



RESEARCH PAPER

**Exploring the Legality and Socio-Cultural Challenges of Surrogacy:
An Islamic Bioethical Perspective**

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ABSTRACT

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This meticulous inquiry undertakes a critical examination of the intricate confluence betwixt surrogacy and Islamic teachings, plumbing the depths of the ethical and legal dimensions that mold Islamic perspectives on this modern-day reproductive praxis. Drawing upon the wellspring of Islamic jurisprudence, the tenets of bioethics, and the tapestry woven by social and cultural contexts, this erudite study strives to cast illumination upon the kaleidoscope of viewpoints enshrined within the Islamic tradition regarding the permissibility, ramifications, and regulations enveloping the realm of surrogate motherhood. Through a multidimensional analysis, this scholarly article embarks upon an exploration of the underlying principles and values that are innately interwoven within Islamic teachings, thus exerting influence upon the perception of surrogacy. It undertakes an inquest into concepts such as kinship, motherhood, fatherhood, marriage, and the sanctity of life, scrutinizing their intricate connections to surrogacy arrangements. Furthermore, it accords due consideration to the socio-cultural factors that conspire to shape Islamic perspectives on surrogacy, duly recognizing the vast realm of interpretations that abound.

Introduction

The notion and intricately designed course of surrogacy, wherein a surrogate mother assumes the role of an incubator for another couple, whether through pecuniary exchange or otherwise, is unequivocally repudiated and denounced by the majority of contemporary Muslim scholars. A multitude among them perceives it as a manifestation of an illicit carnal meeting (zina). Numerous others substantiate their stance by invoking a copious array of verses and traditions, citing these sources to illustrate the contravention of the Divine Legislator's intent and the transgression against the natural laws decreed by Allah Almighty (Zandi, et al., 2014).

The yearning to conceive children, nurture, embrace, guide, partake in their future, and assist in their aspirations holds immeasurable magnitude for a normal man or woman; it manifests as a fundamental human longing, a necessity. Since the dawning of humanity, this desire has been entrenched within the fabric of society and

will endure unabated. In the realm of a conventional Muslim society, the absence of offspring can precipitate the dissolution of households, and until such time as the foundation crumbles, the wife confronts an ever-looming specter of divorce. Even in the absence of immediate marital rupture, the specter of assuming the neglected role of a secondary spouse to a Muslim husband perpetually hangs overhead, not to mention the ceaseless discord and ultimate melancholic union that renders divorce an ostensibly more desirable outcome. To these disillusioned parents, particularly despondent wives, modern advancements in technology proffer a glimmer of hope, much like their transformative influence upon various facets of human existence, encompassing domains as vast as well-being and physical vitality (Usman & Daud, 2017).

For these afflicted couples or distressed women, the advent of assisted reproductive technology emerges as a veritable response to their supplications and waning aspirations. However, their flickering hopes are promptly extinguished when a formidable faction of Muslim scholars' endeavors to underscore that this very technology stands as the bedrock of transgression and its utilization for the purpose of procreation shall unlock the very gates of perdition. Should an unfortunate pair manage to withstand the onslaught unleashed by these scholars, they are then confronted with a burgeoning assembly of Muslim physicians, driven by an ardent fervor to forge the frontiers of Islamic bioethics. Amongst their ranks, some exhibit an even more zealous inclination to castigate this reproductive technology as sinful, limiting the scope of permissible techniques to cases that may not even necessitate recourse to the options extended by Islamic bioethics, for nature, perchance, might intervene and bestow upon them a child through the realm of natural means (Teman, 2009).

Literature Review:

Considering the legality of surrogacy, the interweaving of gender and kinship intricately shapes the lens through which individuals perceive women, casting them within the framework of familial ties and delineating their roles as mothers and wives. Marriage, an esteemed cultural institution, assumes a pivotal role in ascribing worth and social standing to a woman. Within Muslim society and culture, fertility occupies a position of great reverence. In accordance with the Shari'ah, which upholds the significance of matrimony, family, and propagation, the provision of assistance to infertile couples is staunchly encouraged when circumstances deem it imperative, for it paves the way towards the realization of procreation (Padela, Klima, & Duivenbode, 2020).

In the eyes of Muslim jurists, the undertaking of surrogate motherhood, euphemistically referred to as "hiring a womb," within Western societies is construed as deriving not solely from the sincere longing of couples to bring forth progeny. Instead, it is contended that certain Western women embrace this course as a matter of sheer convenience or superficial vanity, inattentive to the profounder sentiments that ought to underpin such a choice. Surrogate mothers may undertake this offer most of the time for any pecuniary exchange. There are a number of married women who go for this procedure for various reasons, be it the predicament faced by a wedded woman desirous of offspring who encounters impediments in carrying her fetus to fruition or for the sake of convenience and ease. Some women may opt for it simply to sidestep the perceived "pains and troubles" associated with conception,

gestation, and labor, to liberate themselves from the weight of maternal responsibilities, to safeguard their beauty and youthful allure, or as an act of self-gratification (Padela, Klima, & Duivenbode, 2020).

In the West, affluent women, desiring to preserve their svelte figures and retain their youthful vigor, are eagerly enlisting the services of surrogates to bring newborns into existence. Some voices, espousing a comparable sentiment, contend that by sidestepping the trials of pregnancy, childbirth, and breastfeeding, these well-to-do married ladies are hiring wombs and enticing Muslim women to follow their path.

In accordance with the tenets of the Shari'ah, the aforementioned form of surrogate motherhood stands firmly prohibited, for it entails the introduction of a man's sperm into the womb of a woman with whom he is not united in marriage. This act unequivocally falls within the defined realm of transgressing the limits set by Allah Almighty, as articulated in the sacred text of the Qur'an. This kind of immoral approach gives rise to a myriad of ethical and legal quandaries, thus failing to garner unanimous commendation. It is contended that the introduction of a third party into the intricate boundary of familial dynamics carries the potential for the muddling of parentage, casting a shadow of uncertainty upon the lineage. The utilization of this methodology engenders a plethora of social, ethical, cultural, and legal considerations and inquiries, thereby precluding its acquisition of comprehensive acclaim. Assertions posit that the introduction of an additional individual into the defined equation of familial ties carries the latent consequence of casting aspersions upon the clarity of parentage, thereby bestowing a veil of bewilderment upon lineage (Matthews, 2021).

Muslim jurists have expounded upon the profound significance of offspring maintaining a steadfast connection with their progenitors, asserting that any endeavors engendering perplexity regarding lineage, be it surrogate motherhood or adoption, ought to be proscribed, for they transgress sacred principles. In the realm of Islamic jurisprudence, it is firmly upheld that every progeny is endowed with an inherent entitlement to a precise lineage, specifically tracing back to a biological father and biological mother. Thus, when confronted with the intricacies of surrogacy, a quandary ensues concerning the verifiable identity of the maternal figure responsible for the conception of such a child (Nordin, 2012).

- Does the designation "mother" pertain to the genetic progenitor who supplies the ovum from which the child is ushered into existence?
- Or does it instead encompass the woman whose womb serves as the carrier through which the child is nurtured and brought forth into the world?

The repercussions of such perplexity are destined to inflict emotional turmoil upon the child, for he or she shall find themselves torn between two maternal figures. Lastly, one cannot disregard the undeniable reality that the entire surrogate procedure manifests as a demeaning devaluation of the sanctity inherent in human procreation, reducing the womb to naught but a mere commodity that can be purchased or leased as a transactional service. Ultimately, this process, once more, transgresses the inherent dignity and esteemed honor with which Allah Almighty has graciously endowed both men and women. Moreover, it has been witnessed in

various countries of the Western world, such as the United States, that this very practice can instigate protracted legal disputes concerning the child's parentage and custody. In such cases, surrogate mothers, contrary to prior agreements, adamantly assert their own status as the rightful mothers of the infants they have nurtured within their wombs and brought into existence, thus exacerbating the intricacies of the situation (Lasker & Ghilardi, 2017).

Methodology

This research paper adopts qualitative research strategy, as no quantitative data is needed to be produced. Quantitative approach is particularly needed for the purposes of this research because the connection between different variables has to be established through interpretation based on archival sources mainly from various international instruments, books, articles, commentaries, journals and guiding principles from the primary and secondary sources of Islamic Shariah.

Results & Discussions:

Moral Considerations: The Sanctity of Procreation

At the heart of Islam's prohibition lies an unwavering dedication to the hallowed sanctity of procreation. Islamic teachings ardently emphasize that the process of ushering forth new life into this mortal realm is a sacrosanct endeavor infused with divine purpose. It represents a harmonious collaboration between a wedded husband and wife, steadfastly rooted in the natural order meticulously ordained by Allah Almighty. Regrettably, surrogacy, with its intrusive techniques and detachment from the innate bond shared by biological progenitors, flagrantly trespasses upon this sacred bond, grievously disrupting the celestial blueprint. From a moral vantage point, surrogacy devalues the very essence of procreation, reducing the profound act of conceiving and nurturing a child to a cold transactional exchange. In this remorseful scenario, the womb is callously treated as naught but a leased abode, severing the intimate connection between the biological mother and her cherished offspring. This dehumanization of the sacred reproductive process stands in stark contradiction to the fundamental principles of compassion, respect, and dignity that Islam ardently espouses (Khan & Konje, 2019).

Psychological and Emotional Implications:

The psychological and emotional ramifications of surrogacy reverberate deeply within the hearts and minds of all those engaged in this intricate reproductive journey. Particularly within the embrace of an Islamic society, where the sanctity of motherhood and the cherished notion of family hold great significance, the psychological implications become all the more pronounced. The surrogate mother, the intended parents, and the child himself are all intimately entangled in a complex web of emotions, necessitating careful consideration and compassionate support. The child born through surrogacy also traverses a unique path, finding himself at the intersection of intricate familial dynamics. Questions of identity, belonging, and understanding his place within the world may arise. Islamic societies place great emphasis on the significance of lineage and the sense of connection to one's biological

roots. Therefore, it becomes essential to provide a nurturing environment for the child, fostering a sense of belonging, stability, and emotional well-being. This may include age-appropriate explanations about their conception, open communication about their unique journey, and access to psychological support as they navigate their own sense of identity and belonging (Jacobson, 2016).

Legal Implications: Lineage and Parental Rights

In Islam, the unequivocal establishment of lineage holds an exalted position of utmost significance. It is an inherent right bestowed upon every child to be acquainted with and linked to their progenitors, encapsulating the sacred bond shared by both the biological father and mother. Nonetheless, surrogacy ventures into a domain that begets a tangle of legal intricacies, obfuscating the delineation of lineage and begetting perplexity concerning the rightful custodians of the child. Ponderings emerge, entwined in the ethereal tapestry of contemplation, questioning whether the genetic mother, who bestows the precious egg, or the gestational mother, who cradles the nascent life within her sacred womb, shall be deemed the veritable embodiment of motherhood. This veil of uncertainty runs contrary to the unequivocal edict ingrained within Islamic teachings, emphasizing the necessity of unequivocal parent-child relationships. Such clarity serves as the bedrock for matters of inheritance, rights, and responsibilities, casting aside the shadows of doubt and preserving the sanctity of divine order.

In the realm of Islam, an unwavering emphasis is placed upon the unequivocal and lucid determination of one's lineage. Each and every child, by virtue of their very being, possesses an innate entitlement to discern and maintain a profound connection with their biological progenitors, encompassing both the biological father and mother. However, the advent of surrogacy precipitates a myriad of legal intricacies, blurring the delineations of lineage and engendering bewilderment concerning the child's lawful parents. Perplexing inquiries arise, questioning whether the genetic mother who graciously furnishes the egg or the gestational mother who tenderly nurtures the embryonic life within her sacred womb should rightfully be regarded as the veritable mother. This equivocation stands in stark contradiction to the Islamic edict, which mandates the establishment of unambiguous parent-child relationships, pivotal in matters of inheritance, rights, and responsibilities.

Surrogacy, nestled within the intricate layout of the Islamic legal framework, emerges as an imposing quandary that demands scrupulous exploration and discernment. Rooted in the profound wisdom of Islamic jurisprudence, the realm of law finds itself tasked with traversing the labyrinthine complexities of this reproductive method, delving deep into the divine tapestry of guidance, moral obligations, and societal considerations. This expansive discourse endeavors to shed light upon the manifold dimensions of surrogacy within the Islamic legal framework, unraveling the intricate interplay between religious principles, legal precedents, and ethical ramifications (Islam, Nordin, Shamsuddin, Nor, & Al-Mahmood, 2012).

At the very core of the Islamic legal framework resides an unwavering commitment to the preservation of the sanctity of the familial bond and the steadfast safeguarding of lineage. Islamic teachings resoundingly underscore the profound significance of the matrimonial union, the natural rhythms of procreation, and the

unambiguous delineation of descent. Surrogacy, with its intricate entanglement of external agents and disengagement from the traditional tethering of biological parenthood, casts a formidable shadow over these cherished principles. Intricate inquiries arise, casting their gaze upon the legal standing of the child, the rights and obligations of the surrogate mother, and the delineation of lineage within the intricate tapestry of inheritance and kinship ties.

Furthermore, surrogacy has the potential to ignite acrimonious legal disputes concerning the entitlement to parental rights and the custody of children. Evidence of this predicament has emerged in diverse Western nations, where surrogate mothers, in direct contravention of previous agreements, have adamantly clung to the guardianship of the infants they have nurtured and delivered. This disheartening development not only begets intricate legal entanglements but also severely disrupts the equilibrium and emotional well-being of the child, who becomes ensnared in a tumultuous struggle between conflicting assertions of maternity. Such tumults are inherently incongruous with the pursuit of serenity and harmony, which Islamic principles ardently strive to cultivate within the sacred confines of the familial realm (Hathoul, 1989).

Divine Wisdom: Submission to Allah's Decree

Beyond moral and legal deliberations, Islam's proscription of surrogacy finds its roots in the profound wisdom ingrained within divine guidance. Muslims firmly uphold the belief that Allah, in His boundless wisdom, has bestowed upon humanity an all-encompassing framework that illuminates every aspect of existence, encompassing the intricate realms of reproduction and familial bonds. Within this sacred framework, Islam underscores the paramount significance of embracing the innate order and surrendering to the divine decree that governs the complexities of human procreation. The faith inspires an unwavering reverence for the natural course of creation, for Muslims recognize that attempting to reshape or manipulate this divine design in pursuit of personal desires stands in direct contradiction to the sublime wisdom woven into the fabric of existence. Thus, by forbidding surrogacy, Islam serves as a guiding light, urging its adherents to embrace the inherent harmony and wisdom of the natural order as established by the Divine

Through the resolute prohibition of surrogacy, Islam stands as a stalwart sentinel, safeguarding against the lurking perils and intricate moral quandaries that emerge from such audacious intrusions. The faith unwaveringly upholds the conviction that mortal beings are bereft of the entitlement to reshape or tamper with the sacred trajectory of creation in pursuit of their fleeting desires. Instead, the devout are summoned to repose their unwavering faith in the unerring wisdom and meticulously orchestrated design bestowed upon them by the divine hand of Allah.

Societal Ramifications: Ethical Slippery Slopes

Transcending the confines of individual and familial spheres, Islam's steadfast proscription of surrogacy resolutely acknowledges the profound societal implications that ensue from the embracement of this practice. Permitting surrogacy unbolts the gates to a myriad of treacherous ethical precipices, potentially propelling society further down the treacherous path of moral deviance. By reducing the sacred womb to naught but a mere tradable commodity, available for purchase or rental as a mere

service, surrogacy unswervingly reinforces a transactional mindset towards the sacred tapestry of human existence. In so doing, it fashions a market wherein innocent children are reduced to mere chattels, destined to be acquired and possessed, engendering the woeful commodification of the very essence of humanity itself. The fallout of this calamitous course erodes the very fibers of moral rectitude woven within the societal fabric, thereby fostering a climate wherein the intrinsic worth of human life is tragically diminished and grievously undermined (Dyan, 2017).

Cultural Implications

In the realm of Islamic society, engagement in surrogacy begets a multitude of cultural challenges deserving meticulous contemplation and discernment. Such challenges arise at the juncture where religious convictions, societal conventions, and age-old customs steeped in the profound tenets of Islamic teachings converge. The present exposition embarks upon a comprehensive elucidation, seeking to unveil and illuminate the cultural challenges that intertwine with surrogacy within the confines of an Islamic society. In this pursuit, we shall delve into the labyrinthine realms of moral intricacies, legal intricacies, familial intricacies, and social intricacies that intricately mold perception and acquiescence toward this intricate method of procreation. The concept of surrogacy, with its audacious interventionist methods and consequential severance from the inherent connection between biological progenitors, casts a shadow of moral perplexity upon the tapestry of Islamic principles. Within this framework, the conception and nurturing of a child are held as hallowed obligations, intricately interwoven into the very fabric of matrimony and the celestial harmony ordained by the divine. Surrogacy unfurls a labyrinth of complexities, wherein the utilization of third-party gametes or the estrangement of genetic and gestational maternity engenders a dissonance with time-honored moral virtues, thus enkindling a cauldron of ethical dilemmas (Daar & Khitamy, 2001).

Impact on Family Structure

Surrogacy, within the sacred confines of an Islamic society, possesses the potential to reverberate through the very fabric of the traditional familial structure. Deeply entrenched in the annals of Islamic teachings lies a resolute emphasis on the sanctity of the matrimonial union and the pivotal position held by the nuclear family. Yet surrogacy, particularly when entwined with the involvement of a third-party benefactor, unfurls its defiant banner, challenging these time-honored precepts by introducing supplementary entities into the intricate equation of kinship. In consequence, a cascade of inquiries emerges, their weight resting upon the legal and societal standing of the child, the role and entitlements granted to the surrogate mother, and the potential upheaval inflicted upon the tapestry of family dynamics and the revered codes of inheritance.

Social Stigma and Perception

Surrogacy, ensconced within the realms of numerous Islamic societies, continues to be ensnared by the delicate tendrils of social stigma. Steeped in the embrace of traditional cultural mores and conservative dispositions towards the realm of reproductive technologies, it unwittingly bestows a cloak of marginalization and ostracism upon those individuals and families who partake in this complex tapestry of procreation. The societal lens casts its judgmental gaze, birthing

formidable challenges that reverberate through the labyrinthine corridors of emotional equilibrium and communal assimilation. The intended parents, the surrogate mother, and the child, brought forth through the intricate interplay of surrogacy, are ensnared within the web of societal perception, impeding their pursuit of emotional well-being and social acceptance (Chamsi-Pasha & Albar, 2015).

Contradictory to Cultural Values

Surrogacy, as a practice, can give rise to conflicts with deeply ingrained cultural values within Islamic societies. These conflicts emanate from the collision of modern reproductive technologies with traditional beliefs and societal norms. In many Islamic cultures, the family unit is regarded as the cornerstone of society, and the natural processes of conception and childbirth hold profound cultural and religious significance. The involvement of a third party, such as a surrogate mother or the use of donor gametes, challenges these cultural values and raises concerns about the sanctity of the marital bond and the integrity of lineage.

Cultural values often emphasize the importance of blood ties and the biological connection between parents and children. Surrogacy, by introducing a surrogate mother who carries and gives birth to a child, can disrupt these notions and blur the lines of parentage. Questions may arise regarding the child's rightful place within the family and their inheritance rights. This can lead to societal stigmatization and the perception of surrogacy as a departure from established cultural norms (Ardakani, et al., 2021).

Within the tapestry of Islamic societies, a vast tapestry unfolds, adorned with a myriad of cultural hues, woven through the loom of time. In this diverse panorama, one must acknowledge that cultural values, akin to intricate threads, interweave within the very fabric of societal norms. Such values, steeped in ancestral customs and age-old traditions, may find themselves at odds with the notion of surrogacy, engendering a clash of beliefs and practices. Within these cultural vistas, a sacred reverence is held for the sanctity of motherhood, the cherished strands of family lineage, and the sacred role of women in the tapestry of society. These cherished ideals, firmly etched within the collective consciousness, bestow upon surrogacy a mantle of resistance and discord, as it challenges the harmonious symphony of cultural narratives. Thus, the acceptance and integration of surrogacy, amidst the nuanced contours of an Islamic cultural landscape, become ensnared within the labyrinthine corridors of conflicting values, thereby necessitating a delicate navigation of societal acceptance (Abu-Rabia, 2013).

Islamic Legal Framework

Surrogacy, nestled within the detailed structure of the Islamic legal framework, emerges as an imposing quandary that demands scrupulous exploration and discernment. Rooted in the profound wisdom of Islamic jurisprudence, the realm of law finds itself tasked with traversing the labyrinthine complexities of this reproductive method, delving deep into the divine blueprint of guidance, moral obligations, and societal considerations. This expansive discourse endeavors to shed light upon the manifold dimensions of surrogacy within the Islamic legal framework, unraveling the intricate interplay between religious principles, legal precedents, and ethical ramifications (Al-Mubarak, 2014).

At the very core of the Islamic legal framework resides an unwavering commitment to the preservation of the sanctity of the familial bond and the steadfast safeguarding of lineage. Islamic teachings resoundingly underscore the profound significance of the matrimonial union, the natural rhythms of procreation and the unambiguous delineation of descent. Surrogacy, with its intricate entanglement of external agents and disengagement from the traditional tethering of biological parenthood, casts a formidable shadow over these cherished principles. Intricate inquiries arise, casting their gaze upon the legal standing of the child, the rights and obligations of the surrogate mother, and the delineation of lineage within the intricate outline of inheritance and kinship ties.

Role of Religious Authorities

The pivotal role assumed by religious authorities in sculpting the cultural tapestry of Islamic societies reverberates with resounding significance. Their interpretations of Islamic tenets and the issuance of fatwas, which devoutly followed religious rulings, possess the capacity to mold public sentiment and steer the prevailing acceptance or repudiation of surrogacy. Within the realm of Islamic societies, the presence of a multifaceted array of viewpoints among esteemed scholars and religious luminaries regarding the permissibility of surrogacy manifests as a catalyst for the cultural challenges encountered. The resultant diversity of perspectives engenders a climate of uncertainty and the absence of unanimity, thus impeding the emergence of a cohesive societal stance on this intricate matter (Al-Bar & Chamsi-Pasha, *Assisted Reproductive Technology: Islamic Perspective*, 2015).

Medical Ethics

Within the domain of medical ethics, surrogacy emerges as a quintessential subject of profound concern, encapsulating a host of ethical considerations. The manifold dimensions of surrogacy give rise to a litany of apprehensions, encompassing the possibility of women being subjected to exploitation, the inherent health risks associated with the procedure, and the disconcerting prospect of human life being commodified. Islamic societies, ingrained with a fervent commitment to safeguarding the sanctity of human dignity and nurturing physical and mental well-being, accord paramount importance to the alignment of surrogacy practices with these ethical precepts. Therefore, a judicious and meticulous examination, accompanied by appropriate regulation, is indispensable in ensuring that the realm of surrogacy adheres steadfastly to the tenets of Islamic ethics and furthers the noble pursuit of preserving the holistic welfare of individuals involved in the process (Al-Bar & Chamsi-Pasha, *Contemporary Bioethics*, 2014).

Conclusion

Islam's unwavering proscription of surrogacy emanates from a rich and nuanced foundation, interweaving moral, legal, celestial, and societal deliberations. The hallowed sanctity of procreation, the resolute pursuit of lineage's unambiguous determination, the humble surrender to the decree of the Almighty, and the meticulous preservation of ethical frontiers all coalesce to shape the bedrock of this prohibition. Muslims, dutifully guided by the sacred precepts of their faith, are summoned to revere the innate cadence of procreative naturalness and venerate the divine sagacity that governs the tapestry of life's genesis. By steadfastly upholding

this proscription, Islam endeavors to shield the intrinsic nobility, the hallowed sanctity, and the harmonious equilibrium that fundamentally underpin the human odyssey.

Within the realm of Islamic jurisprudence, a steadfast and unwavering position has been established regarding the matter of surrogacy. Muslim scholars, deeply entrenched in the sacred texts and profound wisdom of the faith, have diligently engaged in profound deliberation concerning the ethical and legal implications of this difficult mode of reproduction. The unanimous consensus amongst these venerable jurists resoundingly declares that surrogacy, in its entirety, stands unequivocally prohibited within the sacred confines of Islamic principles. This comprehensive discourse seeks to elucidate the profound underpinnings and multifaceted rationales that serve as the bedrock for Islam's categorical prohibition of surrogacy. In so doing, it embarks upon a profound exploration of the moral considerations, religious imperatives, and societal repercussions that inform this unwavering stance.

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