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Review Article

The Restrictions for ARTs Applicants in the Light of Human Rights Principles

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ABSTRACT

Background and Aim: Having one's child is one of the strong desires in human beings especially in married persons who sometimes and for some reason are not capable to achieve. Using ARTs is one of their choices to have a baby while there are some barriers and restrictions for the ARTs applicants, both married and singles, to access which may evaluate in different ways, especially in the light of some basic principles of human rights, including the principles of freedom and non-discrimination and along with, because of the vital importance of respect to child's rights, the principle of the best interest of a child also is a good criterion for this evaluation.

Materials and Methods: In the present study, keywords of persons with disabilities, the best interest of the child, principle of freedom, and non-discrimination in databases PubMed, Magiran, SID, ISC, and Google Scholar were searched and relevant literature was searched and analyzed.

Ethical Considerations: Honesty in the literature and citation analysis and reporting were considered.

Findings: This paper examines the limitations and prohibitions imposed for access to these technologies based on human rights principles. While the respect to freedom and equality of people demands to minimize this restriction, the best interest of a child principle should be the paramount consideration. In the other words, it is necessary to create a balance between the rights of applicants and the rights of the future child with a focus on the best interests of the child and to the main purpose of the application of these techniques for humans, with an approach, preventing dehumanization of the technologies. Accordingly, they recommend the adoption of legislation and regulations, as well as providing specialized counseling services to the applicants and help them during the decision-making by explaining all existing concerns regarding their child's rights in the future and create a balance between their rights and the future child's.

Conclusion: Access to infertility treatment technologies for infertile couples has always created concerns for service providers about the balance between the rights of parents and future children and policymakers at the macro level. Adoption of laws and regulations, as well as providing specialized counseling services to the applicants and help them during the decision-making by explaining all existing concerns regarding their children's rights in the future could play an important role in creating a balance between their rights and future child's.

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Introduction

Today, the desire to have children has declined compared to previous years and the evidence is a growing number of singles and childless families. Requirements and living conditions of our time, especially in the industrial and

developed countries or in transition communities caused many people to think of having a child as a great responsibility, costs, and restrictions on freedom of parents rather than as an economic help and an indication of the ability of a family. Also, regardless of the traditional communities and the importance of having a child in them, maybe if there was no human instinctive desire to be parents, the survival of the human race would be endangered over time (1). This desire makes infertile people experience this pleasant feeling through different ways of fostering and sometimes the urge to have a child, who is biologically, physiologically, or both related to spouses or one of them, will be the applicant to benefit from assisted reproductive technologies. Examining applicants and parental competencies to access these services and imposing restrictions on their right to found a family, on the one hand, and providing these services without the constraints and concern imposed on the rights and welfare of children, creates various discussions legally, religiously, and morally. The right to found a family recognized as a human right in international human rights law, along with human rights principles of freedom and non-discrimination in the exercise of this right, has led researchers to discuss and examine prohibitions and restrictions on access to assisted reproductive methods whether in terms of spending on these methods or the applicants and an important issue is considering the best interests of the child in this regard.

Considering existing legal gaps, especially in the Iranian legal system, the present article paper, while addressing the right to found a family and nature of the government's obligations towards individuals in this field, reviews and analyzes common limitations in providing these services in the light of three principles of freedom, non-discrimination and best interests of the child as the three principles of human rights. This paper ultimately recommends the adoption of rules and regulations, as well as providing specialized counseling services to the applicants and helps them during the decision-making phase by explaining all the existing concerns in terms of rights of their children in the future and creating a balance between their rights and the future child.

Ethical Considerations

Honesty in the literature and citation analysis and reporting were considered.

Materials and Methods

In the present study, keywords of disabled persons, the best interest of the child, principle of freedom, and non-discrimination in databases PubMed, Magiran, SID, ISC, and Google Scholar were searched and relevant literature was searched and analyzed.

Findings

The Right to Found a Family

One of the very strong desires in people, especially in traditional societies is the desire to have a child that is often a product of sexual intercourse between couples. This desire is so strong that even some people who are not married or do not want to get married have the desire to have a child. Also, having a child is the main motivation for marriage.

Survival, continuity and excellence of generations, the need for immortality and keeping alive the surname, overcoming the monotony of life, giving meaning to life and strengthening relationships between couples, interest in having a child, and ethnic and religious directives are among the main motivations for having children as well as incentives such as more child as a factor for empowerment, invulnerable and economic empowerment of communities and families that had special importance in communities in the past (1). Article 16 of the Universal Declaration of Human Rights stating that the family is the natural and fundamental group unit of society, entitles both men and women of full age, to marry and found a family without any limitation in terms of race, nationality, or religion. The International Covenant on Civil and Political Rights also recognizes this right for men and women of marriageable age (Article 23) and Article 10 of the Covenant on Economic, Social, and Cultural Rights refers to the need for the widest possible protection and assistance for the establishment of the family, especially about the mother and child. This right is emphasized in the regional instruments on human rights and the constitutions of many countries.

Article 10 of the constitution of Iran states in this regard: Since the family is the fundamental unit of Islamic society, all laws and regulations and pertinent programs must tend to facilitate the formation of a family, safeguard its sanctity and the stability of family relations based on the law and ethics of Islam." Overall, we can conclude that the right to marry and found a family is a fundamental right and is widely supported by the International Human rights Law. This right is also recognized as a fundamental right in the constitutions of many

countries such as Afghanistan, Japan, Algeria, Italy, Croatia, Kuwait, Spain, Egypt, Thailand, which indicates the fact that various communities, despite differences, sometimes fundamental, attach importance and value to this right and generally to the family unit. Perhaps since this unit is as old as history, and this right is rooted in human dignity and freedom, human societies have paid such special attention to it.

The Concept of Infertility and Assisted Reproductive Technologies

Infertility in medical science means crossing the time of intercourse and sex without using a birth control method that is not conducive to pregnant women. This period is 1 year and 6 months for people less than and over 35 years, respectively (2); however, women with post-pregnancy abortion are also covered by this definition.³

"Assisted reproductive technologies" or "methods of infertility treatment," including ovulation induction, the Injection Of Sperm Into The Oocyte (ICSI), Injecting Sperm And Egg Into The Fallopian Tube (GIFT), in vitro fertilization (IVF), Intrauterine Insemination (IUI), Zygote Intrafallopian Transfer (ZIFT) sperm donation, egg donation, embryo donation, and surrogacy are offered in response to the needs of this category of persons (4).

Using the title "methods of infertility treatment" implies that these methods are used to help people who can't become fertile normally³ and thus after their inability is diagnosed, they are treated as a patient and are given the chance to become pregnant. With this understanding, these services will be only offered to heterosexual couples who are married or included as it is common in some countries, have concubinage life. Based on this assumption, since having a child is normally possible for couples of the same sex and unmarried people, these people are not regarded as infertile people and are not qualified for using methods of infertility treatment. However, fertile people whose children have genetic diseases or die shortly after birth can also use these technologies.

But if these methods are considered as "Assisted Reproductive Techniques", we will reach a different conclusion. According to this perspective, these methods can even be an option for people who used these methods instead of natural fertility; even fertile couples can apply these methods (5).

By generalizing the infertility concept to social or psychological infertility, attempts have been made

to find a justification for providing services to this group of people based on non-interference and imposition of undue restrictions on individual freedoms and the right to health. Social or psychological infertility, unlike biological infertility, refers to the status of single women, menopause, and same-sex couples that had or have the possibility to have normal fertility with sexual intercourse, but their unwillingness to marriage and pregnancy, when the possibility naturally exists or intercourse with the opposite sex place them in this category of infertility (6). But these justifications should be investigated in the light of the right to found a family on the one hand, and the welfare and the best interests of the child will, on the other hand.

Access to Infertility Treatment Technologies in the Light of the Human Rights Principles

As mentioned above, it seems there is no doubt regarding the existence of this right and obligations of government in this regard, but there is a major debate about who are the right holders and what are the obligations of governments. Sometimes due to the limited resources of governments, it is impossible to assist all applicants and thus they limit the allocation of public funds to these individuals by determining indicators and sometimes governments impose restrictions on applicants for utilization of these technologies despite facilities, due to other reasons. In some cases, governments, through no intervention, practically assign the clinics providing these services the responsibility to decide about imposing such restrictions. This situation is sometimes criticized for various reasons, including the right to privacy, freedom of reproduction, equitable access to health care, and disregarding non-discrimination for reasons such as age, marital status, disability and risk of some diseases, sexual orientations, and religious belief. This paper will have a brief look at these principles and then discuss some circumstances and obstacles to access to this technology.

1. The principle of freedom

Freedom is one of the fundamental principles of international norms on human rights, particularly civil and political rights. The negative concept of freedom means "no barrier". Thus, an area is provided for the person and the person acts according to his/her will and belief and exercising self-control over his/her fate. Freedom is ensured by the government until choice and the rest is left to the

individual (7). However, freedom is not real in the absence of barriers, and the ability to exercise is also important. In this sense, we can assume human or humans that despite the apparent granting of freedom do not have the power or conditions to use it.⁷ For example, to marry and to found a family, only the free will of the parties is not enough, but other conditions should also be guaranteed. This is the positive concept of freedom that obliges the government not only to create any barrier for people to get married and found a family but also to enable them to exercise such a right in their real condition. Human freedom in the family includes freedom of choice in marriage, divorce, having a baby, and any other privacy issues in the area of personal independence. This means that the principle is non-interference in people's rights of freedom of the individual in this area and the government, except for the specific reasons for the protection of the rights of the individual or public interests shall not enter into this field and limits the freedom of the individuals. Recognizing privacy and family independence indicates the tendency to reduce government intervention in family relations.

A look at the legal systems of different countries shows that a person from entering the family unit and after it will face a series of imperative rules enacted by the legislature. Some of these rules have been established to protect the freedom of people in this area and some of these rules impose limits on this freedom.

2. *The principle of equality and non-discrimination*

Equality as a function of the inherent dignity, the non-discrimination as a way to respect for equality and its protection is also generalized to the family and its members. The principle of non-discrimination is one of the fundamental principles in international law that has been referred to in various human rights instruments. Universal Declaration of Human Rights as an inspiration to is subsequent human rights instruments in Articles 1 (equality in dignity), 2 (equality in the enjoyment of rights and freedoms of this Declaration), and 7 (equality before the law and legal protection) has noted this principle.

This regulation is also found in other instruments such as the International Covenant on Civil and Political Rights (Articles 2 and 26), the International Covenant on Economic, Social and Cultural Rights (Articles 1, 2, and 3), the Convention on the Elimination of All Forms of Discrimination against Women (specifically

Articles 1, 2, 3 and 4) and the Convention of rights of the child (Articles 2, 5 and 30).

Human Rights Committee in its General Comment No. 18, interprets non-discrimination as direct or indirect non-discrimination. "This committee believes that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or another opinion, national or social origin, property, birth or another status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms" (8).

This committee further observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose that is legitimate under the Covenant.

Most areas of discrimination in international human rights Law include sex and gender, sexual orientation, race, color, tribal or ethnic origin, nationality, language, religion or belief, disability, age, political beliefs or other beliefs, marital status, parents, and family. With a glance, it can be easily understood that much of this discrimination can be generalized to the rights governing the birth, life, and death of a family, and even after this time. Also, the laws of some countries provide evidence for this claim. Deciding freely and responsibly regarding the number and spacing of children, having access to age-appropriate information, and ensuring essential reproductive techniques to enable people to exercise these rights are among these cases.

3. *Principle the best interest of the child*

The best interest of the child has been referred to in the Convention on the Rights of the Child in eight paragraphs with different phrases, without a definition of it.¹ A special place has been considered for the best interest of the child in Articles 3, 18, and 21. Paragraph 1 of Article III states that the best interests of the child are regarded as "a Primary Consideration» that should be respected by public or private social welfare institutions, courts, legal or enforcement authorities, or bodies in all children-related actions. In the case of adoption, this issue should be "The Paramount Consideration» (Article 21) and Article 18 (1) referring to the shared responsibility of parents in the growth and development of children, introduced the best

interests of the child as "Their Basic Concern». Finally, Article 20 also refers to the best interests of the child that are directly related to Article 9 concerning the right of the child to live with parents. The best interests of the child issue imply that when there are several options on the welfare and needs of the child, only the most suitable situation for the child's development should be considered. One of the problems that exist in the identification of the best interests of the child is the lack of definitions and objective criteria for the identification of this issue, which leads to different interpretations of the concept in different cultures. The fact that the best interests of future or current child should be taken into account, what is the relationship between these interests and children's rights, and whether they are fully in compliance with the rights of the child or is a concept beyond these rights in the light of which, some child's rights such as "right to be heard " can be ignored, are interpretable in this context. Although due to the lack of definition, the principle of the best interests of the child seems very abstract and uncertain, this flexible and indefinite concept, limited to the rights and principles enshrined in the convention and is not merely Affected by personal inclinations of decision-makers about the child (9). , reliable awareness or recognition should be achieved of the existing options in recognizing the best interests of the child. Then outcomes of each option must be evaluated and the incidence of these outcomes must be estimated and the results should be evaluated.¹⁰ In this regard, although assisted reproductive technologies are not referred to in the Convention on the Rights of the Child, it seems that in most cases, identification of instances of violation of the rights and interests of the child is not hard, especially in cases where the applicants violate rights of the child future for reasons such as mental disorders, some disabilities, and diseases, addiction to drugs, or history of violence. Also, in case of doubt or conflict between the rights of adults and future children, it seems better to consider the best interests of the child in the child adoption, as The Paramount Consideration and not a primary consideration, and decisions are taken accordingly.

Common Obstacles and Limitation on Access to Assisted Reproductive Technologies

According to the law or codes of clinics providing these services, restrictions and prohibitions are applied to access to these technologies in different countries that the subject of the present paper, but

the following noteworthy points should be taken into account first:

Religious communities frequently oppose the use of these methods, or at least some of them by couples to prevent mixing of kinship; but concerning other applicants, using these methods, even in the case of single people, given the importance and sanctity of the family is somewhat tolerated a surely raising this issue about gay people will be negative to nullifying the subject from the religious perspective; But providing such services is debatable in case of countries where based on the right to sexual orientation and gender identity, sexual relations of these people are decriminalized and concubinage life or marriage is recognized. Some opponents say that the argument that the potential child's welfare and protection of children who were not born and likely never been born, should not limit the freedoms of individuals and to discriminate against them for the enjoyment of their fertility rights of¹¹ is also only a fallacy because the problem is not merely a pleasant feeling of parenting and individuals' enjoyment of children's embryonic period so that we say such a pleasant feeling should not be sacrificed in favor of the fetus interests, but the birth of a child is an objective reality and we can't easily sacrifice prosperity and intergenerational justice in favor of these people's sense of good parenting.

Examples of the use of these methods have created serious concerns, especially for the well-being of children, especially in terms of psychology. Some infertility clinics have agreed that fathers can donate sperm to their infertile children (The unity of father, grandfather, father, and uncle) and the grandmother's uterus be used as a surrogate used (The unity mother, grandmother, mother, and aunt). Gamete donation from relatives, such as father, mother, brother, and sister produces benefits for infertile people. For, example the child, will have in addition to the ties of kinship and family genetics and the expense and time will be saved¹²; but according to ethical considerations, some people do not accept gamete donation by family members without limits, for example, they make difference between gamete donation between infertile brother-brother, brother-sister, who has an infertile wife. Although these methods seem to be appropriate in adults and their demands, the well-being of children and their rights should not be sacrificed for selfishness and social engineering, while it seems that the acceptance of such cases could, over time,

pave the way for the elimination of the ban on incest.

It is said that the radical separation of behaviors and sexuality from fertility and transfer of reproduction from the house to the laboratory, and converts it into a product that leads to identification or personalization of this process. As one of the experts in bioethics "When the history of the twentieth century was written, this separation will be costly with no doubt, because the result is an inauspicious marriage of technology and human values that not only undermines marriage and family but is anti-human equally" (12).

1. Religious obstacles and limitations

Nobel Prize winner for medicine in 2010 is an eighty-five years English scientist, with the advent of in vitro fertilization, in 1978, Louise Brown, the first child was born in this way, so far, has treated dozens of parents and the birth four million children in this manner (13).

His innovative method has created many discussions and debates in many different countries, especially in the Muslim and Christian communities in terms of religion and morals. The result was the imposition of restrictions or a ban on the use of these methods or Exclusive use of this method only to some of the applicants.

The first fatwa in this regard was issued on March 23rd March of 1980 by Grand Mufti of Egypt whereby any third-party intervention is not allowed in sexual and reproductive functions of marital relations. Therefore, donation of sperm or ovum, and surrogacy are not allowed and the third intervention is considered as adultery, and children of prohibited practices are attributed solely to the mother who delivered him, and the child is considered illegitimate. Also, after divorce or the death of the husband, the ex-husband's sperm should not be used for the fertility of his wife and the frozen fertilized egg and sperm of a husband and wife can only be placed in the womb of the wife only during marriage and the establishment of sperm banks solely because of the threat of human existence and race, is prohibited.¹⁴

In Iran, a different fatwa was issued on some of these methods whereby some are allowed and some are banned. For example, in the case of in vitro fertilization with sperm and eggs of couples (homogeneous fertilization) (15), Ayatollah Khomeini, Khouri, Gulpaigani, Tabrizi, Sistani, Shirazi, Lankarani, and Makarem allowed this and Ayatollah Boroujerdi and Milani banned these

methods. Ayatollah Khamenei, Bojnordi, and Rouhani allowed the artificial insemination with foreign sperm and wife eggs (heterogeneous fertilization) (15) and Ayatollah Bahjat, Tabrizi, Hakim, Sistani, Lankaran, Makarem, Montazeri, and Marashi forbid this (16). Finally, after the codification of the law "of donating embryos to infertile couples" in Iran in 2003, only one of the available methods was explicitly recognized. In occupied Palestine two views are in the fertilization with the foreign sperm based on the Jewish religion: some think of it as tantamount to adultery. And as a result, the woman has forbidden priests to the husband and the sperm donor and the husband's consent has no effect. The second view states it is not adultery, but the husband's consent is very important and failure to inform of the husband's consent is considered as a betrayal of his trust, which can be the basis for divorce (17). The Vatican also announced that it is illegal and immoral technology and sees it as a disregard for human life and as a technology that separates human reproduction and intercourse and Orthodox Church sees it as adultery (18).

The impact of religious rules and national legislative and strict regulations and the legislators' silence and assigning the responsibility of determining the parents' qualifications to the clinics, sometimes leads applicants out of these countries as reproductive tourists (19). In Turkey where in vitro fertilization with the involvement of third parties is prohibited and fertility in this way by Turkish women even abroad is considered as a criminal offense to be sentenced to three years, each year hundreds of trips have been done by Turkish women to use this method, however, such trips were banned with the adoption of this decision (20).

2. Age limit for applicants

Generally, the age limit is put for treatment for women applicants. These restrictions may be due to the risks of treatment and pregnancy in older ages for maternal mother and child health that makes sense, but it should be noted that the physiological examination of the female applicant is better than specifying a particular age and rejecting the applicant solely because of failure to meet the age requirements since it may lead us to different concrete results despite old age (21).

In a report published on the age of women who took advantage of these technologies in the United States of America in 2012, the average age of women was announced 36 years. In women who use their eggs

for fertility, age is the decisive factor in infertility success and the birth of a child. According to this report, among women over 44 years, only 2% end to the child's birth and abortions reach over 50% for women at this age (22).

Another issue is considerations raised about child welfare. The high age gap of parents with children, in addition, can cause problems for both sides especially during the child's growth, some believe that it raises the possibility that the child is denied from parents or one of them at an early age. As a result of these reasons, services may not be provided to these couples. In rejecting this justification for the failure to provide medical services, it can be said that there are many children born naturally and without intervention in this situation, and the realization of the above problems for children is not conclusive and should not be an excuse for denying couples of their fertility rights and establish a discriminatory status for them than other couples. Higher ages for marriage and life expectancy, and thus the growing number of children who are naturally born by older parents make it difficult to comment on the issue, although such concerns from third parties interfering in this process cannot be ignored. The expression the current concerns to the applicants and making them aware of the possible consequences of having children in old age for themselves and their children and even convincing such applicants to accept the guardianship of orphanages and child adoption through initial consultation, while respecting the principle of freedom and non-discrimination, seem to be effective on the applicants' choice and produce beneficial results.

3. The ban for singles and unmarried couples

There are various reasons for the lack of providing these services especially to single women and unmarried couples both in terms of child welfare and social policies. For example, the stability status of the couple's relationship, obligations of the parties concerning their spouse and child, and the importance of parental roles and the security resulting from these cases compared with the concubinage and single life cause doubt about the provision of services to the latter groups. Importantly, the idea is that the best family in terms of child welfare is a family consisting of married spouses (23). In addition to the traditional and religious societies where marriage is sacred, giving birth to single girls is considered a factor in reducing the desire for marriage and is another

reason to justify the lack of providing the services to these people.

Research results show that half of all cohabiting relationships dissolve within eighteen months in America and children born in cohabiting parents in North America and Europe experience separation of parents 2 to 4 times more likely than children born to married parents (24).

However, the problems of children with married parents, and particularly with the growing phenomenon of emotional divorce, as well as an increase in single-parent families bring the impression to the mind that children in single-parent families do not have necessarily problems more than children in married parent homes and state that status of single applicants considering their strong motivation to be a mother based on their choice, guarantees the welfare of the future child.

Today, single people give birth to children using these methods, justify it by citing freedom and non-interference in the decision of the people of how to found a family and the prohibition of discrimination because of marital status, even though they know that the child is denied of one parent and without considering the important role of parents in raising children, they consider the presence of a large number of children who are denied of one of their parents due to death or separation, as an objective reality²⁵, and even rationalizing their work by referring to the argument that children born from this method, because of being wanted, have significantly favorable conditions than the other one-parent children.

It seems that being the child of a one-parent family is often exceptional and is not considered as desirable, and everybody even the society in some way feels obliged to compensate this situation and protect these children, so helping to create such a situation, it is not considered as active abusive conduct towards children it can be considered as a form of ignoring children's rights and interests and abuse of these methods for the birth of orphans, by a selfish and harmful practice (26).

Even by accepting the fact that family is a dynamic sense that is changed and today, the definition of family is generalized to divorced, single or parentless families, etc. that shows the transformation in the family concept, it should be noted that the welfare of children is affected by the decisions of adults and their interests, except in the case of death of one parent or both. Also, identifying these families to benefit from family rights and interests and labeling them as an

objective fact, is not implied that this form of family is approved and its adverse effects on their children's condition can't be denied. Rather it occurs to reduce the adverse impact resulting from non-recognizing them as a family for children and even adults who have been diagnosed with this condition. Such an approach allows the proliferation of single-parent families using infertility treatments does not make sense.

Some say that strengthening and supporting the traditional examples of reproduction lead to the promotion of the theory of the narrow concept of a family consisting of children with heterosexual parents and this traditional thinking causes people to be deprived of their certain rights. It should be said that the fact that homosexual couples who select their sexual function and role against their natural sex as female or male, based on their right to sexual orientation, and then entered into marriage, the continuity of this life depends on mutual consent from each other, This consent does not necessarily mean that other side (who select sexual function opposite to his/her sex) has a function fully aligned to the selected gender, but indicates on their satisfaction and the mutual wishes and needs, agreed upon.

Now we have to see whether the role of mothers or fathers could be reduced to the agreed-upon role without significant consequences and male or female gender does not play a significant role in this regard?

Regardless of the opinions against this situation, it doesn't seem that sufficient time is passed from recognizing these types of families so that we can surely talk about the lack of psychological and sociological negative effects caused by the foundation and continuation of such families, particularly on their children. Considering that right of couples for adoption or taking advantage of infertility treatment technologies is newly recognized, many of these studies have been certainly carried out on children who were fostered by these people from their previous marriage and it seems that the changing role of the father or mother of the child in their new life as husband or wife have little effect on the parental role continued from their previous life. Human Rights Committee in a proposition against New Zealand²⁷ stated that Paragraph 2 of Article 23 of the Convention is the only regulation of substance in the Covenant that define a right by using the word "man and woman" instead of "Every Human Being" «Everyone» and «all persons». Use of the word "man" and "woman

"rather than the general terminologies used in other parts of the Covenant, is always inferred that the contractual obligations of member States arising Article (2) 23 of the Covenant recognize marriage as a union between a man and a woman who tend to marry each other. Accordingly, the Committee found that the mere lack of recognition of same-sex marriage doesn't mean the violation of the Covenant²⁸ and given that the Covenant refers to the marriage in addition to the right to found a family; therefore, failure to provide these services to same-sex couples is not a violation of their right to found a family.

The laws of some countries state that the provision of assisted reproductive services to transgender people shall be subject to gender reassignment surgery (18). In some cases, clinics deal with people who have decided to change their gender and since they will often be sterile in their new gender, they will want to freeze their gametes for having a child with their genetic features in the future. If these applicants are accepted, for example, a man whose gender is changed through Sex reassignment surgery will be the genetic father of a child who will have two mothers instead of parents concerning new conditions.

Considering the decline in egg quality in older ages, egg freezing services may be provided to single girls applicants at inappropriate ages so that use these services in older ages in case of marriage and infertility problems. The use of frozen eggs if married can rule out the concerns about the spread of single-parent families and the violation of rights of children to have two parents and no desire to marry. In addition, it can reduce potential problems of a family in the future and strengthen its stability. Overall, it seems that accepting the guardianship of children without guardians, especially for single women, has a significant effect in satisfying the motherhood feeling and help to create better conditions for these children compared to keeping them in an orphanage, the minimum damage of which is failure to form the mutual relationship between children and parents.

4. limitations for persons with disabilities or certain diseases:

Protecting the rights of persons with disabilities has been raised in the international community for decades various documents have been dedicated to this issue. Rule 9 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities adopted by the General Assembly

Resolution 48/96 dated 20 December 1993 on family life and personal dignity²⁹ states: " Persons with disabilities must not be denied the opportunity to experience their sexuality, have sexual relationships and experience parenthood. Taking into account that persons with disabilities may experience difficulties in getting married and setting up a family, States should encourage the availability of appropriate counseling. Persons with disabilities must have the same access as others to family-planning methods, as well as to the information inaccessible from on the sexual functioning of their bodies. (Paragraph 2). States should promote measures to change negative attitudes towards marriage, sexuality, and parenthood of persons with disabilities, especially of girls and women with disabilities, which still prevail in society. The media should be encouraged to play an important role in removing such negative attitudes. (Paragraph 3)."

Committee on Economic, Social and Cultural Rights in Paragraph 30 of General Comment No. 5, regarding the right to marry and have a family which is frequently ignored or denied, especially in the case of persons with mental disabilities, asserts that supports Article 10 of the International Covenant on Economic, Social rights, including the right to marry and have a family is also true for people with disabilities, and states parties should ensure that laws and social policies and practices do not impede the realization of these rights. Persons with disabilities should have access to necessary counseling services to fulfill their rights and duties within the family. It further referred to the rights of women with disabilities to enjoy support concerning motherhood and pregnancy and insists that they should not be deprived of the parental experience (30).

There are criticisms in case of failure to provide these services to people with disabilities because of the direct risks involving the transfer of disability of parents to children or problems that lead to the death and disability for children and indirect risks, including concerns related to parenting because of the impact of disability on the parenting capabilities. Critics argue that the message of denying demands of people with disabilities to use these methods is that "It is better to die rather than being with the disabilities; your birth was a mistake and your family and the world would be better without you" (31).

In a survey study of attitudes of 153 emergency care providers, only 18% of physicians, nurses, and

technicians imagined they would be glad to be alive with a severe spinal cord injury. In contrast, 92% of a comparison group of 128 persons with

High-level spinal cord injuries said they were glad to be alive. Critics believe that the difficulties of parents with disabilities are the belief of those who cannot imagine living with a disability. Everyone knows that having and raising children with disabilities is not easy and people with disabilities, like everyone, tend to add problems of having children to their disability challenges. These critics believe that it is inappropriate and ineffective to assess applicants' status to determine the suitability and competence of parents as an indicator for the treatment of infertility (32) because people who are suffering from infertility problems don't need to have such measures on the decision to have children. Also, it is more difficult to investigate the competence of persons with disabilities since a person who has no opportunity to develop his/her practical skills is assessed, and judging about the qualifications of parents is a kind of involuntary or compulsory sterilization for subjects (33) and finally, if a woman cannot keep the child within 9 months of pregnancy due to disability, surrogacy can be a good option to help her and avoid unnecessary restrictions to her right to found a family. Article 23 of the Convention on the Rights of Persons with Disabilities adopted by the 2006 United Nations General Assembly referred to the issue of eliminating discrimination against persons with disabilities in the family (34) and emphasized their fertility rights equal to others and to decide freely and responsibly on the number and spacing of children and necessary measures to enable them to exercise their right to fertility and founding a family (Paragraph (a) and (c) 1) (35).

Providing the above services has been doubted for drug addicts as other applicants due to their adverse effects on the health and well-being of children from the fetal stage after birth. For applicants with HIV, some believe that the denial of access to these services is considered as a discriminatory act against them, because other couples who give birth to a baby without using the services, are not monitored for this purpose, and today a technique called sperm washing can be used that rules out the risk of transmission among male sufferers (36).

The argument that because other people who give birth to a baby without the need for these services, are not assessed and examining the applicants for these services is undue discrimination against them

and restricting their freedom, does not seem correct for the following reasons:

Fertility rights and the right to have a child is the natural right of every couple and here that the possible exercise of this right does not exist, the third intervention converts this relationship to a triangle relationship; applicants at an angle, the third party on the other angle and the child in the head. In this regard triangular relationship, the relationship between patient and therapist is not merely suggested, but the result of this treatment is a child who is the most vulnerable member of this equation whose interests and welfare cannot be sacrificed in favor of the applicant's instinctive for the infertility treatment and their selfish desires or motives. The damages faced by children with irresponsible parents and orphaned children are so significant that they can make the third intervening party special in providing these services to these applicants with special conditions.

Where parental substance abuse and their mental health problems are the causes of violence against children³⁷ and because of its devastating effect on the present and future of children, governments are obliged to support them against this damage (Article 19 of the Convention Rights of the Child) and is among factors for withdrawal or suspension of custody, when some risks threaten the health of children with parents suffering from some disability or diseases, such as parents of HIV-positive and it is the violation of the child's inalienable right to health that must be protected against these risks before birth and during birth (Article 12 of the Treaty on the Elimination of Discrimination against women and Article 24 of Convention on the Rights of the Child). Also, when children are sent to the care centers due to the parents' childcare inability for various reasons and this is a violation of human rights of children living within the family and parents (Preamble and Articles 9, 10, 20, and 21 of the Convention on the Rights of the Child). How can the principle of non-discrimination and non-interference in personal freedom be considered as an instrument to provide these services to people?

It seems that children do not consent to be born in such circumstances and here we can't ignore the responsibility of those who played a role in making this situation in any way, at least morally. However, if there is the possibility to control such cases while protecting the rights and dignity of women who give birth to a child naturally without the intervention of a third intervention, it is also logical to take appropriate measures with a focus on the

well-being and health of children; however, even if there is such a determination, the government has no effective and legitimate tools and the parents can be helped only after the birth of children so that the rights and the best interests of the child are ensured.⁹ Note of Article 23 Family Protection Law enacted in 2012 also states: "... in cases where the serious disease of couples leads to the damage to the fetus based on the view of Ministry of Health, Treatment and Medical Education, care and supervision should include a ban on the generation of humans ". The fact that how and what basis the last part of this Note can be implemented must be investigated!

Conclusions

Access to infertility treatment technologies for infertile couples has always created concerns about the balance between the rights of parents and the future child for the service providers and policymakers at the macro level. On the one hand, it seems ethically and humanistically difficult to make comments on the competencies of parents, especially when infertile couples wholeheartedly want to have their children and on the other hand, the vulnerability of the future child and the need to protect him/her against known damages, the occurrence of which is almost certain, is the major and non-negligible concern. In International Human rights Law, While recognizing the right of founding a family for every man and woman, in investigating applicants' qualification to access to these technologies, a certain weight is given to the best interests of the child that seems it should be considered as the paramount. Therefore, the future child is supported against the risks that threaten her/his interests and rights while respecting the principle of freedom and non-discrimination and the rights of applicants, For this purpose, adoption of laws and regulations, as well as providing specialized counseling services to the applicants and help them during the decision-making process by explaining all the existing concerns concerning their children's rights in the future could play an important role in creating a balance between their rights and future child. There is no end to the demands and aspirations of humans, but it should be noted that children are not regarded as property so that we should not make any decision about them and sacrifice them for the desires and selfishness of adults. In addition, the main objective of these technologies in humans, which is making it possible for infertile couples to have children, can greatly specify the limitation to the use of these services.

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Conflict of Interest Statement

The author declares that they have no conflicts of interest.

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