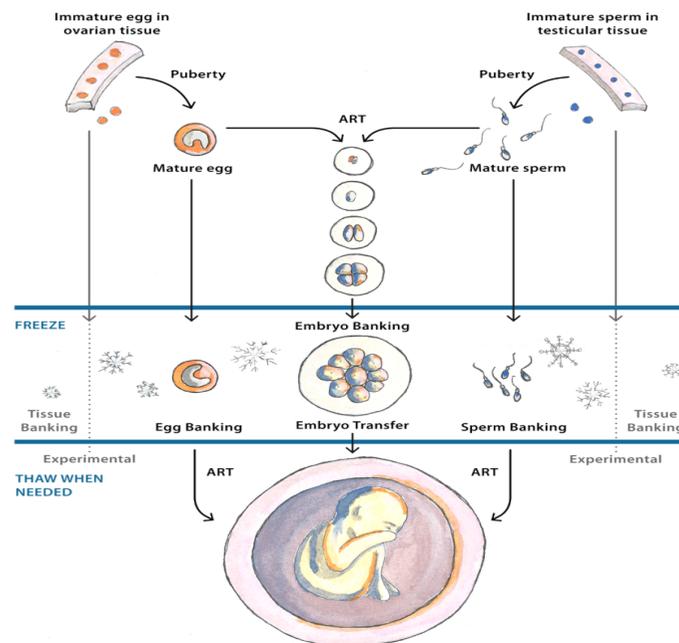
This issue comes in many different forms. Firstly, unmarried individuals will have children through new fertility techniques no matter they are divorced or widow. A great body of literature exists in the latter case. To avoid confusion, only the first case was considered in this article. Among the achievements of modern fertility technologies available, we can mention the freezing technique to maintain fertility and subsequently, single-status fertilities. Fertility preservation indicates that applicants seek medical methods to preserve the ability of fertility besides delaying its actuality. Moreover, this condition maintains their chances of having children through a future genetic relationship, despite potential or actual risks. Infertility is a major concern in patients undergoing chemotherapy, radiation, or surgery [2].

Most treatments for malignant diseases fail to specifically target the pain position; thus, they damage the re-

productive system, i.e., one of the major complications of these interventions. These patients can freeze their gametes before treatment for use after the treatment. This action is called medical fertility preservation [3]. Conversely, maintaining fertility for social reasons suggests that healthy individuals are unable to have children. This is because of their life plans, such as continuing education, seeking the proper job, or failing to meet the right partner or unwillingness to have children during the golden period of their fertility. As a result, they are willing to use fertility preservation techniques [4].

In some cases, individuals who previously froze their gametes to maintain their fertility in the future, may not want to get married for various reasons; however, they want to continue their offspring as well. They want to have children using their frozen gametes without getting married. Therefore, they refer to infertility treatment centers and use donated gametes to fertilize their frozen gametes and have a child without a legal marriage (Figure 1). Of course, this could be performed for those without frozen gametes [1]. Thus, individuals could give birth without having sexual intercourse, whether legal or illegal. This goal is achieved using donated gametes and by out of the womb fertilization.

While this issue prevents marriage clarity, it is contrary to public order and ethics. Besides, it is considered a deviation from the norms with extensive juridical-legal consequences. It also leads to the birth of single-parent children, i.e., contrary to their interests. This is because, in addition to the psychosocial problems in this regard, these children will be deprived of one of their basic rights, i.e., the right to know their genetic parents and suffer from unknown parentage. There are also the odds of future incestuous marriages for these children which are all demonstrated in the Islamic point of view [5].



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Figure 1: The process of Medical Fertility in the laboratory

In countries such as the US, UK, and Australia, there are more coherent laws about employing modern fertility techniques. Accordingly, they have referred to this issue and have specific laws in this regard that differ in different countries. However, despite the widespread use of this technique in Iran, we have no law in this regard, except for the Fetal Donation Act of 2003. This law only addresses general issues. Therefore, the social fertility mandate is remained silent concerning permission, prohibition, and its conditions and affects the child lineage in Iran's laws.

Undoubtedly, reproduction and fertility have a special status in the teachings of religions. This is because reproduction and its growth have been the subject of much attention from the perspective of all divine religions. However, the key point is whether the religions accept single-status fertility, as well.

The present research mentioned the views of the three divine religions; namely, Islam, Christianity, and Judaism, i.e., because religion in its broadest sense, includes these religions.

Freezing gametes is largely practiced in our country. Additionally, single-status fertility is occurring worldwide. This seems to be a problem faced by our society, and may also be conducted illegally in some cases, in Iran. Therefore, this issue has to be examined in its various dimensions prior to its prevalence. The matter of its permission or prohibition and the relevant laws must be studied in the

future, considering the child rights. Thus, the following questions should be answered in this regard.

1. What are the conditions for accessing and licensing single-status fertility and its consequences in the law of Iran and some other countries?
2. What is the legitimacy of single-status fertility in the perspective of Islam, Christianity, and Judaism?
3. Is single-status fertility in favor of children based on the value criteria of children's rights?

2. Results

In Islamic law, the permissible instances of reproductive rights include births through marriage, not otherwise; births by the means of reproductive aids in terms of meeting the Islamic law (not being touched, as well as the absence of the third party).

Furthermore, if some individuals believe that this case could be regarded as some kind of inoculation with the involvement of a donor agent (which some jurists have voted to allow it), these jurists explicitly accepted using donor gamete in the form of marital relations [6]. The legislature of the Islamic Republic of Iran also emphasizes on donation to lawful couples in the law of donation method [5]. Therefore, employing donated gametes for childbearing is excluded from single individuals in Iran (Table 1). Additionally, Judaism and all branches of

Table 1. Single-Status Childbearing according of law in different countries

Country	USA	UK	France	Australia	Iran
LAW	Permissible	Providing services to single individuals per the welfare of children	Prohibited	Clinically infertile	No law

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Christianity, except for the liberal protestant denomination prohibit bearing a child at a single status.

While the approach to the issue differs from one country to another, the USA Supreme Court has recognized and protected free relationships, family formation, and decisions on births as freedom rights.

Only the couples with the assistance to have their children can donate their surplus embryos to other couples. Besides, evidence concerns while a donation to lesbian couples and single women are allowed the US ART clinics accepted only 76% of single women in 1996 (Table 1) [7].

While UK law has subjected providing services to single women to the welfare of children resulting from the process, in France, the provision of infertility treatment services to single individuals is prohibited (Table 1).

According to Australia law, any single or heterosexual individual without receiving medically assessed services is referred to as “clinically infertile” and cannot use this technology for having children (Table 1).

Thus, this medical diagnosis should become the basic test for admiration, with non-clinical or social factors including the process, for facility recipients of ART services, whereas the wider application of “otherwise being unlikely to become pregnant” is only for married women or those in a de facto relationship.

3. Discussion

The legitimacy of unmarried childbearing must be addressed. This condition includes single-status fertility

where unmarried individuals tend to have children by donated gametes. Some applicants might have frizzed their gametes to fertility preservation, and in some cases, single individuals without the use of frozen gametes apply for donated gametes for social fertility.

The subject’s point is the single-status fertility permission; however, it often occurs after gamete frizzling with the purpose of fertility preservation. Thus, it is necessary to consider it before discussing the main issue.

There are two opinions about this practice in jurisprudence and different acts of law exist in different countries.

No verse or narrative directly addresses this issue; however, the great Islamic jurists refer to the verses and narratives on the change of creatures of God to issue their opinions.

“And surely, I will mislead them and I will excite in them false desires; and certainly, I will order them to slit the ears of the cattle and indeed I will order them to change them to change the nice nature created by Allah.” So, whoever takes Satan as protector of Allah, he will surely suffer a severe loss (Nissaa/119).

So, direct your face toward the religion, inclining to truth. (Adhere to) the fitrah of Allah upon which He has created (all) people. No change should there be in the creation of Allah. That is the correct religion, but most of the individuals are unaware of it (Rum/30).

These verses are used to deny the change in God’s creatures because they indicate that the change is at the command of Satan. Since divine nature is based on natural fertility, any other method is a change in divine creation and

Table 2. Different opinions about fertility preservation in Islamic jurisprudence

Group	Opinion	Reasons
First	prohibited	Change of creatures
Second	permissible	Creation means religion Its prohibition is a true example of permanent sterilization 3- There is no prohibition on the subject in Qur’an and Islamic narrations

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is forbidden and evil. Using gamete freezing to maintain fertility is forbidden and incompatible with human nature.

In Islamic narrations, tattoo workers, those who remove the hairs from the roots, those who split the teeth, and those who extend a woman's hair to another one have been cursed [8]. This is because they alter the creation of God. Therefore, freezing gamete and maintaining it to preserve fertility is considered a change in God's creation. This is because fertility preservation in the laboratory environment could generate adverse effects on the fetus. It may also affect the human race. Here, human dignity is targeted (Table 2).

The other group believes that mankind should enjoy the sun, moon, stone, fire, etc.; then, if he worships them according to Satan's command, this is the change in God's creation [9]. In many interpretations, "creation" means "religion". It is not unlikely that a change in God's creation would be a departure from the law of nature and abandonment of Hanif's religion [10]. Overall, accepting the view of the prohibition of God creation change requires some conditions. With this regard, changes in plants, transplanting fruit trees, trimming nails and hair, treating illness, making up a woman for her husband, etc. must be forbidden. This is because all of them include a change in God's creation.

Freezing the gamete also provides a legitimate benefit in fertility preservation. Although according to the fatwas of Islamic jurists, permanent sterilization is forbidden.

Gamete freezing applicants attempt this action to maintain their fertility and not lose their potency due to a particular disease, like cancer that results in their fertility decline or increased age and decreased fertility chances. Now, if we do not allow freezing gametes, we may deprive one of their most basic rights, i.e., to have a child. This is a true example of permanent sterilization [11].

There is no prohibition on the subject in Qur'an and Islamic narrations; therefore, there is no prohibition on freezing and maintaining the gamete by the holy Shariah and is in the circle of arguments.

Considering the above-mentioned reasons, if the legal rules for sperm and ovule extraction are met, their freezing and storage are not legally and religiously prohibited. This is especially the case if there is a rational basis, e.g., gamete freezing, before chemotherapy. This is because the basis is absolute if there is a prohibition doubt. Furthermore, other religious concerns permit it for such reasons (Table 2).

However, the case is different concerning single-status fertility; unlike the legitimacy of fertility preservation.

This issue cancels out the description of marriage, and as per some Islamic narrations, "any approach that result in the loss of a marriage is rejected".

According to a narration, a person asked Imam Sadeq: Why did God forbid adultery? The Imam, Peace Be Upon Him (PBUH) said: It is because it leads to the loss of inheritances and the discontinuation of kinship. The woman does not know who inseminated her and the child does not know her/his father; devotion to relatives will be cut off and family relationships will not be recognized. Then, the man asked, "Why did God forbid sodomy?"

The Imam (PBUH) stated: This is because if sodomy is lawful, men will not need women, which results in the termination of their offspring and its prescription has a great deal of corruption [8].

Imam Reza (PBUH) answered the questions of Muhammad bin Sinan, as follows:

God forbade adultery, because of its corruptions, such as the killing of souls, the loss of descendants, the abandonment of child-rearing, the degeneration of the hereditary legacy, and other similar corruptions.

In answer to the question, why did God forbid sexual intercourse with animals? He argued:

"... There is a great deal of corruption in it ... God created women for men to be comforted by them, and women to be the place of lust and their children's mothers" [8].

These narratives, despite the weakness of their document, are beneficial; accordingly, the overwhelming knowledge is proven if they are issued.

As a result, a number of the above-mentioned wisdom will be revered in every case where give rise.

Another witness is examining the historical course of the marriage in the early days of Islam. At the time of Islam's development, different kinds of marriages, such as bigamy, polygamy, etc. were prevalent. In such circumstances, Islam signed the principle of marriage and family system, and consequently couples (a husband and wife) [12]. Although it allows for up to 4 wives, it prohibits wife selection from mother, daughter, sister, aunt, niece, father's wife, mother- and sister-in-law, and so on. It also allows

temporary marriages and forbids other marriage types and relationships, including privacy through adoption.

This part discusses bearing a child at a single status from the viewpoint of Christianity. The three denominations of Orthodox, Protestant, and Catholic were examined for obtaining an accurate view of this religion, i.e., because there are three major denominations in Christianity, as follows:

Orthodoxy

The religious and sacred aspects of marriage, reproduction, upbringing, and growth of children are among the main points in Orthodox teaching. The sanctity of marriage and the family are the basic framework for the reproduction and upbringing of children. Thus, Orthodox teachings convict family-based fertility and prohibit having children at single-status fertility [13].

Protestantism

Protestantism has various branches, including Evangelicalism, the main branch of Protestantism, and the liberal Protestant denomination. These branches have different opinions about single-status fertility.

Evangelicalism

The scholars of this denomination emphasize the intrinsic relationship between marriage and parental relationship referred to in the creation journey. They also believe that the marriage framework, with emotional relationships between couples, is the most ideal basis for child reproduction and upbringing [14].

The main branch of Protestantism: During Protestantism, medieval singleness priority was replaced with valuing marriage; the priority of family's everyday life was replaced with priesthood priority; the priority of being a wife and mother was replaced with monasticism, and the affirmation of sexuality as human nature replaced disdaining these desires. They believed that fertility should occur in the family [14].

The Liberal Protestant Denomination: Data on this denomination's view of reproduction are scarce. It suffices to note that this denomination, unlike other Christian denominations, supports modern methods of fertility. In other words, it does not accept the viewpoint of other denominations about fertility and its relation to marriage [15].

Catholicism

From the Catholic perspective, marriage provides reproductive outcomes. Besides, it is associated with the unity of sexual relations, i.e., the intrinsic representation of relative relationships. In addition, the natural law explains duties for reproductive and educational stages for children. This parenting upbringing requires the child's ability to grow morally and psychologically and assuming internal commitments [16]. This theory is also called the "sacred relationship between sexual relationship and reproduction". It indicates that one's child must surely be the result of marital relations within the family structure. Therefore, the Catholic Church opposes artificial reproduction techniques, even simulations, and considers artificial fertility methods disrupting the procedure [17]. It also forbids single-status childbearing and strongly rejects it.

Bearing a child at a single status will be discussed as follows from the viewpoint of Judaism. The fact that men and women came from one root, then God separated them after creation is among the teachings of the Torah. Therefore, the men and women got married and together they formed the basic source of a child. Based on this belief, God created a world where men and women unite and fulfill the childbearing order. Moreover, the Torah reads in its 613 commandments that the human race should continue through marry based on the law [18]. While accepting some forms of modern medical fertility under certain circumstances, Judaism prohibits single-status fertility considering the sanctity of marriage.

Social fertility at the viewpoint of law will be discussed in the below. The approach to this issue differs from one country to another; the USA Supreme Court has recognized and protected free relationships, family formation, and decisions on births as liberty rights.

These laws initially supported the right of married couples for reproduction and the decisions correlated with it. They later emphasized the protection of the rights of single individuals. "If the right to privacy refers to all issues, this right be indeed recognized for married and single individuals where they can decide without government intervention on natural reproduction or adoption," the USA Supreme Court stated. The federal court has also recognized the right for infertile couples to use from various fertility assistance procedures [19].

The scope of this right is very broad in USA law; the adoption of all forms of reproduction assistance methods was formally recognized and strengthened by a series of courts' rulings in favor of contraception and deliber-

ate abortion. With the first In Vitro Fertilization (IVF) in 1978 and the expansion of the rental womb phenomenon in the decade 1980, as well as the advent of other assisted reproductive technologies during three decades, different techniques have been developed to respond to the reproduction need. However, conditions, terms, and limits of this right remain unclear [20]. Everybody could use modern assisted reproductive technologies without any limitation in the USA. Moreover, single and without a family, structure populations could also use it and single-status fertility is legal.

A comprehensiveness statute has been enacted in the UK in 1990, i.e., named Human Fertilisation and Embryology. This statute included all aspects of modern fertility technologies, as there are special articles for everything. Regarding the prohibited practices related to gametes, paragraph 1, article 4 of the Reproductive Act states that no one shall store any gametes or use male sperm during the preparation of a woman's medical care unless such service is provided for men and women together. Additionally, they should not use another woman's gametes unless this is per the permit.

Furthermore, the UK Human Fertilization and Embryology Act 1990 code of practice states that licensed centers providing Assisted Reproductive Technology (ART) services 'for attention to the welfare of any child who may be borne by this novel technology (including the need of that child for a father)' [21]. Thus, treating single women is forbidden in this area, except in medical prerequisite cases.

There was no specific law for modern fertility technologies in France until 1994. However, the article 94-653 of civil law and the article 94-654 of the general health law have been enacted on January 29th, 1994.

French legislator accepts most aspects of modern fertility technologies, such as donor and surrogate; however, restricts it because of child welfare, family benefits, values, and so on. Accordingly, there is confinement for applicants, formalities, and the center of modern fertility technologies.

According to the second clause of article 152 of general health law, only a spouse and any man and woman who have lived together for two years could use modern fertility technologies for having children. In France, the provision of infertility treatment services to single individuals is prohibited [22].

However, in Australia, the only law for ART services with three acts have been acted legislation (Victoria

1995, West Australia 1991, and South Australia 1988) to administering involved, also reminded in force laws and states have customarily adhered to the National Health and Medical Research Council (NHMRC) guidelines supplementary note 4 [23]. In Australia, for many years, it was enacted that: "IVF should only be available to individuals living in an accepted family relationship"; however, there existed no clear definition for "accepted family relationships".

1996, the Supreme Court of South Australia's decision, in *Pearce v. South Australian Health Commission*, conceived that the Reproductive Technology Act's limitation of access to ART services to married couples in conflict with the law of the Sex Discrimination Act, meaning this constrain is invalid. Although single women can currently use ART in South Australia, the Sex Discrimination Act does not espouse women from the favor associated with sexual preference. It, however, reflects hope for the further legal sanction of "alternative" family units [24].

After a legal challenge in 2000, an appendage has been added to the Infertility Treatment Act 1997; it commanded that: any single or heterosexual individual without receiving medically assessed services is referred to as "clinically infertile" and cannot use this technology for having children. Thus, this medical diagnosis should become the basic test for admission, with non-clinical or social factors included in the process, for facility recipients of ART services; however, the wider application of "otherwise being unlikely to become pregnant" is only for married women or those in a de facto relationship [25].

Children's welfare: The Convention on the Rights of the Child refers to the benefits of the child in 8 paragraphs with different phrasings, without any definition of it [26]. Articles 3, 18, and 21 provide a special place for the best benefits of the child. Paragraph 1 of the Article 3 suggests that the benefits of the child shall be strongly considered in all actions involving children conducted by public or private social welfare institutions, courts, law enforcement authorities, or legal entities [19]. Article 18 [1], referring to the shared responsibility of parents in the child's development, defines the child's best benefits as the main concern. Finally, Article 20 also refers to the child's best interests, i.e., directly related to Article 9 concerning the right of the child to live with parents.

In this regard, the Convention on the Rights of the Child does not refer to reproductive assistance technologies; however, it is not difficult to identify the instances of infringement of the rights and interests of the child resulting from these methods. This is especially true in

cases where applicants have conditions, such as mental health disorders, certain disabilities, and illnesses, drug use disorders, or a history of violence, where infringe future child's rights.

By the extreme separation of sexual behaviors and desires from fertility and transferring reproduction from home to laboratory, it is turned into a product that improves the process of de-identification or impersonation. According to a bioethics expert, "When the history of the twentieth century is written, this separation will undoubtedly be costly because it is the result of an un-blessed link between technology and human values that not only undermines marriage and the family, but it is also inhumane [27].

Today, unmarried individuals use these methods to have children; although they are aware that the child is deprived of a parent. Giving birth to children without regard to the importance of the parent's role in the child's development and to justify it, refer to the liberty right. Not to intervene in the decision of the individuals about the manner of a family's reproduction and non-discrimination due to marital status are cited the large number of children who have single parents due to the death or separation of parents as an objective fact [24]. Even it is argued that the children born through this method have a more desirable situation than other single-parent children. This is because of being desirable, knowing this as the rational justification for their work.

Single parenting is often exceptional and not desirable. Moreover, everyone, even the community, obliges themselves to compensate for and support these children's conditions. Thus, it seems likely to contribute to such a situation is a violation of the child's rights and interests. As a result, abusing these methods for orphaned children is a selfish and harmful action [28].

According to Social learning theory, elementary models with family, peer, gender, and culture groups are based on child tuition experiences. Some proofs suggest that the psychosocial influences of families and peers affect children's self-esteem, beliefs, aspirations, and self-regulation levels. Subsequently, causally affect their emotional, moral, and academic development, i.e., most are impressed by family and peers. Therefore, having male and female role models is critical within the primary family unit [29].

The children's right to know their biological parents must be protected in all types of assisted reproductive methods. They believe that the right of the child to know

his biological origin is not only legally regarded and respected in preventing from marrying with his/her relatives in the future, but also is "a moral necessity given justice principle" [30].

It should be noted, however, that allowing such a case could also facilitate homosexuality for the child, i.e., not only in the interests of the child but also in contrast with the interests of society, as it can spread prostitution and numerous social problems.

4. Conclusion

Although in some countries, such as the USA, bearing a child at a single status is legal and permitted, in some others, like the UK and Australia, it is permitted under special conditions. Besides, in some countries, like France, this practice is prohibited. However, there is no law about it in Iran. Thus, according to 167 Article of the constitution, by considering the Islamic verses and narrations on preserving the destination of the generation or acquiring the benefits and disposing of the corruptions, it can be concluded that the only way to have a child and to realize the principle of reproduction is in the framework of religious marriage. Accordingly, bearing a child at a single status is illegal and prohibited in Iran.

Ethical Considerations

Compliance with ethical guidelines

All ethical principles were considered in this article.

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All authors contributed in preparing this article.

Conflict of interest

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