



Guardianship of Simulated Children

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ABSTRACT

Guardianship is one of the legal parentage of jurisprudence and law, father and grandfather considered for the position. With the advancement of medical science in the field of infertility and the use of methods other than the use of child-bearing sex cells of those who have children through their routine is not possible could be a very big step in fulfilling this dream for families. One of these is through the use of cloning technology, despite the fact that most jurists have considered marriage to legitimize the children, but some scholars are legitimate reproduction through simulation.

Original Article:

Received 15 Nov. 2015

Accepted 22 Sep. 2015

Published 29 Dec. 2015

Keywords:

province, guardianship, simulation, child

Introduction

Human being has dignity and value, so there is no one province to another but if the natural guardianship of the children talk to action is actually taking the aspect of support for these children and the subject of civil law and Jurisprudence and even the Family Protection Law was to give authority to his father and grandfather and mother consider what is in the best interest of the child friendly. Because the natural guardianship of the issues raised in the family and family are the most important elements of a society and determine the legal status of children is one of the legal parentage is essential and can be helped with respect to family stability. It must be said that the emergence of new technologies and advances in medical science has made great relief for the people, but in areas such as jurisprudence, ethics, sociology and psychology leads to questions and made some nodes that responds to them, and the opening of the nodes requires comprehensive and extensive research and interdisciplinary studies. Frequently happened for us with news and information about the children, many questions come to mind is a simulated example of the situation, for example, to identify the real parents of the child with relatives and acquaintances is named. A child who is born through cloning, the same legal rights and legal entities associated with the first phase of life inevitable: the right to identity, family, parents, charity, child custody, inheritance, and marriage, including privacy issues which should in Islamic jurisprudence and consequently the legal system, be thought necessary measures for it.

First Chapter: the meaning and concept of province

Guardianship or trusteeship is led by a task on the shoulders of one individual to the collection, the management of those

responsible. It is withholding province and it is not ruled out by the holder and the responsibility for this task, but it is considered legal. But in its custody if the fault is certainly disciplined. Loyalty, he conquered province, province to deduct Wow, supervisor, superintendent, the first and other derivatives that, in substance, "but" is. Province and province is deducted victory meant victory but rather the means to overcome him and he found established "authority (the village and fraction Waugh) the word means to govern, dominate, to love, to help achieve and grab come.* Retaining control of the province in general and the life of another person's property, and the father and grandfather of the Prophet and governor of the province as well. But family relationships is the legislative authority to the Department of Finance and sometimes raising children (or stupid and insane that they are connected to the Saqr's Stone) is granted to fathers and grandfathers. (Article 1183 of the Civil Code) If the guardian appointed by the father or paternal grandfather also among their parents, as Article 1194 of the Civil Code says: "The father and grandfather and guardian appointed by a special but called them"[†] But it must be recognized that in practice lawyers, two so-called "provincial" and "administration" and less distinct from each other happens to be the "executor" of "but" it said in particular that the source of authority, but directly the law and grant this side It's not the will of the people. While executor voluntary but is representative of the authority given to him as a father or grandfather. That is why the civil law enforcement authorities have called the father and grandfather.[‡] In terms

* Mohammad Moin, Persian culture, Amir Kabir Publication, under the province word.

[†] Nasser Katouzian, Civil Law (family), 2006, Page 402.

[‡] Nasser Katouzian, ibid.

of civil rights, provincial law to a person competent authority to manage the affairs of incapacitated for granted. The direct rule of the province to be handed over so-called natural guardianship the Civil Code Articles 1180 to 1194 of the task and the executor, it is spoken by the father or grandfather is assigned to oversee obsolescence (Article 1181 of the Civil Code) is a province that is non-guardianship, the While the subject is as specific province. What is so special but, to Article 1194 of the Civil Code, the guardian and the guardian appointed by the father or paternal grandfather. Whenever particular but not incapacitated person entrusted to be the province of the court, said the province patronage with special provisions. Sometimes a person who has been determined by the court to manage obsolescence called Amin (Article 1187 of the Civil Code and Article 15 of the Family Protection Law). The guardian is a person who is determined by law and the Act is directly a function of social and family and his province and other words, is mandatory not optional, and may, therefore, it called coercive. Some lawyers' province to province coercive force has been defined. In Jurisprudence, as far as we reviewed, the so-called natural guardianship apply and it seems that the civil code the first time it is used. However, scholars of the province, including the provincial father and grandfather - USG province, the provincial governor, the guardianship of just believers, have spoken at length and sometimes fathers and grandfathers province said that the province is mandatory. Natural guardianship of the concept that was said in all there and more clear interpretation, in all countries the person or persons who are close to the minor and his natural love and affection are to oversee and direct the affairs of the rule of law have been minor.

First topic: guardianship

Enforcement of legal and social guardianship remains in its true sense because the child born spontaneously placed under the guardianship and no authority has the right to change or enforce such a situation. However, in view of the laws of such province, but the provincial grandfather's father, in our social practices depends on the province and the child's father is gone because of the natural family and not living common. Furthermore, the guardianship of their normal branch custody along: namely, the father of the child but also the mother of his financial affairs and is in custody. While custody grandfather when it finds that the child's parents are dead or because of the implementation of this task are lost.[§]

First Speech: provisions of guardianship

Some (province) means (mandate) which requires an associated (obsolescence) of the mole are believed to have written against the Province in the sense of guardianship, conceptually and nature of government and political governance is different because the province Tenure applies to personal property and proprietary rights against the mole, the direction of ways, such as lack of maturity and intellectual development, insanity, etc., is prevented from disposing of his property rights, while the government and

the political establishment as governance and the country's affairs.**

Second Speech: arguments for retaining guardianship

The civil law rules of natural guardianship Jurisprudence adapted and developed and 15 articles (Articles 1180 to 1194) to the natural guardianship of his father and grandfather dedicated family support, but the new law enacted new rules in this regard 1974.11.15 and has made outstanding progress. Article 15 of the province's recent father and paternal grandfather and mother decreed that "the child is a minor under the guardianship of her father. In case of fixing stone or betrayal or lack of power and competence in the administration of the minor, or the death of the father, at the request of the prosecutor and court approval of the city, the province allocated to each of the grandfather or the mother, unless they establish that their incompetence in this case, the provisions to install a guardian or trustee will be attached. Court, where appropriate, the administration of the minor on behalf of the paternal grandfather or mother will be under the supervision of the prosecutor. If the mother the right of guardianship, he will fall. In this case, if the minor is not the paternal grandfather, or grandfather is not competent to manage the affairs of the minor, the court suggested that the prosecutor, in each case, the mother of a minor or other competent person as trustee or guardian shall be determined. Amin to recognize an independent court or by the prosecutor will handle the minor issues."^{††} Jurisprudence is in the custody of a child to share with his father and grandfather and mother to her child property office does not have any direction. In the absence of a father, grandfather or a paternal ancestors, the guardian appointed by them, but there is no particular child and if it is the province with the ruling.^{‡‡} The Civil Code also retains the same way: the province of underage children in the first stage with the fathers and grandfathers who share and work together to run her own finances (Articles 1180, 1181) after Minor maintenance, training and management of their property with the executor (Articles 1188 and 1194), and if the child does not have special guardian will perform this task.

Second topic: province types

Given that children from birth are needed to manage these responsibilities so God the Father appointed. He is obliged to meet all the needs of their children, this responsibility is not always mature enough and if the responsibility of the father and the child is over and that if they lose their competence determines the prosecutor to replace him, the topic we to province father and grandfather and mother's role in the province.

First Speech: Province fathers and grandfathers

Guardianship over the child's father has long traditions of all ethnic and religious as well as in-laws has been accepted. Once the child is born in a family of their own and without the court's decision be placed under guardianship. This position on the grounds that no reason or another can better handle minor matters cannot be the father. Volume also is a

[§] Nasser Katouzian, Civil Law (family), Mizan Publication, 2006, Page 403.

** Mehdi Haeri Yazdi, Wisdom and Power, Page 178.

†† Iran's natural guardianship law and comparative law, Dr. Seyed Hossein Safaei

‡‡ Nasser Katouzian, ibid

partner in civil law with his father in the province and each of the two can independently decide on behalf of a minor on his property.^{§§} In Jurisprudence and Article 1180 of the Civil Code, natural guardianship of minors and the insane and stupid madness and his philosophy is connected to the child is known only to his father and grandfather. However, Article 1180 of the Civil Code jurisprudence taken and it can be explained by traditional patriarchal family. From what we have said clearly that the civil code known only father and paternal grandfather and guardian and put them in another. Let's see how a change in this regard has created the Family Protection Law. as it will not. In this case, property management and other affairs that are incapable of duties is exclusively the responsibility of the father is the natural guardian. Grandfather of the province in the second row after the woman's father. In this case, property management and other affairs that are incapable of duties is exclusively the responsibility of the father is the natural guardian. Grandfather of the province in the second row after the woman's father. A point of discussion is whether the province's grandfather today as in the past or some other kind of natural guardianship authority has established that the Family Protection Law. Some lawyers argue the province grandfather Family Protection Law, which governed the province of civil law is not enforced, while ceding the province to demand the prosecution and grandfather subject to court approval of the city. However, it is difficult to accept this view because: First of natural guardianship grandfather under no legal text has not been repealed and only in this respect after his father and grandfather were in the second grade. Secondly, the appearance of the Family Protection Law It is concluded that the province is known as the father "as proof stone or betrayal or lack of power and competence in the administration of the minor or his or her father's death ... shall be to each new ... ". In fact, after the father, the mother or grandfather guardian is known. Thirdly, the prosecutor's request and the approval of the court in this case does not contradict the law predicted by the natural guardianship because it is the law of the grandfather and the mother was granted and approved by the court only in terms of qualification for the administration of the insolvent and the judgment in this case, a verdict was announced. Fourthly, it can be said in the case of death or proof of competency father, potential natural guardianship "of each of the grandfather and mother" means to both the direct rule of law, shall be proposed by the prosecutor leading a court to impose one of them province and only static determines that the minor's de facto leader.

Second speech: Mother Province

Civil law, following the natural guardianship of jurisprudence dedicated to the father and paternal grandfather and the mother is not known, although it has allowed the mother as executor or guardian to manage the affairs of incapacitated determined. Solution Shiite jurisprudence and civil law, based on patriarchal extended family system that has long been common in Iran. If in such a family, as a mother, but not compulsory, it is understandable. The new legislation, in addition to the province after the grandfather and father before him by his

father canceled the contract, the authority granted to the mother and her paternal grandfather was in the row. According to Article 15 of the Family Protection Law, in case of fixing stone or betrayal or lack of power father "at the request of city prosecutor and court approval right of each province shall be grandfather or mother."

Second Chapter: Simulation

Simulation concept and activity that discussion and review about it a lot and sometimes contradictory. Agree or disagree with this phenomenon without identifying the constituent elements of the operation and its practices regardless of how well the process is very specialized and complex, prejudice and a one-sided look at the subject matter. So in this season of the concept of child, history and concept of simulation and then examine the process and its variants.

First topic: concept of child

The word child is a child who has the singular form is the literal and technical sense. In this section, the term child literal and technical aspects will be discussed.^{***}

First Speech: literal definition of child

Child or children, young people (boys and girls) said. Children from the root word meaning short-term side kuk and short-term and small families.

Second speech: the definition of the term child

Depending on whether domestic or international child rights perspective discuss specific definitions for it to be considered. In this section we examine the definition of international and domestic. The United Nations Convention on the Rights of the Child, a child is any person under eighteen years all told, unless the law governing the person, provided he is growing younger^{†††} like most legal systems, the rights of the childhood into two periods: the period of drying, drying period. In Iranian law, the legal definition of the term is not clean. A child who is in the drying period, children are told point. Non auditors also the one who set the course is not clean. In some countries, for a period of drying, a certain age, and if the child is over that age, considered point

Second topic: the history and concept of simulation

Simulation as a social and political phenomenon with a series of preparations by a group of people in different fields it has been said that history. In this part of the history of cloning in plants, animals and people, we will discuss: Assimilation in plants, a phenomenon that is hundreds of years farmers are familiar with and it is not surprising. But in 1960, scientists were able to simulate plants. Similar experiments in animals during the different stages of this process can be noted that the 2004 Korean scientists have for the first time to simulate a dog genetics. In 2002 coincides with the January 2002. In the field of human cloning in the news in the newspapers that everyone was surprised. American company Clonaid announced it has created the first cloned human. Bridget governed by (Bovizlid) human cloning project manager said simulated human girl that on 26 December 2002 using the skin cells of

^{***} Seyed Hossein Safaei, natural guardianship in Iranian law and comparative law, Journal of Comparative Law Institute of Tehran University, (2).

^{†††} The United Nations Convention on the Rights of the Child in 1989. Article 1

^{§§} Nasser Katouzain, Family Law, Mizan, Page 404.

a 31 year old American woman, was born by cesarean section.^{***} Simulation is cloning which it is said, from the Greek word clone «Clon» means cuttings, budding and taken copying and cloning of both the cutting and copying. In biology, cloning and the birth of a living organism without sexual intercourse.

First speech: the simulation process^{§§§}

In the first stage using a syringe suction force are outside the nucleus contains the genetic material (DNA) of the egg cells inside will be asexual, in the second phase of a non-sexual cells of the human or animal body which is supposed to simulate it, separated, put into grown within a few days to grow, in the third round with a weak current of electricity that the positive electrode between and negative passed, the egg membrane of the host cell membrane between two electrodes that are implanted and then asexual cell nucleus surrounded by egg embryos to have that name. In the fourth stage embryos and the embryos grown in an incubator through the fertilized egg begins to divide. In the fifth stage 8 to 64-cell stage embryo cloned in the uterus, which hosts the same way that the simulation will be transferred.

Second speech: Types of Simulation

In general, from a legal perspective, there are two types of cloning:

1- Reproductive cloning, which aims to child survival and having counterpart parent generation (in terms of genetic content) takes place. In this method, somatic cell nuclear transfer used for or body.

2- The main goal of therapeutic cloning to obtain embryonic stem cells that can be used in the treatment of disabilities and diseases (especially degenerative diseases) can be used. But from the perspective of genetics and cloning expert proliferative and non-proliferative between the two types of cloning or therapeutic cloning research, which is also called, was distinguished.

Chapter Three: Installation of process simulation generator children in Jurisprudence

Human reproductive cloning is in the process of assumptions and different modes, it should be noted that regardless of the assumptions Shiite scholars, their opinions on the parentage of the child resulting from this process that they'll continue to pay.

First topic: assumptions conceived in human reproductive cloning

The human reproductive cloning, retail has been conceived as follows:

1. In the case of an active nucleus and the egg cells without the female (passive), both belonging to the woman's uterus.

2. In the case of an active nucleus and the egg cell from a woman devoid of female (passive), belongs to another woman, and primary cells implanted in the uterus of women, especially in the case of a rare condition occurs when a woman has no power birth sex, but has a healthy uterus and tend to have children without assignment to be heterosexual.

3. When the active nucleus of the egg cell asexual, passive man and a woman planted parity relationship established

between them and the husband is unable to reproduce sexually.^{****}

4. In the case of an active nucleus-free egg female is a woman-owned, but rented burden placed.^{††††} Of course, other possibilities in this regard is that only four of the medical point of view may seem. The origin of the affiliation of the child to the father of two simulated view of the design is the jurists.

First speech: Comment attributable to parent

Some Shiite scholars to master the common definition of origin and approved by the legislator, said that the cloned baby, not the father. Ayatollah Haeri^{††††}, Javaheri^{§§§§}, Makarem Shirazi^{*****}, Mousavi Ardabili, Bayat, Seyed Mohsen Mousavi Tabrizi, Hakim^{†††††} are those who believe in this view.

Second speech: Comment attributable to parent

Some scholars believe that the assumption of a separation between first, second and third assumptions, and accordingly, believe in hypothetical somatic cells taken from the man and the woman is passive egg, the only child to join his father is not mother; here, the child's father said that it is only because he is the father of a body cell nucleus. In their view, if the core of the mother, the only mother she will be. If it is the father, he will be a father and no mother;^{†††††} if it is the father, he will be a father and no mother;^{§§§§§} because what the inoculation, the development of the sperm nucleus and the cytoplasm of the cell where it is seen as a food. For example, Ayatollah Momen and Ayatollah Bojnordi of this opinion will follow. Also, some of the group, between the odd and even alien cell donation does not matter, and in both cases, the child has a father knows. Among them could be cited to Ayatollah Mousavi Sabzevari Haeri and Makarem Shirazi (in his recent opinion).

Second topic: the source attribution simulated child to mother

Comments jurists on the affiliation of the child to the mother is very diverse and different. In the area of artificial insemination, as the number of maternal uterus and the egg is just the owner, while the number of native human reproductive cloning of the uterus, the egg cell is controlled. The multiplicity and diversity of opinions on this topic is more. . Many jurists by accepting one of the plurality of

**** Olson, Mostafa and Zainab Kanani, "the intersection of ethics, law and the reality of human cloning, the need for rational analysis and balance", Page 6.

†††† Soltani, Abbas Ali and Hossein Nasseri, "simulating the perspective of Islamic jurisprudence" emerging medical issues 2, Qom, Garden Books, 2007, p. 53.

†††† Haeri, Seyed Kazem. 2008, polls about reproduction, can be obtained on this article on the site Second question: <http://www.alhaeri.com/bayanat/bohoth/new/watan%2sharei.htm> (4may2010).

§§§§ Vali Zadeh, Rahman., Ahmad Ari and Mehr Ali Pirdehi, "jurisprudence simulation", Jurisprudence and Principles of Law (Islamic Azad University of Babol), Issue 6, Winter 2006, p. 191.

***** Javaheri, Hassan., "The division of embryos and cloning", new exploration in Islamic jurisprudence, in Issue 47, Spring 2006, p. 95

††††† Tabatabaei Hakim, Seyed Mohammad Saeed, the jurisprudence of human cloning and medical opinions, pp 21-22

††††† Eslami, Seyed Hassan, human cloning the Shia, review the four perspectives, p. 58; Haeri, Seyed Kazem, jurisprudence inmate, Year Issue 55, 2008, p. 44; the believer, Mohammed "simulation", pp 110 111

§§§§§ Eslami, ibid.

*** Shirin Mirza Zadeh "someone come, who just like me for you!" Women's magazine, No. 96, Persian date February 2002, p. 47.

§§§ Yousef Sina., GA, Qom, Omid publication, second edition, 2003, Page 147

native title, simulated child, believed to have been mother and others, there is no respect for the child's mother not simulated. Based on the above, Shiite scholars and jurists are two main views.

First speech: attributable to mother

This view is divided into two different perspectives:

First part: Theory of the plurality of native title

The group did not differ between the states of participation and non-participation of numerous women and have made the following comments.

1. Attributable to the uterus: a group of scholars in the process of simulating the mother's womb to take into account. Ayatollah Mousavi Ardabilly, Nouri Hamedani, Bayat, Seyed Sadegh Shirazi^{*****} and Sadr the top of this opinion. The group confirmed its theory to argue a few verses. The verse that all they have argued, this verse is:

«... That only their mothers who have given birth» The exploitation of man by verse so that the verse is absolutely women who spawn, is mother is, whether or not the egg from him, especially since the arrest words, this concept has announced.

2. Appointment to the egg: a group of jurists mother criteria for being considered as the criterion of being a father and as a result, the mother is none other than the egg. Ayatollah Haeri^{††††††} and Sistani^{††††††}, on the view. According to the jurists, where the owner and the owner of the egg cells are different, the egg, the mother of the child is simulated.

3. Appointment to the cells on the other hand, some scholars are other criteria in addition to those mentioned, have presented. For this group, the cell is in fact what man is or woman is considered the parent of the child. Ayatollah Marefat and Momen believe.

Second part: number theory as native

It is divided into several cases discussed below:

1. The owner of the uterus and the cells together
Ayatollah Janati the mother cell is simulated and the foster mother's womb he knows.^{§§§§§§} Ayatollah Makarem Shirazi in his recent comments, saying such things.^{*****}

2. Appointment to the egg and the uterus together

Some other jurists, any of the criteria for the assignment of child birth child birth from an egg and carrying a child and his mother know. The groups are divided into three categories:

A- Sum of each of those who gather together to apply both as a mother, to know. For example, Mr. Mousavi Sabzevari with reference to various sources lexical and juridical analysis of the concept of motherhood and concludes that without a doubt the concept of motherhood on a woman who had a child in her womb nourished the egg and does not apply.^{††††††}

***** Shabestari, Seyed Hassan, verify the legitimacy of simulating the legal point of view, limits and conditions, Page 126

†††††† - Shabestary, ibid., P. 122

†††††† Ibid., P. 126

§§§§§§ Mousavi Sabzevari, Seyed Ali, reproduction between technical and legislation, pp 139-140

***** Mohseni, Mohammad Asef, Fiqh and medical issues, pp. 409-410

†††††† Mousavi Sabzevari, Seyed Ali, reproduction between technical and legislation, p. 158

B- Each alone is the mother of the group believe that both women are mother to child. Their argument is that traditions are things that a woman's uterus is one of the two pillars form the embryo, the fertilized egg to the uterus is produced by the formation and the assumption of the manufacturer and, therefore, forming the embryo in the womb, not but the fetus in her womb increased only time she is born, the mother will be seen as a precaution. The two species are native sons.

They apparently so the argument implies, that both mother and relative.^{††††††}

C- Both are common parent: the group that can take into account both the relative mother, but the child of a relationship with each of the egg and the uterus, and both can be considered as a foster mother because both effective and contributed to the emergence and formation of the baby. On the other hand, is decisive for religious mother be allocated to each of them.^{§§§§§§}

3. Owner of the egg and the cell together

This is the opinion of Ayatollah Safi Golpayegani the author's request for opinion have been expressed. Prior to this, consider the theory of non-attribution.

4. Owner of the nucleus and cytoplasm together

It is dedicated to Ayatollah Mohammad Shirazi^{*****} and Mr. Javaheri^{††††††}. Who is the mother of his child and he was born from an egg, in this case the child, is developed from the nucleus and cytoplasm, nucleus and the cytoplasm so the child will be both mother.^{††††††}

Second speech: not attributable to mother

Another approach has been suggested by some scholars who believe that the cloned child, is no descent. Among the scholars noted the Ayatollah Makarem Shirazi^{§§§§§§}, Hakim^{*****}, Beheshti^{††††††}, Mousavi Tabrizi^{††††††}.

Result

Guardianship of a social institution and the purpose of bringing it to deliver benefit to the child that his administration does not have the power and ability, the legislator has tried taking into account the provisions of the law in this area is a way for children. In fact guardianship father delighted father of all moral and religious traditions accepted and since civil law is derived from the jurisprudence is concerned, one of the relative legal guardianship and not scrapping provincial mother and for the province not considered coercive, but with the changes that took place in the family Protection Act, provincial of the province for the mother and the mother's father and grandfather made a put on a par with them. It seems that in the legal system of Islam, so there is not a legal concept of

†††††† Rezania Moalem, Mohammad Reza, fertility and reproduction of human rights jurisprudence, pp. 319-320

§§§§§§ Ibid., Pp. 320-321

***** Shabestary, Seyed Hassan, verify the legitimacy of simulation from the legal point of view, limits and conditions, Page 126

†††††† Javaheri, Seyed Hassan, "The division of embryos and cloning", Page 95

†††††† Javaheri, ibid., P. 96.

§§§§§§ Alian Nejad, A., "Ayatollah Makarem Shirazi religious views on the issue of simulation and escape routes of interest", Page 29

***** Tabatabaei Hakim, Seyed Mohammad Saeed, the jurisprudence of human cloning and medical opinions, pp 22-23

†††††† Mohammadi, Ali, human cloning, scientific considerations, ethical, legal, and legal, Page 475

†††††† Shabestary, Seyed Hassan, verify the legitimacy of simulating the legal point of view, limits and conditions, Page 121

lineage to prove guardianship and each of the four Sunni schools of Sunni and Shiite religious expression only to have satisfied the conditions for obtaining it and some Shiite religious contemporaries such as lawyers have a common definition. More jurists with the adoption of a property, a mother or father to child cloned, their terms. Because the concept of motherhood and fatherhood, the concepts are not considered customary and religious truth. After the adoption of a criterion other than the common criteria, smooth looks. In addition to sexual reproduction, the genetic information from two of receiving, ie multiple sources. But in the simulation, the person, their genetic information from a person receives, the source unit. So what is the single source and multiple source are simulated child alone for assignment to the source (the cells) will suffice. So, the child can be joined at least to the cells, even if the parties cannot join him. He's all about doing human cloning but now, due to the negative consequences that it would respect the consensus of jurists on the job (and I emphasize with regard to its consequences).

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