

Surrogacy Understanding Types and Exploring the Islamic Perspective

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Abstract

This assignment comprehensively explores the intricate topic of surrogacy, covering its diverse types and intricacies, while concurrently delving into the Islamic perspective on this assisted reproductive practice. Beginning with an introduction to the concept and its significance, the assignment proceeds to dissect traditional and gestational surrogacy, distinguishing between altruistic and commercial motivations. Legal and ethical dimensions are examined globally, leading to a focused analysis of the Islamic stance on surrogacy. The assignment also investigates the varying positions of Islamic countries, shedding light on regulations and cultural responses. Through case studies and a thorough examination of sources, this assignment aims to provide a nuanced understanding of surrogacy, considering both its global landscape and its specific implications in Islamic contexts.

Keywords: Surrogacy, Types, Islamic Perspective, Legal Ethics, Cultural Responses

Introduction

Surrogacy, an advanced medical procedure, has emerged as a cutting-edge solution for infertility-related problems, surpassing even the advancements of in vitro fertilization (IVF). Positioned as the next stage in reproductive technologies, surrogacy has gained popularity globally, notably in Western societies. However, in Islamic countries, it has sparked intense debate and varying opinions among scholars. The majority of Islamic schools of thought contend that surrogacy is impermissible in Islam, citing ethical and legal

concerns. While some scholars permit it, the broader Muslim world tends to prohibit surrogacy both legally and ethically. Nevertheless, there are countries where surrogacy is permitted, showcasing the intricate interplay between medical advancements, religious beliefs, and cultural norms.

Definition of surrogacy

Surrogacy is an arrangement in which a woman carries and gives birth to a child for another individual or couple, typically because they are unable to conceive or carry a pregnancy to term themselves.

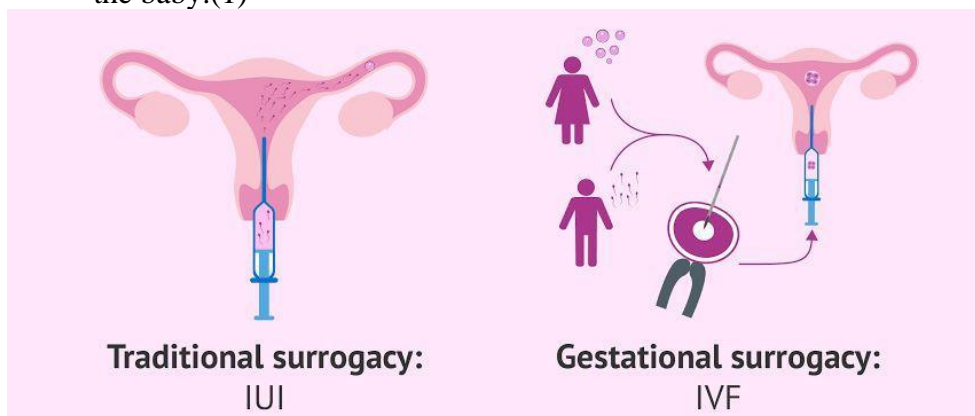
Significance and reasons for choosing surrogacy

The significance of choosing surrogacy as an assisted reproductive option lies in its capacity to address various challenges faced by individuals or couples struggling with infertility. Reasons for opting for surrogacy can be multifaceted. For couples facing medical conditions that make pregnancy impossible or risky, surrogacy offers a viable solution. Additionally, individuals with a history of unsuccessful fertility treatments may turn to surrogacy for increased chances of successful conception. Same-sex couples also find surrogacy as a means to fulfill their desire for biological parenthood. Furthermore, surrogacy can be chosen when pregnancy is contraindicated for health reasons. The significance of surrogacy is rooted in its ability to provide a pathway to parenthood for those facing diverse reproductive obstacles.

Types of surrogacy

There are different types of surrogacy which are in practice these days

- In traditional surrogacy, the surrogate's eggs are used, making her the biological mother of the child she carries.
- In gestational surrogacy, the surrogate has no biological link to the baby.(1)



(2)

Traditional surrogacy

Traditional surrogacy involves the use of the father's sperm to fertilize the surrogate's egg. This means the child is biologically related to the surrogate. The

surrogate carries the baby to full-term. After delivery, the intended parents become the legal guardians of the baby.(3)

Gestational surrogacy

Gestational surrogacy is a process where one person, who did not provide the egg used in conception, carries a fetus through pregnancy and gives birth to a baby for another person or couple. (4)

TRADITIONAL SURROGACY	vs	GESTATIONAL SURROGACY
The father's sperm is used to fertilize the surrogate's egg.		The intended father's sperm and the intended mother's eggs are combined, creating an embryo, which is then implanted into a surrogate.
Typically costs less than gestational surrogacy.		Typically costs more than traditional surrogacy, which may require careful financial planning.
May pose more legal issues since the baby is genetically related to the surrogate, which is why it's important to have a legally-binding surrogacy agreement.		The baby is genetically related to both parents, making this method a more safe and risk-free option.
The surrogate undergoes IUI, Intrauterine Insemination, where the sperm cells are placed in the surrogate's uterus.		IVF, In-Vitro Fertilization is used, where the egg is harvested from the intended mother or donor and fertilized with the father's sperm outside of the womb.
Offers a viable alternative to adoption, but comes with some risks.		Has a high rate of success and is used to help many individuals create the family of their dreams.

Books on surrogacy

- Considering Surrogacy by Linda Oliver
- Surrogacy Was the Way: Twenty Intended Mothers Tell Their Stories by Zara Griswold.(5)
- Everything conceivable by Lisa Mundy (6)

Why people opt for surrogacy

There are multiple reasons why people choose surrogacy, and some of them are as follows

Pre-existing health conditions

When individuals have pre-existing health conditions such as diabetes, high blood pressure, cardiac issues, autoimmune disorders, or other serious medical conditions that could complicate pregnancy, they may choose to pursue surrogacy as an alternative option to conceive a child.

Infertility

Infertility stands as a primary factor driving couples to opt for surrogacy. It affects both men and women, often leading couples to pursue surrogacy when conventional methods such as in vitro fertilization (IVF) (7) prove unsuccessful in achieving conception.

Problems with previous pregnancy

In cases where previous pregnancies have been marred by serious complications(8) posing significant risks to both the mother and the fetus, medical professionals often advise against conceiving again naturally to avert potential life-threatening outcomes. When conventional conception is deemed unsafe, couples facing this dilemma may turn to surrogacy as a viable alternative. Surrogacy offers them the opportunity to expand their family safely, with the assurance that the pregnancy will be carried by a surrogate who can mitigate the risks associated with their own biological pregnancy.

Lack of a uterus

The absence of a uterus can occur due to congenital factors or be acquired through conditions such as malignancies or complications arising from previous pregnancies, necessitating surgical removal of the uterus. Despite this significant reproductive challenge, couples may still desire to conceive and expand their family. In such cases, surrogacy emerges as a promising solution, offering hope to couples who wish to experience parenthood despite the absence of a viable uterus. By entrusting the gestation of their child to a surrogate, couples can fulfill their dreams of having a baby while navigating the complexities of reproductive health with resilience and determination.

Women choice;not to go through the whole pregnancy procedure

A prominent driving force behind the surrogacy trend among celebrities and the global elite is the pursuit of cosmetic reasons. This form of surrogacy, often referred to as commercial surrogacy, has seen a surge in popularity among women who prioritize their physical appearance and are hesitant to undergo the rigors of pregnancy. For individuals whose careers are intricately linked to their outward appearance, such as those in the entertainment industry or high-profile professions, maintaining a certain aesthetic is paramount. Consequently, the option of surrogacy provides these individuals with the opportunity to fulfill their desire for motherhood without compromising their physical attributes or professional obligations. As such, commercial surrogacy has emerged as a sought-after solution for those who place a premium on their appearance and are keen to navigate the journey of parenthood in a manner that aligns with their lifestyle and career aspirations.

Islamic perspective on surrogacy

The first argument, the strongest, used by scholars is verse 2 of chapter 58 of the Quran

﴿الَّذِينَ يُظَاهِرُونَ مِنْكُم مِّن نِّسَائِهِمْ مَّا هُنَّ أُمَّهَاتُهُمْ إِنَّ
أُمَّهَاتُهُمْ إِلَّا إِلَىٰ وَلَدَنَّهُمْ وَانَّهُمْ لَيَقُولُونَ مُنْكَرًا مِّنَ الْقَوْلِ وَ
زُورًا وَإِنَّ اللَّهَ لَعَفُوفٌ غَفُورٌ﴾(9)

"If any men among you divorce their wives by Zihār (calling them mothers), they cannot be their mothers: None can be their mothers except those

who gave them birth. And in fact they use words (both) iniquitous and false: but truly Allah is All-Pardoning, All-Forgiving.”

It is stated that mothers are those who give birth to human beings. However, the practice of surrogacy introduces a complex dynamic where the biological mother, from whom the eggs are obtained, and the surrogate mother, who carries and gives birth to the child, are often two different individuals. This creates a nuanced and challenging scenario that challenges traditional notions of motherhood. In cases of both egg donation and surrogacy, the biological link between the genetic material and the gestational carrier is severed, leading to a discrepancy between the biological and gestational roles of motherhood. This discrepancy can potentially conflict with the established understanding of maternal lineage and the bonds between a mother and her child as outlined in Islamic teachings. As a result, surrogacy raises important ethical and religious considerations regarding the definition and recognition of motherhood within the context of Islamic beliefs.

In traditional surrogacy, a practice is observed where the sperm of a male, who is not married to the surrogate mother, is implanted into her womb. This scenario presents a stark violation of Islamic law and principles governing marriage and reproductive ethics. According to Islamic teachings, marriage serves as the sanctioned framework within which procreation and the establishment of familial ties are to occur. However, in traditional surrogacy, the involvement of a male's sperm outside the confines of a lawful marriage undermines the sanctity of marital bonds and introduces moral and legal complexities. This practice contradicts the Quranic injunctions regarding lawful relationships and the protection of family integrity, thereby highlighting the importance of adhering to Islamic principles in matters of reproduction and parenthood.

﴿وَالَّذِينَ هُمْ لِأُزْوَاجِهِمْ حَافِظُونَ إِلَّا عَلَىٰ أَزْوَاجِهِمْ أَوْ مَا
مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ﴾ (10)

"And those who guard their private parts, except for their wives or those whom their right hands possess, then they are not to blame." *

Indeed, while traditional surrogacy starkly contradicts Islamic teachings due to its involvement of sperm from a male outside of a lawful marriage, the conversation becomes more nuanced when considering gestational surrogacy. Gestational surrogacy involves the implantation of an embryo created using the genetic material of the intended parents, bypassing the issue of sperm donation from a non-spouse. However, the ethical considerations surrounding gestational surrogacy still warrant careful examination within an Islamic context. Questions arise regarding the preservation of lineage and the sanctity of marital bonds, as well as the potential exploitation of women serving as gestational carriers. Consequently, the discussion surrounding gestational surrogacy within Islamic

teachings requires a thoughtful exploration of ethical, legal, and theological dimensions to discern its compatibility with Islamic principles and values.

Muslim scholars approach regarding surrogacy

The unanimous consensus among Sunni Ulama, the scholars of Islamic jurisprudence, is that surrogacy is not permissible in Islam due to its various aspects that contradict fundamental teachings of the faith. Surrogacy poses intricate ethical, legal, and theological dilemmas that challenge the foundational principles of Islamic beliefs and values. One primary concern is the potential disruption of lineage and familial relationships, as surrogacy blurs the traditional understanding of parentage and biological ties. Additionally, surrogacy raises questions regarding the sanctity of marriage, as it introduces complex dynamics that may undermine the institution of matrimony. Furthermore, the process of surrogacy can lead to exploitation of women, particularly gestational carriers, and may result in the commodification of human life. Considering these multifaceted implications, Sunni Ulama have uniformly concluded that surrogacy is incompatible with the principles and teachings of Islam, emphasizing the importance of upholding ethical and moral standards in matters of reproduction and family formation.

Allah's Messenger (ﷺ) prohibited the money paid for a dog, the payment against special parts, and the payment given soothsayers- (11)

Here, we observe that in Islam, it is not permissible for a surrogate mother to receive payment in exchange for the services rendered through her reproductive organs or womb.

Legalization of surrogacy in different countries across the world

Certainly. Several countries have enacted legislation to legalize surrogacy, including India, the United States, Canada, and England. These legal frameworks aim to safeguard the rights of surrogates and embryos while also ensuring that intended parents fulfill their responsibilities. However, in contrast, many other countries have prohibited surrogacy, deeming it illegal. Notably, the majority of Muslim countries, with the exception of Iran, have not legalized surrogacy. Iran has implemented regulations allowing surrogacy only under specific circumstances. This indicates a diverse range of approaches and perspectives on surrogacy within different legal and cultural contexts worldwide.

The argument of those who allow and have legalised it at government level

Indeed, among Muslim countries, Iran stands out as the only nation to permit surrogacy, citing Islamic jurisprudence regarding foster relationships as a basis for their decision. In both the Quran and Hadith, the concept of fostering is acknowledged and sanctioned, whereby a woman who breastfeeds a child not biologically her own is recognized as the child's foster mother. This relationship

extends to foster siblings, illustrating the importance of nurturing and caregiving bonds in Islam. By drawing parallels between surrogacy and fostering, Iran justifies the practice within an Islamic framework, emphasizing the value of providing children with loving and supportive environments, regardless of biological parentage. This interpretation reflects the dynamic and evolving nature of Islamic jurisprudence in addressing contemporary issues such as assisted reproduction and family formation.

﴿حُرِّمَتْ عَلَيْكُمْ أُمَّهَاتُكُمْ وَبَنَاتُكُمْ وَأَخَوَتُكُمْ وَعَمَّاتُكُمْ
وَخَالَاتُكُمْ وَبَنَاتُ الْأَخِ وَبَنَاتُ الْأُخْتِ وَأُمَّهَاتُ مَنَ الرِّضَاعِ
وَأَخَوَتُهُنَّ مِنَ الرِّضَاعِ﴾ (12)

"Forbidden to you for marriage are your Mothers, and your Daughters, and your Sisters and Sisters of your Father and Sisters of your Mother, and Daughters of your Brothers, and Daughters of your Sisters, and your Foster Mothers and your Foster Sisters."

Indeed, proponents of surrogacy often cite various compelling reasons to support its legalization and practice. Firstly, it offers hope to infertile couples who may otherwise struggle to conceive, providing them with an opportunity to fulfill their desire for parenthood. Additionally, for individuals facing infertility, surrogacy can alleviate the emotional burden and potential depression associated with the inability to conceive or carry a child. Furthermore, from a medical perspective, surrogacy can address a range of medical conditions and complications, offering a viable solution for individuals unable to conceive due to health issues or anatomical challenges. By enabling individuals to pursue their dreams of parenthood through alternative means, surrogacy holds the promise of restoring hope and joy to those grappling with infertility and related medical concerns.

Opponents argue that traditional surrogacy is unequivocally prohibited in Islam. However, even the gestational surrogacy that some Shia scholars have permitted on the base of foster rulings presents challenges that may not align with Islamic teachings.

The initial argument posits that the foster relationship in Islam begins with the birth of the child, where nourishment is solely provided through breastfeeding without any physical exchange from the child back to the mother's body. Conversely, in gestational surrogacy, there is a direct exchange of blood between the fetus and the surrogate mother, who carries and protects the child in her womb for nine months—an integral role typically attributed to the biological mother in Islamic teachings.

﴿وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ إِحْسَانًا حَمَلَتْهُ أُمُّهُ كُرْهًا وَ
وَضَعَتْهُ كُرْهًا﴾ (13)

"His mother carried him with hardship, and gave birth to him in hardship "

In the case of foster relationships, it's possible to have multiple foster mothers, unlike in surrogacy where once the embryo is implanted in the womb, it cannot be reversed or extracted. As exemplified by our Prophet Muhammad, peace be upon him, who had two foster mothers, Hazrat Haleema Sadia and Hazrat suwaiba. (14) The flexibility exists for a mother to reclaim her child from the foster woman at any time. However, in surrogacy, once the decision is made, one must wait for the nine-month development period without the ability to make immediate decisions. Instead, the outcome is contingent upon the surrogate's agreement.

Surrogacy not only contradicts Islamic teachings but also contributes to the emergence of anti-Islamic trends, such as the rise of single motherhood and same-sex marriages. By attempting to alter the natural order, surrogacy undermines the divine guidance outlined in the Quran regarding the sanctity of family and procreation. If it's only for the sake of offspring, then Allah SWT explicitly states in the Quran,

﴿يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ
وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَ
نِسَاءً﴾ (15)

"O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women."

And also

﴿لِلَّهِ مُلْكُ السَّمَوَاتِ وَالْأَرْضِ يَخْلُقُ مَا يَشَاءُ يَهَبُ لِمَنْ يَشَاءُ
إِنَاثًا وَيَهَبُ لِمَنْ يَشَاءُ الذُّكُورَ أَوْ يَزْوَجُهُمْ ذُكْرًا وَ إِنَاثًا وَ
يَجْعَلُ مَنْ يَشَاءُ عَقِيمًا- إِنَّهُ عَلِيمٌ قَدِيرٌ﴾ (16)

"To ALLAH belongs the Sovereignty of the Heavens and Earth. He creates what He wills. He grants Females-daughters whom He wills and grants Males-sons whom He wills:"

Indeed, it is crucial to place our trust in Allah and seek His blessings. If we encounter deficiencies or challenges in our lives, it's essential to understand that this life is temporary and serves as a test for humanity. While we may face difficult challenges, we cannot bypass Islamic teachings to fulfill our desires. Therefore, we are only permitted to utilize medical procedures that align with the principles and guidelines outlined in Islam.

Concise statement

Surrogacy is deemed impermissible in Islam due to its myriad contradictory issues, which conflict with Islamic teachings. It should be discouraged within all Islamic societies, as it can potentially give rise to various additional problems, such as the promotion of single parenting and same-sex marriages. Therefore, it is crucial to spread awareness about the ethical and religious implications of surrogacy to uphold the values and principles of Islam.

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