

Legal aspects of nationality transferring to modified genetic children

Razieh Hassankhani^{1*} and Maede Ghane²

Bu Ali Sina University- M.sc of Private law

**Corresponding Author Email:* rzhasankhani@gmail.com

Abstract

Genetic science is one of the branches of biology. By way of existing contacts and discussion in this field, we may discover similarity and dissimilarity of two living beings. Genetics is a fundamental science that discusses the transmission of hereditary information from parents to children and from generation to the next generation. Freedom in the domain of Genetic is mentioned in article 2 of Universal Declaration of Human Rights: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." but this matter should be considered from the view point of the children themselves, which under the convention of children rights, the children must have desired personality growth and this processes begin from the early stages of life.

Keywords: Gen, Genetics, children rights, Nationality

Introduction

Genes are large molecules made up of a substance, DNA, whose double helical structure allows both copying and division.

Biotechnology, despite fine and useful effects, such as relief and reformation of congenital abnormalities, improvement of some disease, e.g. rickets has many uncomplimentary effects in simulation sphere. If these detrimental and harmful effects come to existences, there would be wretched destiny for the next generation. Such as descending human dignity, decreasing marriage statistics, satisfaction of sexual willing in absurd ways, smuggling of organs of new borne humans.

Genetic Testing

Genetic testing is the analysis of human DNA, RNA, genes and/or chromosomes, or the analysis of human proteins or certain metabolites, with the primary purpose of detecting a heritable genotype, mutation, phenotype or karyotype. In the clinical context of patient care, our recommendations for counselling and consent are intended only for genetic tests entailing the analysis of DNA, RNA, genes and/or chromosomes. In this context where genetic tests entail the analysis of human proteins and metabolites, only the requirements of established medical ethics apply. Though many human diseases have a genetic basis in the sense that they are caused by mutations (alterations) in genes, most such mutations or alterations are not capable of being passed on to the next generation, and so affect only the patient. Such mutations are known as somatic mutations. In contrast, other mutations can be transmitted to the next and subsequent generations, so that a child may inherit a mutation from a parent. This kind of heritable mutation is known as a germline mutation. 5 We therefore restrict our definition to those tests involving germline mutations that define heritable conditions. Tests for somatic mutations that carry no implication of heritability are excluded. (Pin, Lim2005)

Genetic and the rights of the child

Freedom in the domain of genetic applying is discussed in the note 1 of article 2 Universal Declaration of Human Rights:
Article I

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non self governing or under any other limitation of sovereignty."

The similar topics are discussed in the Child Rights Convention:

Article 3 (best interests of the child)

The best interests of the child must be a top priority in all actions concerning children.

Beside the Universal Declaration of Human Rights, we mentioned the Child Rights Convention, and resorting to these two international documents, we achieve this goal that although at first glance selectively, determination of the characteristics of children by parents might look as their right of having a child with grace characteristics, but this should also be viewed from the child viewpoint. According to Child Rights Convention, children should pass their own optimal personality growth, a trend that starts by the time semen is coagulated, and since then the child would have its own respected rights. Therefore, exerting the preferences and rights of parents should not ignore the right for living of a healthy child and its specific characteristics under any circumstances.

4- Aspects of nationality transferring to modified genetic children Nationality is an important issue in governments' and their national's international relationships. "Nationality is a political and intellectual relationship which defines the relationship between one person and a specific state." (Nasiri, 2001) they continue to reflect social norms and ethno-cultural customs that have developed over generations (Mateos, 2011)

Article 15, Right to a nationality and the freedom to change it:

1) You have the right to belong to a country and have a nationality.

2) No-one can take away your nationality without a good reason. You have a right to change your nationality if you wish

There are two criteria in granting nationality: Jus sanguinis (based on blood or descent) and Jus soli (based on birth place). Each of the nationality requisites is not complete in its own, there upon; governments take them together to endow nationality.

Another issue to be considered is that, when's the best time to Impose the nationality based on the blood principle?

- A. Coagulate the sperm for the child?
- B. Give birth to the child?
- C. Marriage for the parents?
- D. Considering government's interests
- E. Authorizing the child

Ultimately, different comments and suggestions are considered to observe the rights of both the child and the government.

The parents' marriage time nationality

Sometimes it may be considered that the valid time for giving the father's nationality to the child is the date of that marriage occurred. So there's unlikely to consider the date of marriage; since the time of giving nationality to the child and date of marriage are two different subjects. The essential of every marriage is not to have children, and also the time between getting married and having a child is not consistently the same; therefore, marriage could not be a criterion for the nationality status (Madani1993). Moreover, this theory's not comprehensive, since the sperm may be coagulated before marriage and the parents marry after the child is born and so legalize the child- according to the most countries rules-; during this time, the child has no nationality.

Nationality status during sperm coagulation

The followers of this theory believe that to determine the child's nationality, the time when the sperm was coagulated has to be considered and then father's nationality must impose to the child.

Despite it's almost near to reality, most of legal authors refuse it and the main reason behind is the uncertainty of the exact date of sperm coagulation. It's not reasonable to give nationality to something doubtful (Nasiri, 2001).

Considering government's interests

Nationality belongs to a government's general rights and jurisdiction and it's a political relationship in essence. Since every government considers the society's interests in case of authorizing nationality, they determined that an Iranian nationality is good for the child (Nasiri, 2001). So it seems that both groups are going to go extremes. Since nationality is essentially political, applying to this theory lead to disorder in relationships between the governments; because not only isn't certain the exact date of the sperm coagulation, but also the child may have two or none nationality, that is the both countries may give nationality to the child and on the other hand, the both refuse to give nationality. Moreover, the government's interests are not some clear defined rules.

Authorizing the child

The followers of this theory say that admitting the father's nationality while sperm coagulating is a right for the child, not an imposition; therefore the child has the sperm-coagulating time nationality only in case of having it chosen when grown up/adult (Nasehi, 1996).

Although this theory's ideal and mostly secure the individual's interests, but represents no clear rules. An individual's interests are different from time to time and place to place; while it's crucial to have a clear rule to authorize the nationality. Moreover, authorizing nationality -which is essentially political- to individuals is illegal and unreasonable. Also, in some cases in which the government considers a legal character for the child before birth, it's merely on the issued like inheritance, will and possession, not on the general rights area.

The child's date of birth

According to this theory, the criterion to determine the child's nationality is his father's nationality while being born. One problem here is that what if the father dies before the child birth? Although some legal authorities such as Weis believe that the father's nationality is gone when he dies and it's impossible to authorize the child, so the child has to be authorized as his mother's nationality (Ameri, 1988), but since nationality is a political relationship that the legislature get it assumed and doesn't go off in case of death, and on the other hand the mother's lineage hasn't been identified by the legislature, therefore the child possesses a nationality as his father's while dying.

Ultimately, it's clear that distinguishing the exact and scientific date of sperm coagulation is not possible now on; so it doesn't seem sensible to determine the nationality- which is the origin of some important consequence in one's life- based on a doubtful hypothesis. On the date of sperm coagulation we have to indicate that birth is something evident, perceptible and easy to record its date; while, on the other hand, the date of sperm coagulation- in all cases- cannot be evident. So nationality mustn't be depended on a doubtful date. (Azizi et al 2011).

Conclusion

The nature of genetic information, as determined in the major jurisdictions, is reviewed. The most distinctive feature of genetic information is its predictive power for individuals and for their close relatives. It has to be interpreted with care as it is generally probabilistic in nature.

Beside declaration of human rights we referred to convention of children rights and resorting to these two international document, at first sight, it may strike that selectively determining the characteristics of children by parents is their right to have children with desired characteristics, but this matter should be considered from the view point of the children themselves, which under the convention of children rights, the children must have desired personality growth and this processes begin from the early stages of life and the rights are going to attach to. Anyhow there must be no conflict between the rights of children to be healthy and it's unique characteristic with parents rights. So with surveying of genetic science and taking legal experiments against anti-humanism policy, we should try to have appropriate and efficient usage from this useful field of science.

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