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# Judicial-Legal Consideration of Transaction Extant Human Frozen Gametes in Cryopreservation Banks

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**ABSTRACT**

Gametes (Sperm & ovule) cryopreservation method is one of the recent subjects in medical fertility that helps child bearing in the future. The cryopreservation-anybody that cannot bearing child nonce-with the purpose of bearing genetic children in the future, have been frozen their gametes and store them in gamete cryopreservation banks, but in some cases because of changing their opinion about having child or curing their disease and being able to nature procreation the applicants don't need their frozen gametes nevermore. So, some of them tend selling them. But because of descent affiliation and its Judicial-Legal effects there is a big challenge between the opponents and consents about their transaction. On the other hand today's, human gametes trading is one of the most important problems, so it seems considering this topic is essential, but unfortunately there is not any academic research in this field in Iran. So, in this project we hardly tried to find the best Judicial-Legal solutions the problems in this field, because this is an applied and theoretical research in the theology field, there is no material. The main method in this research is bookcase. According to jurisprudence opinions based on the gametes' impurity the human gamete transaction had been prohibited in the past, but attentions show that it refers to their usage at that time not their impurity so this prohibition cannot be entirely. Today's, because of their different medical, pharmacist, fertility, etc... usages they can be considered as property and there isn't any prohibition for their transaction because of impurity. However, there aren't any Judicial-Legal problems for transaction human frozen gametes which are extant in cryopreservation banks but, for the legal prohibition of donation medical fertility and marriage cancelling in bearing child at single status their transaction for the purpose of fertility is forbidden. But in some case such as medical, pharmacist, fertility, etc... researches according to the ethical codes it is permitted.

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**Introduction**

**G**amete Cryopreservation method is one of the recent subjects in medical Fertility; however, there isn't any problem in the medical fields. But since frozen gametes have the

potential to become human beings. So, considering of this subject at the point of view of jurisprudence is essential.

The main goal of Gamete Cryopreservation is Fertility Preservation, which can be divided into

medical and social. Medical Fertility Preservation refers mostly to chemotherapy or radiotherapy, which can destroy reproductive tissue. Social Fertility Preservation refers to anyone without medical but social reasons especially the women in advanced age whose fertility can be compromised leading to menopause. Therefore the cryopreservation applicants for having genetical children in the future, have been frozen their gametes (1), but in some cases because of changing their opinion about having child or curing their disease and being able to nature fertility the applicants don't need their frozen gametes nevermore. So, some of them tend selling them. But because of descent affiliation and its Judicial-Legal effects there is a big challenge between the opponents and consents. On the other hand today's, human gametes trading are one of the most important problems, so it seems considering this topic is essential.

### **1. Examining the Impediments to the Validity of the Human Frozen Gamete Transaction**

There are three possible reasons for the forbidding the human frozen gametes transaction:

#### **1-1. Gamete Impurity**

The discussion of impurity gains in jurisprudence is about the types of forbidden acquisitions. One of the types of forbidden acquisitions mentioned in jurisprudential books is the acquisition of impure things (2).

Shahid Aval in introducing the najis has said: Anything that is forbidden to use it in prayer and food due to filth is called impurity (najis) (3).

Human wastes, blood and sexual fluid are under this heading. Human gamete is a part of human sexual fluid which in the previous divisions was considered as a human benefit.

There is no doubt about the impurity of human sexual fluid, but the main issue is its sale.

In Sheikh Mufid's *Moghnaee* and Sheikh Tusi's *Mabsoot*, as well as the books of Marasem, Ghaniye, Sharayea, Masalek, Ghavaed, Tazkare and *al-Feghh el Al-Mazhab Arbaee*, there are expressions that appear to be the title of "impurity" and its characteristics. "Being impure", even though the impure object has a rational benefit, hinders the validity of the transaction and

makes it impossible to trade that object (4). These jurists use the reasons in some narrations such as the *Tuhaf al-Uqul* (5) and *Daaem Al-Islam* (6). In fact, they consider the ban on the transaction because they are impure (Table 1).

On the other hand, some other jurists have expressed different opinions in this regard and believe in the legitimacy of buying and selling gametes and do not consider mere impurity as an obstacle to sale, because there is no application or principle that the sale of the impure, like semen, is absolutely forbidden. Even the narration of *Tuhaf al-Uqul* does not rely on the impurity of the object being traded; that is, it does not consider the title of impurity as the whole subject and the complete reason for the prohibition of sale, but because of the evidence mentioned in the narration or the lack of legitimate and rational benefit is circumvented. The reason for this claim is the following points:

1. In the narration of *Tuhaf al-Uqul*, following "... it is the object, the faces of impurity..." from which the prohibition of the sale of impure objects has been used, it is stated: "...because of all of them are for eating, drinking, clothing and ..." and It is understood from this phrase that since their main interests are eliminated and if they have the interests of a rational solution, their sale should not be forbidden;

2. In the supplications of *Daaem Al-Islam*, the phrase "... using of them is permitted..." is mentioned; that is, the things for which usufruct is permissible for the servants, its sale is also permissible. Therefore, the criterion is the existence of lawful benefit, not impurity and purity.

Therefore, it can be said that the transaction of frozen gametes and other genetic materials were not banned only because they are impure, but at that time, their sale was banned on the grounds that these items could not have any rational and legitimate benefit (7) (Table 1).

Today, gametes have different uses, regardless of their use in the creation of generations; in simulation for human organs, genetic research and experiments and especially in genetics to identify hereditary traits (DNA) and diseases and defects, etc. to determine the moral, psychological, social

and biological functions of humans. Therefore, its impurity is not relevant and cannot prevent the sale (Table 1).

**1-2. Lack of Rational and Legitimate Benefit**

The second reason for opponents of buying and selling laboratory gametes is that they believe that these substances do not contain any rational or legitimate benefit.

Today, the use of gametes in experiments and scientific research, as well as in simulations for the production of human organs (cloning organs) and especially in genetic research, hereditary traits and other diseases and defects and the pharmaceutical

industry certainly has a legitimate and rational benefit (Table 1).

**1-3. The Consensus of the Jurists on the Illegitimacy of the Gamete Deal**

The third reason for opposition to buying and selling gametes and laboratory embryos is consensus. Proponents argue against this reason, because consensus has been issued either on the basis of the impurity of these materials or the notion of lack of legitimate and rational benefit, so it is invalid and cannot be cited as a reason for prohibition (9) (Table 1).

**Table 1:** Possible Reasons for the ban on the Sale of Gametes

Reasons for the Ban on the Sale of Gametes	Gamete Impurity	Lack of Rational and Legitimate Benefit	The Consensus of the Jurists
At the Past	Accepted	Accepted	Accepted
Today's	Unacceptable	Unacceptable	Unacceptable

**2. Trading Conditions of Frozen Gametes**

The subject of the transaction is the property or action that according to Article 214 of the Civil Code, each of the parties to the transaction undertakes to surrender or perform. It remains to be seen what conditions must be met for the transaction to be valid.

Articles 215 and 216 state some of the terms of the transaction, but there are other terms that are mentioned in some materials related to each of the specific contracts. Therefore, we examine these conditions for the sale of frozen gametes in terms of Articles 215 and 216 and other materials.

There is an objection to the consideration of the organs of the body that man is non-possessed and not property, but in response to this objection, it is stated, firstly, this issue is related to the soul and spirit of man and not his body and secondly, we have no reason to give the rule of the whole man to some of its members and interests. A group has also avoided considering them as property due to the potential talent of frozen gametes to become human due to the principle of human respect and dignity (8).

However, given that human dignity and how it is violated is not clear, because the property of body parts does not violate human dignity, but his dignity is violated if the principles of humanity are violated and cause self-harm or insult to human beings, while his possession within the limits of Sharia does not violate his dignity, it seems that the set of criteria and elements necessary for the property in the case of frozen gametes are available

First, frozen gametes belong to a specific person or persons. Second: They are also transferable in practice. Third: Both the public opinion has an interest and value and it has a benefit for the parties to the contract and in their relations. Fourth: This interest is a rational benefit because it satisfies their rational needs. Also, the acceptance of a personal criterion for the ownership of something in a contractual relationship is the criterion used in Article 336 of the Civil Code and the non-necessity of a certain criterion for the possibility of ownership confirms the above view. And they are legitimate parties to the contract, so they are considered property

because the frozen gamete, regardless of any opinion we have about the type of legal relationship with the person, satisfies the legitimate needs of individuals and guarantees benefits for them.

Also, according to the definitions provided by jurists of property and the elementology of property, it can be said that these definitions are true in relation to human frozen laboratory gametes.

Therefore, frozen gametes, although impure, have the criterion of becoming property because they have a lawful benefit although impurities are not considered as property in the primary rulings, but according to the secondary rulings, if they have a lawful interest they can be considered as property. Of course, it should be noted that human dignity will determine how we deal with them. In this way, being considered a frozen gamete may lead to the establishment of human frozen gamete banks centers for their sale, while this is contrary to public order and good morals. Therefore, paying attention to preserving human dignity in relation to frozen gametes is a red line.

Existence at the time of contract, transferability, certainty and possibility of surrender are also among the requirements for the sale, all of which are unrestricted in relation to the sale of frozen gametes.

### 3. Man's Relationship with His Gametes

Of course, a person can possess something if he owns it, so that the possessions of a person in his non-property are not valid and have no legal effect.

Thus, man has the right to possess the genetic products of his body, including frozen sperm and frozen ovules, within the limits of the rules and regulations of Sharia (10).

Because man, as the vicegerent of God Almighty, although not the real and main owner of things and property, but as the authorized and infringing unreal owner, has the right to all kinds of domination and possession within the limits of the Creator's permission and the limits of the rules of Sharia.

Therefore, considering that the relationship between man and his body parts is of the nature of

intrinsic property, the transaction of materials produced from the human body and its separation from the body does not cause organ failure or disorder in human health and is generally not harmful to him such as the transaction of blood, hair and milk of women, due to the existence of rational and legitimate interest (11) and is considered valid in them (12), because such use and seizure in the body have been confirmed by the wise and their method and this rational rule has been approved and signed by the shari'ah according to the rule of connection between the rule of reason and the rule of Sharia and according to the principle of immorality (13). Therefore, it can be said about frozen gametes, as long as the use of these materials includes rational and legitimate benefits and their acquisition does not cause organ failure, health disorders or harm to the individual. So, we can sell and transfer them.

### 4. Transaction Extant Human Frozen Gamete

Selling to married people for bearing children in a family status

Buying and selling gametes for fertility in the form of a family is a clear example of fertility with the involvement of a third party. In this method, personal gametes other than couples are used. In this regard, detailed discussions have taken place and many articles have been written. In them, the relevant verses and narrations have been mentioned, so in this article, due to the length of the word, the expression of those matters has been omitted and only the theory of the great jurists will be mentioned, because the jurists disagreed on this issue and the opinions are different. The method has few supporters and many opponents (14).

Some believe that since the human sperm and ovule are a part of the organs and part of its components and not a perfect human and since man owns his own components and separates components such as sperm and ovule from the human body is not harmful and if there is damage to him, it is likely to be compensable, the sale of sperm and ovule have been allowed (15).

But from the point of view of some contemporary Imami jurists, the inoculation of another's gamete except for a couple is forbidden.

The vast majority of Sunni jurists have forbidden the sale and donation of gametes. They believe that if a person removes his gamete from his body and gives it to the relevant laboratories to keep it and if necessary, A stranger buys it or even donates it, this is nothing but adultery, because there are all the pillars of adultery and only sexual connection is not established between them, while the result is the same and that child is illegitimate and also there was no religious contract between the two (16).

Also, the Islamic Jurisprudence Council, in its third term, which was held in the capital of Jordan in 13 of Safar of 1998, declared that this form of gamete sale, which is bought and sold for the purpose of fertilizing, is forbidden.

As a result, it can be said that the jurists who consider the basic principle in Foruj as precaution, here as well, rule according to the obligatory precaution. And the jurists who consider the principle in everything to be purity, except for what its sanctity has been stated, rely on the principle of innocence here as well and rule it permissible.

Of course, from all the verses and narrations mentioned in relation to the subject which were refused to be expressed due to the length of the word, as well as the wisdoms contained in them and in the subject of explaining marriage and its various rulings, as well as the fact that some factors and parameters of the subject of discussion (such as not predicting its psychological and social effects) are unknown and issues related to lineage, which is of great importance, as well as the existence of the principle of precaution in the vagina used to produce offspring by combining sperm and ovule, it is contrary to precaution, although the vast majority of the reasons given do not imply sanctity, but in general they can be the basis of precaution. As a result, the criterion for combining sperm and an ovule to produce offspring can be the existence of a marital relationship between the owners of gametes (17-18). Therefore, selling frozen gametes for fertility, even if it is for married people in the form of a family, is not allowed (Table 2).

## 5. Selling Frozen Gametes to Single People in Order to Have Children in Single Status

The issue of childbearing in the state of single people, which is one of the current issues in the world, in which single people without legal marriage and family formation and in principle without any sexual contact tend to have children by using donated or purchased gametes from cryopreservation banks and combining it with their gametes in the laboratories of infertility treatment centers to have children is considered (19).

This invalidates the description of marriage and if some narrations are used, any way that leads to the closure of Forouj and the disappearance of the cause of marriage in the issue of lineage is rejected.

Another evidence is the study of the historical course of marriage in the early days of Islam. At the time of the advent of Islam, marriages of shaghar, azl, akhdan and istibada were common. In such circumstances, Islam signed the principle of marriage and family and based it only on one husband and one wife (20). Although the conditions (such as observance of justice) allow up to four wives and the choice of spouse from mother, daughter, sister, aunt, niece and nephew, foster mother, foster sister, mother-in-law and ... is banned. The Shaghar marriage was allowed on the condition that each couple give dowry to their wives, as temporary marriage and mut'ah are permissible and forbade other marriages and artificial relationships such as adoption. Could not this act of the legislator of Islam prove that Islam wants both male-female relations to have a special order and generational production to be based on a genuine natural relationship based on blood relationship?

Of course, it should be noted that allowing this form in addition to the annulment of marriage will have other corrupt consequences, including that it can be a way for homosexuals to have children, which is not only in the interest of the child but also in the interest of society, as well as the spread of prostitution and many social problems (21). In addition, the acceptance of this issue will lead to the birth of single-parent children, which is also against the interests of the child, because in

addition to the many psychological and social problems in this area, these children will be deprived from one of their basic rights, the right to know their genetic parents and the possibility of future incestuous marriage for these children is predictable, all of which are condemned in Islam (19) (Table 2).

**6. Sale of Frozen Gametes to Scientific Research Centers**

Research on the human gamete has long been the subject of much debate. The debate in support of this research emphasizes the potential benefits to be derived from this research, so that research on the human gamete can increase the success of artificial insemination and related procedures and can pave the way for the development of new contraceptives and these studies can also be used to treat many diseases.

In the Iranian jurisprudential-legal system, the issue of research on frozen gametes has not been studied much due to its innovation and because gamete experiments have not been developed in our country, as is common in European countries, a special law in this regard has not been compiled.

Of course, in these circumstances, one can use the valid fatwas of the jurists in the field of legalizing the issue.

According to the theory of jurists, manipulating genes and taking actions on sperm or embryos is not in itself a reprehensible act and is not against morality and Sharia. Ultimately, by making new

changes in its human personality or other changes, it can be considered as an example of physical or mental defects, in which case it is not permissible whether the tests and research are done for therapeutic purposes or only for medical progress. Due to the legal nature of gametes and their ownership, buying and selling frozen gametes is permissible for research, but it is clear that this action is intended to make a profit and income because gametes are part of the human organs and against good morals and public order (9).

To this end, the National Committee for Research Ethics in the Ministry of Health has set conditions and required research centers to comply with the requirements for research on embryos and gametes, which according to this charter should not be done on human embryos and gametes, except when it is essential for reproductive health or other aspects of human health and there is no suitable alternative to human embryos or gametes. Also, the induction of ovulation and the extraction of gametes from the human body are prohibited only for research. Gametes should be used for research that are induced for fertility and extracted at the end of the assisted reproduction process or obtained outside the body, for example, from stem cells (22). Therefore, buying and selling frozen gametes is permissible for scientific research centers when carried out by observing the codes of ethics in research so as not to lead to the creation of gamete sales centers and not to create grounds for their abuse (Table 2).

**Table 2:** Judicial-Legal view about the aims of Transaction Extant Human Frozen Gametes in Cryopreservation Banks

Aims of Transaction Extant Human Frozen Gametes in Cryopreservation Banks	Selling to Married People for Bearing Children in Family Status	Childbearing in Single Status	Using in Scientific-Research Centers
Judicial-Legal	Prohibited	Prohibited	Permissible

**Conclusion**

Due to the impermissibility of using donated gametes in medical fertility and the fact that sperm and ovule are the two elements of human creation, the next effects are conceivable and generations after it are affected by it. Human being cannot give or transfer his parenthood to another, whether he receives a ransom in return or

not. Therefore, in relation to the sale of gametes for the purpose of reproduction, no legitimate benefit can be assumed for that purpose. Therefore, selling frozen gametes for bearing children is not allowed.

In connection with the sale of frozen gametes in order to have children in the case of single-statutes, due to the annulment of the marriage,

which is contrary to the intentions of the holy shari'a and will cause social problems and produce single-parent children, which can have irreparable consequences and may be abused by some people like homosexuals, it is not permissible.

Transaction of human gametes, in order to use them in research can be the best legitimate and rational benefit to rule the correctness of their transaction, provided that these investigations are not found to be immoral and illegal and they are conducted According to the code of ethics in embryo research and Gamete set up in the National Committee for Ethics in Research of the Ministry of Health, to prevent the establishment of commercial centers for their sale and possible abuse.

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### Authorship

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The authors declared no conflict of interest.

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