

A Comprehensive Examination of Surrogacy within the Islamic Framework Aneeqa Ansari*

Dr. Sadia Saeed

Lecturer, Department of Sociology, Fatima Jinnah Women University, Rawalpindi

Corresponding author ansarianeeqa@fjwu.edu.pk.

Associate Professor, School of Sociology, Quaid-I-Azam University, Islamabad at-
ssaeed@qau.edu.pk

Abstract

This review study examines the practice of surrogacy within the Islamic setting, specifically focusing on its legal status and employing a comparative method to analyse the various schools of thought within Islam. The study investigates both conventional and gestational surrogacy, as well as the effects of in vitro fertilisation (IVF) and the global commercialization of surrogacy. It provides a contextual analysis of the prevalence and acceptance of infertility rates, societal standards, and varying legal frameworks on a global scale. The research centres on the Islamic standpoint, carrying out a comparative examination of Sunni and Shia perspectives. The paper highlights the socioeconomic difficulties, underscoring the importance of employing sophisticated strategies that strike a balance between technology advancement and ethical principles. The text finishes by emphasising the significance of continuous discussion and flexible legal frameworks to tackle the changing environment of surrogacy in the Islamic world and beyond.

Keywords: Surrogacy, Vitro Fertilization, Infertility, Legal framework, Islam.

Background of the study

The term "surrogate" originates from the Latin word "Subrogare," which means "to substitute" or "appointed to act in the place of" (Etymonline, 2023). Within the field of assisted reproductive technologies, a surrogate mother acts as a replacement, a woman who plays a crucial role in carrying a pregnancy with the specific purpose of giving up the child to another person or couple, often referred to as the "intended" or "commissioning" parents (Patel et al., 2018). The emergence of in vitro fertilisation (IVF) has brought about a dramatic evolution in surrogacy, making it an important reproductive treatment. IVF has enabled women without a uterus, those with uterine defects that make it difficult to get pregnant, and those with serious medical issues to become mothers. It has also offered a revolutionary option for individuals who are unable to conceive due to medical reasons (Brinsden et al., 2000). This method enables the achievement of motherhood by using embryos that are either self-created by the women or obtained from donors, and then transferred to the uterus of a surrogate. Furthermore, the introduction of IVF has created new prospects for homosexual couples and unmarried males, allowing them to commence the pursuit of parenthood. IVF enables non-traditional family structures to become parents and enjoy the experience of raising a child by creating embryos using their own sperm and donated eggs (Noga, 2023). Surrogacy represents the convergence of medical advancements, reproductive autonomy, and changing family structures within the realm of assisted reproduction. It has surpassed conventional limitations, offering a crucial support system for people and couples facing challenges in their journey towards becoming parents. As society grapples with the ethical and legal implications of surrogacy, appreciating its roots in Latin etymology explains the historical and linguistic backdrop of this multifaceted and transforming reproductive activity (Seidinova,

2023).

Surrogacy is a type of third-party reproduction where a woman agrees to carry a pregnancy for intended parents who are either facing medical obstacles or are same-sex couples. There are two main types of surrogacy: conventional surrogacy, which involves using the surrogate's own egg, and gestational surrogacy, which involves transferring an embryo created through in vitro fertilisation (IVF), typically using eggs from the intended mother or a donor. The development of IVF has substantially facilitated gestational surrogacy, underlining scientific breakthroughs in assisted reproductive procedures (Patel et al., 2018). Nevertheless, the surrogacy process, despite its advantages, imposes significant psychological burdens and health hazards on the surrogate mother. These issues shed light on the ethical considerations related to surrogacy, prompting inquiries regarding the welfare of the individuals engaged in this complex reproductive procedure (Saxena, Mishra, & Malik, 2012). Navigating legal procedures after surrogacy becomes more intricate due to societal norms that typically think the woman who gives birth is the rightful mother. This necessitates the surrogate formally relinquishing parental responsibility (Patel et al., 2018). Instances of postpartum conflicts have arisen, wherein surrogate moms decline to relinquish the kid to the intended parents, or conversely, intended parents reject the child. Such issues underline the necessity for precise legal frameworks to manage the nuances of surrogacy arrangements. The commercialization of surrogacy has generated disputes, with apprehensions over the abuse and commodification of women's bodies for the advantage of client families (Brandao & Garrido, 2022). While certain nations allow for altruistic surrogacy, where no financial remuneration is given save for medical and associated costs, the matter becomes more intricate when considering commercial surrogacy. The situation presents ethical quandaries about the overlap between reproductive rights and economic transactions within the domain of assisted reproductive technology (Hazem Zohny, 2022).

Different countries have legally adopted different positions on surrogacy. Only countries such as Canada, Greece, Israel, the Netherlands, South Africa, the UK, and some Australian states permit altruistic surrogacy. Conversely, countries with lenient legislation, such as Georgia, Russia, Ukraine, and several U.S. states (Arkansas, California, Illinois, and Maryland), allow for commercial surrogacy. Many individuals, because to many factors such as medical, ethical, societal, and religious reasons, generally prohibit both types of surrogacy (Reuters, 2023). The commercial surrogacy regulation in Asia is reflected by the rapid changes in the landscape. Thailand, once a prominent destination for medical tourism, has prohibited the practice of commercial surrogacy for foreign visitors. This decision was made under the Protection of Children Born from Assisted Reproductive Technology in response to global disputes surrounding the matter. India, which has been a centre for commercial surrogacy since 2002, had legislative obstacles. As a result, the Surrogacy (Regulation) Bill 2016 was enacted to tackle these issues (Hibino, 2022). Danielle Tumminio Hansen (2021) argues that surrogacy is a complex phenomenon that encompasses various nuanced aspects related to medicine, ethics, law, and culture. Given the intricate nature of these issues, it is crucial to find a middle ground between the freedom to make reproductive choices, ethical concerns, and legal structures in order to safeguard the welfare of all individuals participating in the surrogacy procedure. The changing worldwide environment highlights the necessity for thorough and deliberate regulation to negotiate the complex overlap of technology,

ethics, and societal expectations in the field of surrogacy.

Provide context on the increasing prevalence and acceptance of surrogacy.

According to the World Health Organisation, around 186 million persons globally, which is comparable to 15% of couples in their reproductive age, experience infertility problems (Shamima Parvin Lasker, 2015). Advancements in infertility treatments have broadened the range of choices available to individuals seeking to become parents in recent years. Surrogatemotherhood is a very controversial procedure that is associated with intricate ethical, psychological, and societal challenges. Studies suggest that people's choices about surrogacy are strongly influenced by society norms, encompassing moral, religious, and philosophical beliefs, which are frequently connected with ethical and social consequences (Deonandan, 2020). Hence, different facets of surrogacy might lead to a wide range of perspectives. Internationally, the lack of a universally accepted legal framework for surrogacy has resulted in divergent rules across different nations. For example, Russia and Ukraine allow both commercial and altruistic surrogacy, whereas the United Kingdom, Australia, and Canada only legally support altruistic surrogacies. Germany, France, and Italy have implemented a complete prohibition on all types of surrogacy (Horsey, 2023).

Scientific research investigating prevailing attitudes about surrogacy in different countries produce contradictory findings. A recent Australian study indicates that 75% of participants demonstrate a favourable overall disposition towards surrogacy, indicating a significant rise in comparison to prior studies conducted in Australia (Constantinidis & Cook, 2012). A survey conducted in Sweden among obstetrics physicians reveals that 63% of the participants either support or hold a neutral stance towards the concept of surrogacy. However, there are lingering worries over the health of surrogate mothers and the risks of coercion. In contrast, a study conducted by Rodriguez-Jaume et al. (2021) emphasises the significant levels of acceptability observed in nations such as Canada, Japan, the United Kingdom, and Iran, whereas Germany demonstrates a comparatively lower level of acceptance. Interestingly, the level of social approval for surrogacy does not always align with greater acceptability among individuals experiencing infertility, as demonstrated by multiple research indicating acceptance rates lower than the average overall value.

Research conducted in Spain reveals that 60.1% of participants view surrogacy as a favourable method for assisting infertile or homosexual couples in achieving parenthood. In addition, several scholars underscore the potential impact of media depictions on the overall perception of surrogacy (Horsey, 2023). Research exploring the contentious elements of surrogacy uncovers diverse preferences. 51.3% of the population in Greece approves of traditional surrogacy, while 82.1% approves of gestational surrogacy. The issue of whether a surrogate mother should be remunerated elicits controversy. In France, commercial surrogacy is regarded as less troublesome compared to altruistic surrogacy. Preferences regarding the nature of the relationship between a surrogate mother and the commissioning couple differ across countries. Certain countries, such as the United Kingdom, Turkey, and Iran, support the idea of establishing familial connections. On the other hand, countries like Greece and Japan prefer the surrogate mother to be an unfamiliar person (Chhagani, 2023).

Thesis Statement

The main objective of this comprehensive literature review is to examine and assess the extent to

which surrogacy is embraced by different communities, with particular attention to the perspectives held within the Islamic context. In the course of the inquiry, several facets of surrogacy, such as public attitudes, ethical considerations, and legal systems, are investigated. In addition, the purpose of this research is to get a better understanding of the complex position that Islam takes about surrogacy. It will investigate the various ways in which Islamic teachings may either support or dispute the legitimacy of this reproductive procedure.

Types of Surrogacy

There are two distinct types of surrogacy: the classic technique and the gestational method. The traditional method of surrogacy involves the artificial insemination of the surrogate mother with the sperm of the intended father. This provides the surrogate mother with a genetic tie to the child that is shared with the intended father. On the other hand, gestational surrogacy, which is sometimes referred to as host or full surrogacy, is the process by which an embryo is transferred to the uterus of the surrogate. This embryo can be obtained from the intended parents or is obtained through the donation of oocytes or sperm. According to Brandão and Garrido (2022), in this particular arrangement, the woman who is carrying the child does not have any genetic links to the offspring. Additionally, depending on whether or not the surrogate receives monetary remuneration for her pregnancy, surrogacy can be classified as either a commercial or an altruistic practice. In the case of commercial surrogacy, the surrogate receives compensation for her participation. On the other hand, in the case of altruistic surrogacy, the surrogate does not receive any financial benefit other than the reimbursement of medical and pregnancy-related expenses, in addition to her insurance coverage. The multifaceted character of surrogacy arrangements is brought to light by this nuanced classification, as stated by Brandão and Garrido (2022).

Legal and Ethical Considerations

legal landscape of surrogacy in various countries.

Countries that have legalised Surrogacy	Nations where surrogacy is Illicit	Countries with restrictions
In U.S Certain states permit both commercial and altruistic surrogacy, while others solely permit altruistic surrogacy (Nazari, 2023).	Belgium: The practice of commercial surrogacy is the only aspect that is forbidden (Neelam Chhagani, 2023).	Colombia: The lacks explicit regulations on surrogacy, and the existing laws governing the process are based on those pertaining to traditional delivery.
Iran permits the practice of surrogacy within its legal framework.	Denmark has a legal prohibition on surrogacy.	Cambodia: Surrogacy is illegal in Cambodia.
In the United Kingdom, surrogacy is legally permissible (Nazari, 2023).	France strictly prohibits both commercial and altruistic surrogacy within its borders, as stated by Neelam Chhagani in 2023.	In Mainland China, the Regulation of Human Assisted Reproductive Technology law prohibits surrogacy.

In Russia, surrogacy is legally permissible, but, the practice of commercial surrogacy is prohibited (Nazari, 2023).	Germany has a prohibition on surrogacy.	In the Czech Republic, surrogacy is not subject to legal regulations, hence it is widely seen as permissible.
According to Nazari (2023), surrogacy is legally permissible in Ukraine.	Ireland: Surrogacy is illegal in Ireland.	Finland: Surrogacy is not explicitly addressed in the legislation, but it is commonly regarded as permissible.
Surrogacy is legally permissible in the country of Georgia. Neelam Chhagani, graduating in 2023.	Italy has a legal prohibition on surrogacy.	In Greece, surrogacy is legally permitted, however, only altruistic surrogacy is permissible.
Canada permits surrogacy arrangements within its legal framework (Nazari, 2023).	Spain: Surrogacy is illegal in Spain	In Hong Kong, surrogacy is illegal.

Issues of ethics surrounding surrogacy include the potential exploitation and commodification of women's bodies.

The rise of surrogacy, especially in its commercial manifestation, gives rise to significant ethical problems around the possible exploitation and monetization of women's bodies. The introduction of assisted reproduction technologies such as In Vitro Fertilisation (IVF) has untangled the conventional connection between sexual intercourse, genetic parenting, and pregnancy. This has opened up new possibilities for reconfiguring reproductive institutions. Surrogacy arrangements, which involve the process of a woman carrying and giving birth to a child for someone else, require careful examination of legal and ethical factors (Saxena, Mishra, & Malik, 2012). The practice of commercial surrogacy, which involves the exchange of money, has generated criticism due to its introduction of the idea of buying reproductive services on the marketplace. The commercialization of pregnancy, made possible by IVF technologies, leads to contemplation over the ethical consequences of regarding surrogacy as a business transaction, giving rise to concerns about the possible exploitation of women's bodies during the procedure. The legal disputes and court challenges regarding the validity of surrogacy contracts highlight the importance of careful examination and regulation when dealing with the overlap of reproductive technologies, parental rights, and ethical standards (Hazem Zohny, 2022).

Blazier & Janssens (2020) argue that the differing legislative approaches to surrogacy in Italy and the United Kingdom highlight the ethical issues associated with the practice, specifically regarding the potential exploitation and commodification of women's bodies. Italy's complete prohibition of surrogacy, which includes both altruistic variants, demonstrates a firm disapproval of the practice, supported by severe penalties and legal nullification of surrogate pregnancy contracts. Conversely, the United Kingdom differentiates between commercial and altruistic surrogacy, making the former illegal while permitting the latter within particular regulatory frameworks. UK legislators stress the importance of preventing the commodification of altruistic

arrangements, acknowledging the potential harm that might arise when surrogacies are organised through markets. The ethical issues encompass more than just legal frameworks, exploring the effects on human relationships, family dynamics, and the gender-specific aspects of pregnancy. The practice of commercial surrogacy, which involves incorporating pregnancies into the reproductive market, gives rise to concerns regarding the development of 'clinical labour' and its possible consequences for the freedom and welfare of women participating in the surrogacy process. The complex legislative positions necessitate a thorough analysis of how surrogacy, especially in its commercial form, intersects with ethical concerns around the exploitation and commodification of women's reproductive abilities.

Surrogacy is an intricate reproductive process in which a woman consents to gestate a foetus on behalf of another individual or couple, either out of selflessness or in exchange for monetary remuneration. The surrogate agrees to give up the kid when it is delivered, enabling the intended mother to legally adopt the newborn (Knoppers, le Bris, 1993). This procedure is commonly referred to using many phrases such as female carrier, surrogate mother, maternity substitution, pregnancy agreement, and gestation for another. These terms are used interchangeably to convey the same concept. Surrogacy is medically recommended in situations where the uterus is absent, there are abnormalities in the uterus (either congenital or acquired), there have been multiple failed attempts at in vitro fertilisation (IVF), or there are medical issues that make pregnancy unsafe (Machtinger et al., 2017). Surrogacy is also indicated in cases where a woman is unable to bear a pregnancy due to objective factors such as a high risk of foetal development issues, the requirement for life-saving drugs during pregnancy, or maternal dangers connected with certain medical problems. Surrogacy can sometimes entail a total of six parents, comprising three moms and three men, if the surrogate is married as well (Machtinger et al., 2017). This reproductive approach offers a vital alternative for individuals or couples who have various difficulties in becoming pregnant and successfully bringing a child to full term. The complex medical and ethical concerns associated with surrogacy emphasise its importance in treating a wide range of reproductive challenges.

The influence of varying legal and ethical frameworks on the implementation of surrogacy.

In some, the practice is not clearly regulated by existing laws, while, in countries where specific legislation does exist, there is a considerable degree of diversity in terms of judicial approaches. Indeed, while some states ban surrogacy contracts or make them null and void, others allow such agreements to be enforced. In Italy, the practice of surrogacy, often termed by its detractors "uterus for rental", is subject to law No. 40 of 19 February 2004: "Regulations on medically assisted procreation". The legislation currently in place in fourteen European countries has been analyzed, ten of which are part of the European Union (France, Germany, Italy, Spain, Greece, the Netherlands, Belgium, Denmark, Lithuania, Czech Republic and Portugal) and three are non-EU members (United Kingdom, Ukraine and Russia), whose legislative frameworks are summarized in the following table.

Countries	Legal Status	Legislation
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France	Banned	According to Article 16-7 of the Civil Code, established by Law No. 94-653 on July 29, 1994—Article 3 JORF, July 30, 1994, engaging in the act of arranging agreements for procreation or gestation on behalf of others is considered a criminal crime under Article 227-12.
Germany	Banned	The Embryo Protection Act, implemented on December 13, 1990, establishes that genetic, biological, and social motherhood are closely interconnected.
Italy	Banned	Surrogacy, sometimes referred to as "uterus for rental" by its critics in Italy, is regulated by Law No. 40. The law permits the use of MAP (Medically Assisted Procreation) to address reproductive issues resulting from confirmed sterility or infertility, as long as there are no other means to eliminate the obstacles to procreation and the procedure is carried out in accordance with legal regulations that safeguard the rights of all parties involved, including the child. The legislation prohibits the use of heterologous MAP techniques, which involve using gametes from donors who are not the intended parents. It specifies that if this prohibition is violated, the gamete donor will not have any legal parental rights or obligations towards the child and cannot make any claims or assert any rights against the child.
Spain	Banned	Article 10 of statute 14/2006, enacted on 26 May ("Regarding assisted human reproduction techniques"), stipulates that all surrogacy agreements are invalid.
Greece	No Law Currently	Permissible for individuals in a heterosexual partnership or single females who wish to become parents. The latter individuals must provide medical evidence of their infertility and must not exceed the age of 50 at the time of signing the agreement. Surrogates are required to undergo assessments to determine their physical and psychological suitability.

The issue of heterologous PMA has been subject to intervention from multiple judicial bodies, including the European Court of Human Rights (ECHR), the Italian Constitutional Court, and local courts in Italy. These interventions have resulted in differing interpretations of the relevant legislation. Therefore, despite Italian jurisprudence declaring the restriction on heterologous MAP techniques as illegitimate, surrogacy remains illegal in Italy, as it does in France, Spain, and Germany. There is no explicit legislation regarding this matter in Belgium and the Czech Republic. The United Kingdom and Denmark are among the European countries that permit altruistic surrogacy. The mother is only eligible for reimbursement of the expenses she incurred throughout the pregnancy and cannot get any other form of compensation.

Surrogacy in Islam

When issuing a legal verdict, Muslim scholars take into account the Maqasid al-Sharī'ah, which refers to the underlying objectives of Islamic law. The Maqasid al-Sharī'ah refer to the objectives

of Islamic law, which include the protection of religion, life, progeny, mind, and wealth. This classification succinctly delineates the fundamental and essential requirements of human beings. The primary objective of legislation pertaining to surrogacy is the safeguarding of offspring. Islam promotes procreation and supports the treatment of infertility. In addition, safeguarding offspring involves ensuring the well-being of expectant mothers and the overall health of the offspring. It also involves the conservation of one's ancestry. It is essential for every newborn to have knowledge of and a connection with both their mother and father (Ebrahim, 1990). The practice of hiring a surrogate mother for the sake of procreation is a relatively new occurrence that modern legal experts must address. Islamic bioethics opposes surrogacy due to the utilisation of donor sperm, an external component, within a woman's womb, leading to the blending of lineages. According to Mufti Sheikh Ahmad Kutty, a prominent Islamic scholar, the act of introducing male sperm into the uterus of a woman to whom he is not married is considered a violation of Allah's limits.

Regarding the concept of "transgressing the bounds of Allah," the author cites the following verses from the Qur'an: "and those who are cautious of their sexual purity, refraining from engaging in sexual relations except with their lawful husbands or those whom they possess as slaves. For such individuals, there is no guilt. However, those who exceed these boundaries are indeed transgressors. Once again, a fundamental aspect of *hifz al-nasl* is to safeguard one's ancestry. Let's examine a scenario involving gestational surrogacy. If the surrogate mother is married, the resulting kid would be legally considered the child of her husband, even though the sperm used for conception was supplied by someone else. The issue of genetic surrogacy is particularly complex and challenging as it involves a woman who not only carries the foetus but also provides her own egg. Although she is biologically the mother of the kid, she is not recognised as a mother. Surrogacy indeed presents a quandary over the progeny's identity. Simply put, any baby born under a surrogacy contract would be considered illegitimate as the male who entered into the arrangement with the surrogate has not engaged into a marital agreement with her. Despite obtaining written agreement from her husband, the religious constraints would still prevent the woman from serving as a surrogate. In Islam, it is forbidden for the semen of one man to come into contact with a foetus that is the result of another man's semen. Should we enact legislation that forbids husbands from using their legal entitlement [to engage in sexual intercourse] with their wives during pregnancy if the child is conceived by another man? If such a law were to be enacted, what measures would be taken to ensure its enforcement?

The Islamic Fiqh Academy Council, during its third session in Amman, Jordan, from 8 to 13 Safar 1407H (October 11–16, 1986), unequivocally stated that surrogacy, which involves *in-vitro* fertilisation using the sperm and eggs of the spouses and then implanting the fertilised ovum into a surrogate woman's womb, is strictly prohibited in Islam. This prohibition is based on the potential for confusion regarding lineage and the loss of the natural motherhood bond.

Another pertinent Islamic notion to be acknowledged is the explicit recognition of women as the individuals who physically give birth to their offspring, as explicitly mentioned in the Quran. Therefore, a surrogate mother may assert her status as the biological mother despite carrying the egg of another woman in her uterus. If she is the second wife of the embryo's father, she may have a legal marriage link, but she does not share any genetic relation with the child in this scenario.

Therefore, what evidence did she provide to assert her legitimacy as the biological parent? How can the ovum donor have legal rights over the child despite not physically carrying or giving birth to the child, as stated in the Qur'ān?

Some Muslims justify the acceptability of surrogacy in Islam by employing qiyas as a legal reasoning method. Nevertheless, decisions derived from qiyas may lack reliability due to the substantial dissimilarities in the nature and context of contemporary medical concerns, rendering them unsuitable for analogy. They propose that surrogate motherhood can be regarded as equivalent to foster parenthood. Can this parallel be justified? Indeed, it is a fact that in Islam, Muslims have the option to entrust their infant to a wet nurse for breastfeeding. By doing so, the wet nurse becomes a foster mother to the child through the act of suckling. Gestational surrogacy is the fertilisation of the sperm and ovum of a married couple in a laboratory, followed by the placement of the resulting embryo in the womb of a surrogate. This arrangement can be either voluntary or commercial in nature (Tawfique Al-Mubarak, 2014). The woman who donates the ovum can be regarded as the biological mother due to the genetic connection with the child, whereas the woman who bears and gives birth to the foetus would be termed a surrogate mother. However, this parallel is flawed. Firstly, the wet nurse has no affiliation with the father of the child for whom she provides nursing services. However, in a surrogacy agreement, the woman is either artificially inseminated with the father's sperm or the father's sperm is used to create an embryo that is then implanted in her womb to carry the pregnancy to full term and give birth to the child (Tawfique Al-Mubarak, 2014).

Surrogacy in Islam Sunni

Within the Sunni community, jurists hold divergent views on surrogacy. While some jurists endorse surrogacy as a means of expanding families, others harbour reservations over the use of in vitro fertilisation (IVF) and surrogacy. They argue that obtaining an egg or sperm from a third party is akin to engaging in extramarital relations, as it involves the surrogate carrying the fertilised egg of someone who is not her legal spouse. Consequently, this is deemed illegitimate. Moreover, they contend that due to the biological mother's genetic contribution to the baby's creation, there is a significant likelihood of emotional and legal conflict between the two individuals referred to as "mothers" (Tawfique Al-Mubarak, 2014). Nevertheless, these two specific criteria are considered acceptable within the Sunni tradition as long as the couple remains married:

- In vitro fertilisation (IVF) involves mixing the husband's sperm and the wife's egg outside of the body and then transferring the resulting embryo into the wife's uterus.
- Intrauterine insemination (IUI) involves the mechanical introduction of the husband's sperm into the wife's uterus to achieve fertilisation.

Based on the conditions mentioned, it may be concluded that there is a complete absence of surrogate mothers. Both spouses must be satisfied with participating in the procedure. It is preferable for the physician to be a female and, if feasible, it is advantageous for them to be a Muslim. Surrogacy is deemed permissible in the Hanafi and Shafei schools of thought when using contemporary reproductive methods, provided that insemination is carried out using the husband's sperm and the wife's eggs. Here it is worth noting that a small number of religious authorities permit surrogacy between co-wives. Due to the various arguments and opinions surrounding surrogacy, particularly within the Sunni community, there are divergent viewpoints

on this matter. It is advisable to consult with knowledgeable jurists whom you trust to seek their guidance and perspective on this process. Ultimately, this strategy assists in fostering a more robust familial bond by facilitating the production of offspring (Islam, Rusli Bin Nordin, Ab, & Abu Kholdun Al-Mahmood, 2013).

Surrogacy in Islam Hanafi

According to the Hanafi school of Islamic jurisprudence, surrogacy is typically deemed permissible, subject to specific conditions. According to Hanafi scholars, surrogacy is permissible for assisting infertile couples in achieving parenthood, provided that the surrogate mother is married and consents to carrying the child on behalf of the couple. Nevertheless, Hanafi scholars place significant emphasis on the necessity of upholding transparent lineage and paternity in surrogacy agreements. The stipulation mandates that the surrogate mother utilise her own ovum, which is then fertilised by the husband's sperm. Furthermore, it is required that the resulting child be legally acknowledged as the biological offspring of the couple, entailing the whole range of rights and obligations associated with such parentage (Nazari, 2023).

Furthermore, Hanafi scholars stipulate that the surrogacy arrangement must be conducted with complete transparency, ensuring that all parties involved possess a comprehensive understanding of and consent to the parameters of the agreement. Additionally, they reject the practice of commercial surrogacy, wherein the surrogate mother receives compensation for her services. In general, Hanafi scholars hold the position that surrogacy may be acceptable under specific conditions, provided that it adheres to Islamic law and ethical concerns (Nazari, 2023).

Surrogacy in Islam Shia

In 1999, Ayatollah Khamane'i, the highest-ranking religious authority for Shia Muslims in Iran, issued a ruling stating that surrogacy, as well as the donation of eggs or embryos, are permissible under specific circumstances. "The act of transferring the foetus to the woman's uterus is permissible in all circumstances, however, it is advised to refrain from physically touching or visually observing the forbidden aspects," he stated. The rationale behind permitting embryo donation is in the fact that the embryo is produced by a married couple and subsequently transferred to another married couple. Since this process does not entail direct sexual contact, it cannot be deemed as adultery (Fatemeh Ghodrati, 2023). The notable disparity in Shia and Sunni perspectives on surrogacy stems from their divergent understanding of the sin of adultery. According to Shia belief, adultery refers to engaging in physical and sexual body contact, rather than simply transferring certain cells. From the Shia perspective, adultery is seen as a destructive force that undermines the integrity of the family, whereas donation or surrogacy is viewed as a means of safeguarding it. Surrogacy is deemed permissible according to the principles of Sharia, which aim to safeguard individual dignity and honour, as well as ensure the maintenance of the human species, a fundamental objective of Sharia. Advocates of surrogacy in Islam justify its permissibility by drawing a parallel to the practice of 'wet-nursing'. In surrogacy, the surrogate mother provides nourishment to the infant, similar to how a foster mother breastfeeds and provides nutrients. Thus, they regard surrogacy and wet-nursing as analogous (Islam, Rusli Bin Nordin, & Abu Kholdun Al-Mahmood, 2013).

Is Surrogacy Haram in Islam?

As previously mentioned, the Islamic stance against third-party involvement in reproduction is not

uniform. According to a collective of Sunni scholars, surrogacy is deemed unacceptable for childbearing due to their comparison of carrying the kid of a guy who is not legally married to the mother to adultery. Consequently, they disapprove of this approach. Nevertheless, surrogacy is endorsed by other Sunni intellectuals and nearly all religious leaders in the Shia community. They argue that surrogacy should not be equated with adultery, as it does not involve any sexual activity. Surrogacy is likened to wet nursing, in which a woman solely provides nourishment to a kid without being engaged in the creation of the embryo. Islamic scholars, known as *foghaha*, engage in significant disputes regarding the morality of surrogacy, as each scholar may have their own reasons to assess the ethical implications of this procedure. However, it is important to acknowledge that surrogacy is a highly effective method for assisting infertile couples in conceiving children and expanding their families.

What Does the Quran Say about Surrogacy?

The Quran, the primary sacred scripture of Islam, was disclosed around the 7th century, predating the emergence of contemporary medical techniques like surrogacy. Hence, it does not explicitly pertain to the notion of surrogacy. Nevertheless, it offers fundamental concepts and teachings concerning parenting, lineage, and the sacredness of marriage. These values serve as the foundation for Islamic law when considering contemporary matters like surrogacy.

An essential principle in Islam is the safeguarding of lineage, as delineated in the Quran, which provides explicit guidance on familial connections and their corresponding entitlements. Moreover, the Quran highly esteems the institution of marriage, and surrogacy, typically involving a third person, can be perceived as a potential threat to this institution. As a result, certain experts hold a more cautious stance about surrogacy. Conversely, several scholars advocate for a more suitable approach to surrogacy by examining the broader Islamic tenet of providing relief and facilitating matters for believers. The continuous interpretation of Quranic principles in relation to surrogacy demonstrates the adaptable flexibility of Islamic jurisprudence as it addresses present-day concerns.

Comparative Analysis

The legal position of surrogacy in the Islamic setting is a complex and diverse subject, with differing viewpoints from various schools of thought. Regarding legal judgements, Muslim scholars commonly prioritise the objectives of the Law (*Maqasid al-Sharī'ah*), with safeguarding future generations (*Hifz al-Nasl*) being a significant factor. Islam promotes procreation and addresses issues of infertility, placing importance on the well-being of pregnant women and the health of children, as well as the preservation of lineage (Ebrahim, 1990). Within Sunni Islam, there exists a variety of beliefs about the practice of surrogacy. Certain Sunni jurists permit surrogacy under specified circumstances, such as when the surrogate mother is married and consents to carrying the child for the couple who are unable to conceive. Surrogacy is permitted by Hanafi academics, specifically to assist couples who are unable to procreate, with a focus on preserving unambiguous lineage and paternity. The stipulation mandates that the surrogate mother employ her own ovum, which is then fertilised by the husband's sperm, and that the offspring be legally acknowledged as the biological child of the couple (Nazari, 2023). Nevertheless, several Sunni academics raise apprehensions regarding the possibility of emotional and legal disputes, drawing a parallel between the involvement of a third person in the reproductive

process and the act of adultery (Tawfique Al-Mubarak, 2014).

Conversely, among Shia Islam, namely under the guidance of Ayatollah Khamane'i, surrogacy, as well as the donation of eggs or embryos, is permitted under specific circumstances. From the Shia standpoint, there is a distinction made between physical and sexual bodily contact. Surrogacy is seen as a method to safeguard the family and ensure the continuation of the human race. Ayatollah Khamane'i rationalises this by asserting that the embryo is formed by the union of a married couple and then transferred to another married couple, without engaging in direct sexual intercourse, hence removing the possibility of adultery (Islam, Rusli Bin Nordin, Ab, & Abu Kholdun Al-Mahmood, 2013). Shia scholars contend that surrogacy is acceptable, drawing a parallel with wet nursing, a practice in which a woman provides sustenance without participating in the creation of the embryo. The legal standing of surrogacy in Islam is influenced by various viewpoints among Sunni and Shia theological schools. Although there is variation among Sunni academics on their endorsement of surrogacy, Hanafi scholars do tolerate it under certain conditions. On the other hand, Shia scholars, led by Ayatollah Khamane'i, allow surrogacy while taking into account the preservation of lineage and family. The divergent perspectives are a result of the continuous analysis of Quranic principles within the evolving framework of Islamic legal theory, as it tackles present-day matters.

Socio-Economic Challenge in the context of Surrogacy

Exploring surrogacy within the Islamic context reveals a range of socioeconomic and health challenges inextricably intertwined with this reproductive practice. Surrogacy in Islamic societies raises intricate concerns regarding family relations and the unambiguous determination of parental duties, given the utmost importance placed on lineage maintenance. The variety of community perspectives on surrogacy also influences the overall sociocultural environment, potentially leading to social ostracism or approval depending on the prevailing cultural standards. The media's depiction has an impact on determining how the public perceives and influences the ethical considerations related to surrogacy in Islamic societies. The complex nature of surrogacy in Islamic societies is highlighted by the ethical debates, psychological burdens experienced by surrogate mothers, and potential health risks associated with pregnancy (Patel et al., 2018; Saxena, Mishra, & Malik, 2012; Brandao & Garrido, 2022; Horsey, 2023). The dynamic worldwide situation emphasises the crucial convergence of technology, ethics, and societal expectations in the field of surrogacy. The lack of universally established legal frameworks among different countries leads to uncertainties and difficulties, which have an impact on the physical and mental health of individuals engaged in surrogacy agreements (Patelet al., 2018). Given the psychological burden on surrogate mothers, as well as the physical health hazards linked to pregnancy and labour, it is imperative to have a complete strategy for providing medical care and mental assistance. The requirement for sensitivity and comprehension within Islamic communities is emphasised by the diverse community attitudes, which are shaped by cultural and religious variables (Saxena, Mishra, & Malik, 2012). The current discussions and differences in regulations worldwide highlight the need for careful and thorough regulation to traverse the complex field of surrogacy, while safeguarding the welfare of all individuals involved (Brandao & Garrido, 2022; Horsey, 2023).

Conclusion

To summarise, the examination of surrogacy in the Islamic setting reveals a complex web of intricate factors encompassing sociological, health, and ethical aspects. In Islamic communities, lineage preservation holds significant importance in the societal domain, giving rise to fundamental inquiries regarding family dynamics and parental responsibilities. The opinions of different communities, influenced by cultural norms, bring an extra level of complexity to the issue of surrogacy, as it can either be met with social shame or be accepted. The media's depiction plays a significant role in moulding ethical issues and contributing to the ongoing societal discussion about surrogacy within Islamic communities. The ethical discussions, closely connected with cultural and religious beliefs, emphasise the necessity for a careful equilibrium between technical progress and respect to ethical standards. Surrogate mothers face psychological pressures as they navigate the emotional intricacies of bearing a child for someone else, along with the health problems connected with pregnancy. This calls for not only competent medical treatment but also an understanding support system. The complex worldwide scene is compounded by diverse legislative frameworks in different nations, which create uncertainty and obstacles for those engaged in surrogacy arrangements. The ever-changing nature of continuing discussions and variances in regulations highlights the need for careful and situation-specific regulation, guaranteeing the safeguarding and welfare of all parties concerned. Patel et al. (2018), Saxena, Mishra, & Malik (2012), Brandao & Garrido (2022), and Horsey (2023) are important references that provide valuable insights into the various aspects of surrogacy in the Islamic setting. To effectively address the changing issues and potential of surrogacy in the Islamic world and beyond, it is essential to prioritise constant discourse, understanding, and evolving law.

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