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## Original Article

# Jurisprudence-Legal Consideration of Lab Children's Marriage with their Parents in Compare to Adopted Child's Marriage with Guardian

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## ABSTRACT

The rapid advancements in Assisted Reproductive Technologies (ART) introduce novel ethical and jurisprudential dilemmas distinct from traditional adoption practices, particularly concerning marital law. This study aims to address the core research question: What is the comparative legal ruling, based on Islamic jurisprudence and civil law, on the permissibility of marriage between children conceived via ART and gamete owners, in contrast to adopted children and their legal guardians? The central hypothesis posits that the presence of a direct genetic link in ART cases fundamentally prohibits marriage (akin to consanguinity), whereas the absence of such a link in adoption necessitates only legal ratification based on child welfare, despite psychological concerns. The research utilizes a doctrinal-comparative analytical framework to examine classifications based on gamete origin (own, donated or surrogacy) and contrasts these findings with the lineage and marriage barriers inherent in adoption. This research adopts an applied, theoretical approach situated within the field of Theology and comparative Family Law; thus, no empirical data collection was undertaken. The primary methodology employed was doctrinal and comparative analysis. The doctrinal method was utilized to systematically categorize and evaluate the permissibility of marriage concerning ART-conceived children based on the established Islamic legal principles governing lineage and gamete ownership across the four identified scenarios (own gametes, sperm donation, oocyte donation and surrogacy). This was further strengthened by a comparative legal framework, juxtaposing the findings derived from the genetic connections in ART with the established legal and welfare considerations governing adoption. This dual-framework approach ensures methodological validity by grounding conclusions in both deep jurisprudential exploration and cross-legal comparison. Results confirm that genetic attribution in ART mandates prohibition of marriage for all related parties, including surrogate mothers. Conversely, while adoption has no biological barrier to marriage, legal and psychological advisability remains the primary regulatory concern. This paper concludes that although genetic linkage, not mere custodial relationship, is the defining criterion for prohibiting marriage under current jurisprudential and legal norms but, legal frameworks in many jurisdictions, including Iran, require specific permissions from religious authorities and courts, prioritizing the child's welfare. Despite the legal possibility, there is a significant consensus among psychologists and legal experts that marriage between an adopted child and their guardian is inadvisable and potentially harmful.

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## Introduction

Life is recognized as the paramount and most valuable asset for humankind, a principle deeply rooted in sacred texts such as the 70th Verse of Surah Al-Isra in Holy Quran.

“We have honoured the sons of Adam; we have provided them with transport on land and sea; we have provided for them Sustenance out of good things; and we have preferred them far above many of those whom we have created (with great preference)”.

The advent of “laboratory children” resulting from Assisted Reproductive Technologies (ART) introduces profound legal and jurisprudential complexities, particularly concerning the creation of embryos outside the conventional, natural biological process. While “the assertion that laboratory-conceived children in Iran possess absolutely no legal distinction from naturally conceived children is inaccurate”, this is because a comprehensive, codified law specifically defining lineage in ART cases remains absent. Instead, legal certainty is currently derived only from limited judicial rulings and religious *fatwas*. Consequently, numerous debates persist regarding the matters of parentage, inheritance and marriage for these children. While some aspects have been addressed, specific rulings concerning their marriage rights are reportedly still pending, perhaps because this cohort has not yet reached marriageable age. This legislative vacuum leaves room for future deliberation, particularly considering the explicit prohibitions on certain marital unions within Islam, as stipulated in the Holy Quran. In practice within Iran, the confidentiality surrounding the identity of gamete donors and recipients can inadvertently lead laboratory-conceived children to enter into marriages that would otherwise be religiously prohibited.

Scholarly discourse suggests that assisted reproduction, especially when it involves a third party (such as the donation of gametes or surrogacy), shares conceptual parallels with adoption. It can be framed as a form of “embryo adoption” or a contemporary iteration of the adoption concept (1). Globally, various avenues

for child adoption exist today, including traditional, institutional, independent, interracial, international and prenatal adoption. Prenatal adoption, which is particularly relevant here, is understood by some scholars to encompass conception facilitated by artificial insemination utilizing ART or third-party gametes (2). The core objective of both adoption and the utilization of donated embryos is the fulfillment of the desire to have a child; the precise terminology employed is deemed less critical than the realized outcome (3).

This paper critically examines the “permissibility of marriage between laboratory-conceived children and their biological/ social parents”, drawing a comparative analysis with the rules governing the marriage of adopted children to their guardians, approached from the distinct viewpoints of Islamic jurisprudence (*Fiqh*) and current Iranian enacted law.

### 1. Definitions

#### 1-1. Adopted Child

An individual who has been legally brought into a family unit by non-biological parents. The Quran itself bears witness to the historical practice of adoption preceding Islam.

#### 1-2. Prenatal Adoption

In the context of this article, some scholars advocate for expanding the definition of adoption beyond traditional methods to include “prenatal adoption” achieved via artificial insemination of eggs using ART or external third-party assistance (4).

#### 1-3. Laboratory Children

Defined within the context of Islamic jurisprudence, the traditional expectation is that all stages of conception, gestation and birth occur within the mother’s uterus. However, this paper specifically addresses children whose conception or developmental trajectory takes place, in whole or in part, within a controlled laboratory environment (5).

#### 1-4. Artificial Insemination

A medical fertility treatment method designed to achieve pregnancy without sexual intercourse (6). This involves introducing processed sperm into the woman’s reproductive tract, thereby enabling sperm-ovum contact in an *ex vivo* (external) setting.

## 2. Types of Artificial Insemination

### 2-1. Homogeneous Artificial Insemination

This involves utilizing the couple's own gametes (sperm and ovum). Techniques such as Intrauterine Insemination (IUI) and In Vitro Fertilization (IVF) fall under this category (7).

### 2-2. Heterogeneous Artificial Insemination

This technique mandates the use of donated gametes (sperm or ovum) or surrogacy.

## 3. The Prohibited Marriages in Islam

While Artificial Insemination deals with gamete sources - homogeneous (self-gametes) versus heterogeneous (donated gametes) - its permissibility in relation to Islamic jurisprudence on marriage must be assessed against the stringent prohibitions on *consanguinity* and *affinity*. The core theological hurdle for Heterogeneous is the disruption of lineage certainty, which fundamentally mirrors the concern addressed by the Quranic prohibitions on marriage based on prohibited degrees of kinship.

Islam explicitly prohibits marriage with certain close relatives, including those related by affinity or fosterage, as clearly detailed in the foundational text of Islamic family law: 23th verse Surah An-Nisa in Quran.

The verse states: "Forbidden to you are your mothers, your daughters, your sisters, your paternal aunts, your maternal aunts, the daughters of your brother, the daughters of your sister, your foster mothers who have given you suck, your foster sisters, the mothers of your wives and your step-daughters who are in your care, born of your wives whom you have entered; but if you have not entered them, there is no blame upon you; [also forbidden are] the wives of your sons who are of your own loins and that you should take in marriage two sisters simultaneously, except for what has already passed. Indeed, Allah is ever forgiving and Merciful" (8).

## 4. Analytical Linkage

The prohibition on using donated gametes in Heterogeneous is not explicitly stated in this verse, but the *spirit* of the prohibition lies in preserving the integrity of bloodlines (*nasab*) and relational ties. Homogeneous maintains lineage integrity as the child is biologically the couple's own. In contrast, Heterogeneous introduces an

external genetic link (a "foster" relationship to the donor), which risks conflating existing prohibited relationships (like those with foster siblings or mothers) or undermining the lineage framework that Verse 23 is designed to protect. Therefore, the debate hinges on whether introducing a non-spousal genetic contributor violates the established legal and ethical boundaries set by this foundational verse regarding prohibited kinships.

Scientific Perspective:

### Section I: Scientific and Medical Landscape of Assisted Reproduction

This section addresses the scientific underpinnings of assisted reproductive technologies (ART) and clarifies the emerging terminology used to describe pre-determined parental arrangements.

A. Clarification of ART Methods: ART processes involving gamete origin fundamentally divide into two categories:

1. Homogeneous ART (IUI/IVF with own gametes): Involves the fertilization of the intended mother's egg with the intended father's sperm. While medically complex, the biological lineage remains unequivocally within the intended parental unit.

2. Heterogeneous ART (Involving Donated Gametes or Surrogacy): This category introduces external biological material or gestational carriers, directly challenging traditional lineage structures.

- Gamete Donation: Utilizes donor sperm or eggs, meaning the intended parents lack a direct biological link to the child's genetic makeup.

- Surrogacy: Where a woman other than the gamete owner carries the pregnancy, delivering the baby to the intended parents post-birth. This is scientifically one of the closest analogies to "pre-birth adoption" (9).

B. The Concept of "Pre-Birth Adoption" (PBA): "Pre-birth adoption" is an emerging term describing legal or social arrangements that determine a child's future custodial status before birth (9).

- Key Distinction from Traditional Adoption: The primary difference lies in the *timing and intent*. In PBA (via surrogacy or donated gametes), the

intended parents' plan to accept the child is established *before* birth, often establishing a contractual or intentional bond, even without a biological link. Traditional adoption typically follows birth and involves a definitive break from the biological parents (2).

## Section II: Juristic Analysis and Islamic Jurisprudence

This section separates the legal and jurisprudential review, focusing on the legal status of PBA and drawing necessary comparisons with established Islamic legal principles, particularly regarding lineage and marriage prohibition.

A. Global Legal Perspectives on PBA and ART: The legal recognition of PBA varies globally, focusing primarily on protecting the child's best interests.

- Recognition and Regulation: Jurisdictions like the United States (e.g., California) explicitly recognize processes akin to PBA, especially where commercial surrogacy is legal (10). The United Kingdom achieves a similar outcome through a "Parental Order" following altruistic surrogacy, legally affirming intended parenthood post-birth, though the prior agreements are central (11).

- Legal Challenges: Determining legal parental status (distinguishing between donors, intended parents and surrogates) remains a key challenge, alongside issues concerning donor rights and jurisdictional conflicts in international cases.

B. Juristic Foundation of "Pre-Birth Adoption" (Analysis required): The core juristic inquiry for PBA - especially in non-biological arrangements - is whether the pre-determined intention to parent satisfies the requirements for legal parentage *before* the child's actual birth and legal registration.

- Analysis: Unlike traditional adoption, which involves post-birth transfer of custody/ rights, PBA relies on *pre-emptive intent*. The foundation of this concept in non-Islamic law often rests on contract or legislative decree, not natural lineage. This necessitates a thorough analysis of whether *intention alone* (as the basis of PBA) can supersede the established requirements for lineage establishment in various legal codes.

C. Comparison with Islamic Law (Lineage and Prohibited Marriages): The challenges posed by Heterogeneous ART (which mirrors the non-biological nature of PBA) are fundamentally rooted in the Islamic imperative to maintain clear, undisputed lineage (*Nasab*).

- Relevance of Quran 4:23: The prohibition on marrying close relatives serves to strictly safeguard the boundaries of the immediate family unit, which is predicated upon clear lineage. The Holy Quran states:

"Forbidden to you are your mothers, your daughters, your sisters, your father's sisters, your mother's sisters, brother's daughters, sister's daughters, your wet nurses, your milk-sisters, your wives' mothers, your step-daughters who are in your care from your wives whom you have entered; but if you have not entered them, there is no blame upon you; and the wives of your sons who are from your loins and that you should take in marriage two sisters simultaneously, except for what has already passed. Indeed, Allah is Ever-Forgiving and Merciful."

- Analytical Link: Heterogeneous ART/PBA, by intentionally severing the genetic link between the child and one set of recognized parents, directly challenges the very system of lineage protection enforced by verses like Quran 4:23. The legal debate surrounding *who* is the true parent (donor vs. intended parent) in PBA mirrors the necessity in Islamic law to define *Nasab* precisely to uphold marriage prohibitions and inheritance rights.

D. Status in Iranian Law: While Iranian law, such as the Law on the Protection of Children without Guardians, regulates adoption post-birth (allowing exceptions to marriage prohibitions only via court order for the child's best interest), the concept of PBA in its Western contractual sense is not institutionalized. Current regulations largely adhere to biological or traditional relational frameworks. Judicial discretion may address "laboratory children" born via ART, but the emphasis remains on safeguarding established family structures, making the concept of PBA legally ambiguous and underdeveloped compared to its recognition in jurisdictions like the US or UK.

**Summary:** PBA is the contractual/intentional precursor to non-biological parenthood. While scientifically analogous to heterogeneous ART, its juristic foundation contrasts sharply with the strict *Nasab*-based framework central to Islamic family law, as evidenced by the comprehensive prohibitions in Quran 4:23.

**Results:** Marriage Considerations for Laboratory Children based on Gamete Ownership

Considering the different techniques for creating laboratory children, their marital implications are best understood by categorizing them based on gamete origin:

- Group 1 (Spouses' Own Gametes): When a child is conceived using the couple's own gametes through laboratory procedures (like IUI or IVF), they are the genetic parents. Consequently, marriage between them and the child is forbidden, akin to natural parent-child relationships.

- Group 2 (Donated Sperm): If a donated sperm is used to fertilize the wife's ovum (via IUI or IVF), the sperm donor is the genetic father (11). The wife remains the genetic mother. The husband, being the husband of the genetic mother and having engaged in sexual intercourse with her, is also considered in relation to the child. Furthermore, the donor's wife, in accordance with Islamic law (Surah An-Nisa, Verse 23), cannot marry her husband's child conceived through another woman (12).

- Group 3 (Donated Ovum): The ovum donor and sperm owner are the genetic parents, making marriage between them and the child forbidden. Additionally, the husband of the ovum donor and the wife of the sperm owner are prohibited from marrying this child, based on Surah An-Nisa, Verse 23.

- Group 4 (Surrogacy): The surrogate mother is analogous to a foster mother due to nurturing the child. Consequently, due to Islamic law and civil regulations concerning foster mothers and their husbands, marriage between them and the surrogate child is forbidden. As in other groups, the gamete owners are the genetic parents and thus, marriage between them and the child is prohibited.

**Comparison with Adoption:** In traditional adoption, the absence of a blood or genetic relationship generally permits marriage between the adopted child and the guardian, provided no specific legal prohibitions exist.

In Iran, the "Law on the Protection of Unsupervised Children" prohibits marriage between a guardian and an adopted child, both during and after the guardianship period, unless a competent court, after consulting the Welfare Organization, determines it to be in the child's best interest. Nevertheless, many psychologists and legal experts deem such marriages detrimental, citing potential harm and societal disruption.

**Discussion:** Studies suggest that medically assisted fertility treatments, particularly those involving gamete donations, bear resemblances to adoption. These practices could even be characterized as embryo adoption or a modern form of adoption.

According to various Islamic texts (e.g., the 54th verse of Surah Al-Forghan, 37th verse of Surah Al-Qiyamah, 2nd verse of Surah Ad-Dahr, 19th verse of Surah Abasa and 7th verse of Surah Al-Tareq), if fertilization occurs in a lab using the spouses' own gametes, the resulting child is considered equivalent to children conceived through natural sexual intercourse. Historically, prominent jurists like Ayatollah Borujerdi and Ayatollah Milani had reservations about artificial insemination (14). However, contemporary major jurists generally permit artificial insemination using the spouses' own sperm and ovum, provided that religiously prohibited procedures are avoided.

Imam Khomeini stated that artificial insemination using the spouses' own sperm and ovum is permissible. If sperm is collected through religiously permissible means and the husband performs the artificial insemination himself, resulting in pregnancy and birth, the child is considered as any other child born through sexual intercourse. However, if the process involves religiously prohibited methods, the individuals are considered disobedient, though the resulting birth is deemed pure (15).

Ayatollah Sayyed Ali Sistani permits artificial insemination using the spouses' own sperm and ovum, as long as it does not lead to unlawful gazing or touching, except when absolutely necessary (5).

Consequently, based on established Islamic jurisprudence and civil law, any marital relationship between a child conceived through this method and either of the genetic parents (the husband and wife) is strictly forbidden, constituting incest. This method is often preferred by couples undergoing fertility treatment as it maintains the complete genetic connection within the marital unit.

In sperm donation the sperm donor, as the biological father, cannot marry the child due to the blood relation; they are considered father and daughter. Major religious and ethical jurists prohibit such marriages, drawing parallels to prohibitions in cases of *musaheqeh* (a specific form of incestuous relationship where a woman has sexual intercourse with her husband and then with another woman who becomes pregnant; if the child is a girl, she cannot marry the first woman's husband) (16).

Similarly, the ovum owner and her husband cannot marry this child due to the blood relation. The ovum owner is considered the child's real mother. Great jurists consider donor insemination religiously prohibited and importantly, the gamete owners cannot marry the resulting child (17).

Furthermore, the gamete owners' spouses also cannot marry this child. This is in accordance with Article 1047, Clause 3 and Articles 1045 and 1061 of the Civil Code, which are based on Islamic law. Specifically, the 23rd verse of Surah An-Nisa states that individuals forbidden in marriage include stepdaughters who are under one's guardianship and born from wives with whom private association has occurred (18).

From a genetic standpoint, the sperm donor is the biological father, establishing a direct paternal lineage. Thus, a marital prohibition exists between the donor and the child conceived from his sperm. Likewise, the wife, who provides her ovum and carries the pregnancy, is the child's genetic mother, creating a marital prohibition between her and the child. Additionally, the wife's husband, as

the social father and spouse of the genetic mother, is also subject to marital prohibition with the child. This prohibition arises not from a direct genetic link but from the established marital relationship with the child's mother and related legal and jurisprudential principles concerning affinal kinship (akin to prohibitions with a stepchild).

In oocyte donation, the husband, as the sperm owner, is undoubtedly the real father due to the blood relation. Articles 1158 and 1167 of the Civil Code stipulate that the sperm owner is the real father. Furthermore, Articles 884, 1165, 1160, 1159, 1158 and 167 of the Civil Code state that if the sperm owner is unknown, the child is legally attributed to the husband. Consequently, when the sperm owner is known, he is unequivocally the real father (19).

Marital relations between the donor-conceived child and the sperm owner are prohibited. If the ovum owner is known, she is considered the real mother due to the blood relation and thus cannot marry the child if the child is male. Although her husband, according to the 23rd verse of Surah An-Nisa, is forbidden from marrying his stepdaughter (born from a wife with whom he had consummated the marriage), he cannot marry this child (19). Additionally, the sperm owner's wife - who receives the embryo, conceives, carries and gives birth - is considered a foster mother according to the rules of fosterage (*rada'ah*) in Islam. Because this child is considered her husband's child and according to the 22nd verse of Surah An-Nisa (which prohibits marrying women whom one's father has married), this woman can be considered the child's mother, thus prohibiting marriage.

The surrogate mother's role in providing a uterine environment for fetal growth and nourishment is analogous to that of a wet nurse, primarily concerning nutrition. However, the legal and ethical standing of surrogacy, including potential impediments to marriage involving the surrogate mother, remains a complex and evolving area within Islamic jurisprudence and civil law.

Considering the philosophy of suckling (*rada'ah*) and the resulting prohibitions, it can be argued that the child has been nourished by the surrogate

mother's blood for months, with her contribution shaping the child's blood, flesh, bones and skin. Therefore, the child should arguably be considered her offspring, making marriage between them forbidden and religiously unlawful. Two categories of narrations support this view:

1. The first category states that suckling causing prohibition is that which leads to the growth of flesh and strengthens bones, as explicitly mentioned in authentic narrations from Hammad ibn Uthman and Abdullah ibn Sinan (20).
2. The second category implies justification for various instances of suckling, based on the principle that it causes flesh growth and bone strengthening and nothing else suffices if it doesn't promote this growth, as seen in the narration from Ali ibn Ri'ab (20).

Thus, if the criterion for extending prohibition through suckling is the physical growth of the suckled child due to nourishment from a substance produced by the nurse's body, then regarding the womb-owner whose fetus directly feeds on her blood and undergoes physical growth before two years of age, it is even more conclusive that prohibition extends (21). The husband of the surrogate mother, even if the child is not legally considered his offspring, is also subject to a marriage prohibition with the child. This is because the child is considered his wife's stepdaughter (rabiba). According to Shi'ite jurisprudence and Article 1047, Clause 3 of the Iranian Civil Code, the marriage of the husband of a surrogate mother with a daughter born from his wife's womb, who was carried by another woman through surrogacy, is permanently forbidden due to her blood relation to the said woman. The children of the surrogate mother also cannot marry this child (22).

## **5. Juristic and Legal Analysis: Prenatal Adoption (PBA) and Traditional Adoption**

### **5-1. Section One: Juristic Views on Surrogacy (Pertaining to PBA)**

This section outlines the jurisprudential opinions of several Maraji' on the status of a child born via surrogacy (a key component in the discussion of Prenatal Adoption - PBA).

**View 1: Attribution to Sperm Donor and Severance of Inheritance from Surrogate Mother (Similar to Ayatollah Makarem Shirazi's Stance)**

Ayatollah Makarem Shirazi has opined that the child belongs to the gamete donors and is considered a mahram (unmarriageable relative) to them, inheriting from them (23). He views the surrogate mother (womb-owner) as akin to a wet nurse and in some aspects, even superior, as all the child's flesh and bone developed from her. Consequently, marriage with the surrogate mother and her children is forbidden, although the child does not inherit from the surrogate (23).

**View 2: Caution Regarding the Establishment of Mahramiyyat (Similar to Ayatollah Sistani's Stance)**

Ayatollah Sistani advises caution regarding the application of mother-child rulings when two mothers are involved. He suggests that establishing mahramiyyat (kinship ties that prohibit marriage) between the child and the womb-owner, even if legal attribution is uncertain, is not unlikely (24).

**View 3: Mahramiyyat and Adoptive Status (Similar to the Late Ayatollah Fazel Lankarani's Stance)**

The late Ayatollah Fazel Lankarani, despite disagreeing with embryo transfer, ruled that the child is mahram to the womb-owner and considered her his stepdaughter (25).

## **5-2. Section Two: Rethinking Adoption - Comparison between Traditional Adoption and ART**

This section compares traditional adoption with procedures based on Assisted Reproductive Technologies (ART) and highlights fundamental distinctions in their biological and legal foundations.

### **6. Comparison: Genetically Related Children vs. ART Children**

Unlike children conceived through ART, who always possess a direct genetic link to at least one parent, traditionally adopted children typically lack a blood and genetic relationship with their legal guardians. From this perspective, there are no inherent impediments to marriage between an adopted child and their adoptive guardian based

on genetic kinship; however, legal systems and religious interpretations impose various restrictions.

## 7. Reformation of Adoption in Islam and Iranian Legal Foundations

In Islam, the pre-Islamic practice of adoption, where the adopted child held all the rights and responsibilities of a biological child, was reformed. The Qur'an unequivocally states in Surah Al-Ahzab (Verse 4): "And Allah has not made your "adopted children your [true] children" [adopted sons as your real sons]..." This verse, along with subsequent verses (e.g., Verse 5, emphasizing naming children after their biological fathers), highlights that the parent-child relationship in Islam is primarily based on "biological lineage", not formal adoption. The Qur'an thus negates three traditional effects of pre-Islamic adoption: establishing lineage, creating marital prohibitions and conferring "inheritance rights".

## 8. Comparative Analysis: Inheritance and Mahramiyyat

The fundamental distinction between traditional adoption and methods like "PBA/ ART (when no genetic link exists)" is evident in the matters of "lineage, inheritance and mahramiyyat" from an Islamic jurisprudential standpoint:

### 8-1. In Traditional Adoption

Since the adopted child is not considered the biological child of the parents in *Shari'ah*, "no inheritance" is established between them and the parents, nor are the rulings of "mahramiyyat" (prohibitions on marriage) applied due to the lack of biological lineage. However, Iranian law (Law on the Protection of Unsupervised Children) prohibits marriage between the guardian and the adopted child (except in exceptional circumstances) to support the social and educational framework (27-29).

### 8-2. Regarding Surrogacy (PBA Context)

As noted in Ayatollah Makarem Shirazi's view, if the child is attributed to the gamete donors, "inheritance is established from those donors" and the child is "mahram to the donors". However, regarding the surrogate mother (the carrier alone), "no inheritance" is established, although rulings on "mahramiyyat" (prohibition of marriage) are

emphasized due to her perceived maternal role (akin to a wet nurse) (23). This indicates a divergence of opinion even at the jurisprudential level concerning the surrogate mother's role in determining "lineage and inheritance".

## 9. International and Ethical Considerations (Beyond Inheritance and Mahramiyyat)

### 9-1. Children's Rights

The Convention on the Rights of the Child, to which Iran is a signatory, prioritizes the best interests of the child (Article 3 & 21). Marriage of an adopted child to their guardian is considered contrary to these best interests, as it can disrupt the supportive family structure and create an environment conducive to moral corruption, undermining the primary goal of adoption (providing a safe environment) (28-29).

### 9-2. International Parallels

Internationally, in jurisdictions like California where commercial surrogacy is legal or via "Parental Orders" in the UK, the legal status of the child is determined, showing attempts by legal systems to formalize parenthood in the absence of a biological link (10-11).

## Conclusion

In Iran, the concept of "prenatal adoption", as it is commonly understood in certain Western jurisdictions, has not yet been legally institutionalized or explicitly defined within the framework of Iranian civil or family law. While courts may approve specific arrangements to protect the interests of intended parents and the child, these mechanisms resemble traditional postnatal adoption or custodial guardianship rather than a structured, contractual and pre-birth adoption agreement.

In contrast, jurisdictions that legally recognize surrogacy and gamete donation - such as the United States and the United Kingdom - permit the establishment of parental status prior to birth or immediately thereafter. Their legal systems thereby transform the notion of "prenatal adoption" from a moral or medical idea into an enforceable legal construct.

In the Iranian context, children born from donation and adopted children often share similar

social and emotional realities while differing in their genetic relationship to parents. Hence, gamete donation and surrogacy may be viewed as a modern extension of the adoption framework - one that redefines the legal meaning of lineage (*nasab*). Yet fundamental distinctions remain: biological kinship in ART-based families imposes prohibitions on marriage and lineage ties that do not exist in traditional adoption.

In light of these findings, this study proposes a new fiqh-legal definition of *prenatal adoption*:

*“Prenatal adoption is a pre-birth commitment sanctioned by Sharī‘ah principles and judicial oversight, through which intended parents assume moral and legal responsibility for a child conceived by another, without transferring biological lineage but by establishing custodial and fiduciary parentage from conception onward”.*

This definition aims to offer a conceptual bridge between Islamic jurisprudence and contemporary reproductive practices. It can serve as the basis for future legislative development, allowing Iranian family law to recognize the moral legitimacy and legal protection of pre-birth parent-child relationships without violating lineage or inheritance principles.

A key point of scholarly debate revolves around the perceived equivalence between donation-born children and adopted children in terms of their relationship with their legal parents. Research suggests that, given the differing genetic origins - children from donation possess a direct genetic link to at least one progenitor, whereas adopted children typically do not share a genetic tie with their legal guardians - donation can, in many functional and even theological respects, be analogized to a form of modern adoption within infertility treatment.

However, profound distinctions persist, particularly concerning “genetic and marital implications”. Children born through ART methods always carry a direct genetic relationship with at least one recognized parent, which consequently imposes prohibitions on marriage between the child and that parent based on biological consanguinity. Furthermore, complex family and legal ramifications prohibit marriage

between the child and the donor’s spouse, the surrogate mother and the surrogate’s spouse and their offspring. Conversely, the absence of a biological relationship in traditional adoption removes this specific genetic barrier to marriage between the adopted child and the adoptive parents. Nonetheless, irrespective of the biological reality, established legal frameworks, religious interpretations and psychological considerations consistently impose restrictions on all parent-child relationships by prioritizing the overarching principle of the child’s best interests.

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