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## Legal controls of artificial insemination in Algerian legislation

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**Abstract---**The research paper came on the subject of artificial insemination, which is one of the modern techniques for abnormal reproduction if the couple is not having children or is infertile, Modern medical science has revealed the existence of many means of artificial reproduction. However, this subject has taken on particular importance in Algerian legislation, in particular in the Family Code, which has made this technique a set of requirements in accordance with Islamic law, which is one of the sources of Algerian family law.

**Keywords---**Artificial insemination, infertility, surrogate motherhood, childbearing.

### Introduction

God created man and woman to build the earth. To this end he proceeded to marry for a great wisdom encompassing the good of the individual and of society, The aim of marriage is to form a family based on affection, compassion and the preservation of genealogy. He gave them special sanctity, which obliges them to abide by the provisions of God's law that preserve this family. Islam has emphasized the preservation of genealogy because of its importance for the family and societies. Reproduction is the means of maintaining the family, as well as one of the goals of marriage. However, this right may affect what impedes it naturally, whether infertility or illness affecting one of the spouses, making it impossible to procreate; Therefore, with the development of technology in all fields, especially medicine, it has the latest technologies to solve these problems of childlessness, which is called artificial insemination, which is the focus of our study, which is a modern topic for the Islamic community as well as the legal, and the subject of research is considered to be studied legally for what should be surrounded by legitimate and legal controls.

Therefore, the study aims to highlight the position of the Algerian legislator on this modern technology, which leads us to raise the following problem: What is

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the position of the Algerian legislator on artificial insemination? What are the legal controls for artificial insemination?

To study this topic, which is marked by the legal controls of artificial insemination in Algerian legislation, we have adopted an analytical approach, which includes an analysis of the legal texts before and after the amendment of the Algerian Family Code, and an analysis of concepts related to the subject.

To answer the problem, we divided the topic into two axes:

The first axis explains the concept of artificial insemination, while the second axis is entitled the position of the Algerian legislator on artificial insemination.

### **The first axis: The concept of artificial insemination.**

Artificial insemination is a method and a solution to the inability to reproduce, as it is one of the important topics in the current era, as it affects the family and societies, and the importance of this topic must be addressed first to its concept, and its conditions secondly, and its types thirdly.

#### **First: The definition of artificial insemination.**

Artificial insemination came up with several definitions, including the following:

Artificial insemination is the transfer of a man's sperm to a woman's genitals by medical methods and methods without normal sexual contact.<sup>i</sup>

It was defined as the artificial transfer of semen from the male to the female vagina.<sup>ii</sup>

It also means placing sperm in a woman's reproductive system or fertilizing a woman's egg by extracting the egg and inseminating it with the cell.<sup>iii</sup>

Artificial insemination can be defined as an evolving process of abnormal reproduction by transferring sperm from the husband to the wife's uterus by implanting a fertilized egg.

#### **Second: Conditions of artificial insemination.**

As mentioned earlier, this technique is one of the abnormal methods of reproduction, and therefore it must be used with caution and caution because it affects the family and communities, so it must be briefed after the conditions for its use are the following:

##### **1- Artificial insemination should not be used unless it is necessary.**

The Islamic Shariah rejects this technique except for necessity, because Islam came with a religion easy, when the inability or inability of the couple to procreate in a natural way, and the use of artificial insemination except when necessary and inability, and this according to Islamic law.<sup>iv</sup>

##### **2- To undergo artificial insemination couple only.**

This condition is one of the most important conditions, especially that Algeria is a Muslim country and criminalizes illegal relations, other than non-Muslim countries, it allows illegal relations, so artificial insemination must be the result of a legitimate bond (marriage) and be between husband and wife only without submission to what is known as the surrogate mother.<sup>v</sup>

### **3- The woman's egg must be inseminated with her husband's sperm.**

According to Islamic law and in order to preserve the family and communities, artificial insemination must be from a radical relationship as well as from the husband. It is not permissible except for the husband, and it must be from the husband's side and it is not legally permissible to be in the hands of another man or vice versa to be in the womb of a woman other than the wife, This requirement in foreign countries operates in the technique of the so-called foster mother and this technique is prohibited in the Islamic religion as well as in Algerian family law.

Therefore, the process must be carried out in front of a reliable scientific authority and the presence of the husband, as it is not permissible to be alone with the wife, in artificial insemination is dealt with fortified broilers and results in a legitimate child and no doubt in the attribution to his parents.<sup>vi</sup>

### **Third: Types of artificial insemination.**

There are many methods and forms of artificial insemination through the infertility of the couple or the inability to conceive and according to the scientific development in the field of medicine, the latter and specialists in artificial insemination divided its types into two types.

#### **1- Internal artificial insemination.**

Internal insemination is defined as the medical process of fertilizing a woman through the semen of her husband or one of the sperm used in the insemination process fresh or frozen, although the first type is preferred by doctors because the success rate of the insemination process is higher than if a frozen sperm was used.<sup>vii</sup>

Reasons for resorting to internal vaccination include:

- If the sperm count of the husband is low, or these animals have little movement.
- If the acidity of the vagina kills sperm.<sup>viii</sup>
- The process of internal insemination by taking semen is hot after placing it in a sterile container that is not wet with water, and it is drawn with special injections into the uterine nozzle to enter the womb of the woman.<sup>ix</sup>

#### **2- External insemination or IVF.**

External insemination is defined as an egg inseminated by a woman outside her reproductive system and inseminated with male water. If inseminated, the inseminated eggs are returned to another woman's uterus.<sup>x</sup>

External vaccination is used for several reasons:

- When the tubes are sealed, blocked, removed by operation or have an irreparable injury.
- If the sperm does not exceed one million and attempts at internal insemination have failed.
- Cervical secretions caused the death of sperm, and the failure of internal insemination attempts.
- Cases of anonymous infertility.<sup>xi</sup>

It can be seen that artificial insemination passes through internal and external types, but internal insemination is less harmful than external insemination, that is, does not require surgical intervention.

**The second axis: The position of the Algerian legislator on artificial insemination.**

Artificial insemination has been initiated by some legislations, including the Algerian Family Code.

**First: The position of the Algerian legislator before the issuance of order 05-02.**

With reference to Family Law No. 84/11,<sup>xii</sup> the Algerian legislature does not provide for artificial insemination. By reference to the provisions of the articles of the Family Law, article 40 of the same law stipulates: "Parentage shall be established by valid marriage, acknowledgement, evidence and suspicion, and by any marriage that has been dissolved after entry in accordance with articles 32, 33 and 34 of this law."

Article 41 also stipulates that: "A child shall be attributed to his father when the marriage is legitimate and communication has been possible and has not been denied by legitimate means."

Through the previous texts, we find that the legislator did not provide for artificial insemination Referring to the provisions of the Islamic Shariah if they are not stipulated in family law, Islamic law allows artificial insemination between spouses, although this technique is modern. However, the fatwas authorized this, and this through several legitimate conditions so that there will be no excesses in the sanctities and mixing of lineages, Thus, it has become possible to prove the paternal lineage of the son once it has been established that the woman was conceived by the father regardless of the means that led to it.<sup>xiii</sup>

**Second: The position of the Algerian legislator through Order 05-02.**

After the amendment of the Family Code by Ordinance 05-02,<sup>xiv</sup> the legislator kept pace with the development of artificial insemination in the family, and stipulated in the law in the text of article 45 bis that: "Spouses may resort to artificial insemination.

IVF is subject to the following conditions:

- Marriage must be legitimate.
- Vaccination must be with the consent of the spouses and during their lives.
- To be done with the husband's sperm and the wife's womb egg alone.
- Artificial insemination may not be used by surrogate mothers. "

Through the text of article 45 bis, we note that the legislator has included in it the provision of vaccination, which is the authorization of this technique However, this article is suspicious that it raises several questions on this subject, regardless of the conditions mentioned by the article to achieve this vaccination, However, there are problems around it, can any couple resort to IVF without proving the condition and trying to cure? Or is it permissible only for couples who have been found infertile as a result of a defect found in the husband or wife

prevents the encounter of eggs and sperm? Is it done as soon as the required amount is secured and agreed with the doctor or must there be procedures followed in that, such as the need to pass on a medical committee, which will guarantee the rights of citizens and avoid manipulation and defrauding them, as in the case of the absence of sperm in the husband completely, especially as they are obliged to take care not to achieve its results, which is the pregnancy?

These are all the questions that arise on this subject and are among the problems surrounding this article. The legislator must decide on them and add other articles, especially since artificial insemination is one of the sensitive topics affecting descent and the family in particular.

In return, the legislator stipulated this article in the amendment to the Family Law Artificial insemination is regulated by several conditions, despite its permission, and these conditions are considered to be in accordance with Islamic law as a source of family law. However, the article added another condition, namely the consent of the spouses as well as the non-recourse to the surrogate mother and the reason for this is not to mix genealogies and this is in line with Islamic law and we find it in non-Muslim foreign countries, which may be inseminated with the surrogate mother.

## **Conclusion**

Finally, we conclude that the legislator made a set of controls governing artificial insemination through its text in the amendment to the Family Law by Order 05-02 amending Law 84-11.

The results of the research are:

- Artificial insemination after a modern technique of abnormal reproduction so that it transfers the sperm of the husband to the uterus of the wife by modern medical methods.
- IVF is divided into internal and external types and the internal type is the lightest type of damage and achieves an effective result.
- Artificial insemination has conditions that regulate this mastery, because this technique affects family, lineage and society, and to preserve what has been mentioned must be regulated conditionally.
- The Algerian legislator, like other legislations, stipulated in the new amendment to the Family Law on artificial insemination and regulated it with several conditions. Among the conditions not to use a surrogate mother who is considered permissible in non-Muslim countries, It appears that the legislator in his artificial insemination legislation approved and maintained what was mentioned in Islamic law as well as preserving the customs and traditions that exist in Algerian society that reject surrogate mothers.

## **Recommendations include:**

- The need to follow legal procedures to carry out artificial insemination.
- Care in the event of artificial insemination taking into account Islamic Sharia and the law.
- The legislator shall review the Family Code by amending the article or adding an article detailing and clarifying this article.

- The need for legal protection of sperm after obtaining it and the vaccine before returning it to the womb.
- The need to legislate sanctions when violating these conditions.

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