

The Legal and Ethical Aspects of Surrogacy in Islamic Perspective

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Abstract

Infertility has been considered as one of the major problems in human life. It is an irony in our society that a couple must have children in any case. Historically, the couples if remained issueless after the treatment used to face taunts and humiliating insults at the hands of their dear and near ones. Some of them had to adopt the children to satisfy themselves and the others. This problem also lead to the separation of many couples. Meanwhile different artificial methods of the child birth were invented to solve the problem of infertility. Among them were Artificial Insemination, Test Tube Baby Fertilization (IVF) and Cloning etc. the people around the world warmly welcomed these methods. Except the Cloning the other methods got popularity. But still some women could not conceive children by these methods owing to the complications in their uterus or pelvic disorder etc. So, this problem was solved through Surrogacy especially in the non-religious societies of the West. In this method the zygote is produced by the sperm of the husband and egg of the wife and then it is implanted in the uterus of other woman, hired for this purpose. After the delivery she hands over the child to the parents and get the fixed amount, they were agreed upon. Many people adopted this method without caring the religious, ethical, social and moral consequences. Now a days it has become a popular treatment in almost all over the world. Although this procedure is not validated by Islam yet Pakistan is among those countries where it is adopted by some people furtively. This article will highlight all these aspects.

Keywords: Artificial Insemination, Gestational Surrogacy, Rented Mother, Surrogacy, Test Tube baby Fertilization.

Introduction:

Since the creation of human being the desire of children has been felt in order to carry out the lineage. The institution of marriage has been played and is still playing a vital role for the fulfillment of this desire. The infertility has also been main obstacle in the development of mankind. Initially, the infertile couples adopted the children to fulfill their desire of having the children¹ or remain childless and faced provocative and insulting behavior of the society.

With the passage of time, the science and technology advanced and scientists were able to find different ways to help the infertile couples in conceiving the children. In first step the artificial insemination method was used in this regard. In 1790, an eminent Scottish anatomist and surgeon John Hunter, engineered the first ever example of artificial insemination by impregnating the wife of linen draper with the sperms of her husband.² This attempt encouraged the scientists to work further on this concept. They made different

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¹ Saud Joseph and Nagmabadi, *"Encyclopedia of Women and Islamic Cultures: Family, Law and Politics"*, (vol.2), (Boston: BRILL, 2003), 1.

² Corporation Marshall Cavendish, *"Sex and Society"*, (Vol.1) (New York: Marshall Cavendish, 2010), 8.

attempts and later on the first ever successful attempt of Test Tube Baby fertilization was made by Robert G Edwards, an endocrinologist in Britain by IVF in 25 July 1978.³

This method brought smile on the withered faces and ultimately the infertile couples were able to have their own children. That was the one legal aspect of the infertility which has addressed. The other aspect of the infertility was that women having acute problems in their fallopian tubes or ovaries were still deprived of this scientific success and were unable to be impregnated by medical assistance. Then a concept of surrogacy was introduced in European societies to enable such women to have their children. Surrogacy basically means hire mother to implant a zygote in her uterus produced by the third party for producing a child.

The very first case was seen in 1980 when a 40 years woman was hired to serve as surrogate mother. She was given \$10,500 and she delivered a child for an infertile couple. Three years later another aspect was introduced. A woman who was unable to produce an egg, the donor's egg was utilized and attempt was made to get a child. This attempt was successful and in 1985 the first ever gestational surrogacy was succeeded.⁴ After this success the different people utilized it. Another example was seen in 2005 when a woman of 58 years donated her uterus and gave birth to her twin granddaughters.⁵

Later on, Pot Intoni a resident of "Zanain", a town in South Africa, got implanted a zygote which was fertilized by the egg of her daughter and sperms of her son in law and gave birth a baby for them.⁶ Since then, surrogacy has attained the heights of popularity and now it is considered a source of getting a child for those who are unable to conceive it by a natural process.

Meaning and definition:

The word surrogacy was used in early 17th century from Latin "Surrogatus", which means "A substitute, especially a person deputizing for another in a specific role"⁷ Simply it can be defined. "A woman who has a baby for another person who is unable to become pregnant or have a baby"⁸

The Encyclopedia of Britannica defines it, "Practice in which a woman (the surrogate mother) bears a child for a couple, unable to produce children, usually because the wife is infertile or unable to carry a pregnancy. The surrogate is impregnated either through artificial insemination (usually with the sperm of the husband) or through the implantation of an embryo produced by In Vitro Fertilization." (IVF)⁹

In other words, it means a woman who is agree to give birth a child for infertile couples, unable to have their child because of the medically unfitness of the wife to carry or develop a zygote. The other condition is that wife is fertile but cannot carry a fetus to grow. In

³ Heilbron John L., "The Oxford Companion to the History of Modern Science", (Oxford: University Press, 2003), 422.

⁴ Sauer Mark V. "Principles of Oocyte and Embryo Donation" (vol.2), New York :Springer Science & Business Media, (2013), 278.

⁵ <http://www.surrogatemothers.org/history-of-surrogacy-when-and-where-did-it-all-begin>

⁶ Lahoree, Hafiz Mubasher Hussain "Jadid Faqhe masaial kitab-o-sunnat ke Roshne Mein", (Lahore: Maktaba Qadosia, nd), 56.

⁷ "English Oxford Living Dictionary", (Cambridge: University Press, 2008), retrieved <https://www.oxforddictionaries.com/oed>

⁸ "Cambridge Advanced Learner's Dictionary" 3rd edition, , (Cambridge: University Press, 2008).

⁹ <http://www.britannica.com/EBchecked/topic/575390/surrogate-motherhood>

both cases the egg of wife and sperms of husband are used and with the help of IVF the fetus is inserted in the uterus of a surrogate mother on some terms.¹⁰

Procedure:

In first step, with the help of endoscope which undergoes the stomach wall structure, suck an ovum from the ovary of a woman. The ovum is fertilized with the husband's sperms. No sooner the spermatozoa and ovum are united it starts to multiply. The cell mass is then inserted into the genital tract of any other woman. The embryo begins to develop in the womb of that host woman till she delivers the child and gives the baby to them who had hired her for this purpose.¹¹

Reason of surrogacy:

There are some certain reasons for the adoption of this method. Few of them are as follows:

- (i) Failure of embryo to be implanted
- (ii) Repeated miscarriages
- (iii) Hysterectomy or pelvic disorder
- (iv) Dangerously high blood pressure
- (v) Heart or liver disease¹²
- (vi) Carrier oriented women with their professional constraints (e.g. actors, Single and homosexual couples realize their dream of parenthood through surrogacy.
- (vii) Defected Fallopian Tube or Uterus
- (viii) Absence of Uterus.
- (ix) To save herself from the painful process of delivery.¹³

Islamic rulings:

Islam is a complete code of life. It guides people in all aspects of life. In the case of ailment, Islam allows for treatment to all its followers conditionally that must be under the approved method of the Sharia. The diseases which were never analyzed and cured in past are currently being dealt with effectively. Subsequently, we can't see this superb improvement and rational movement in the field of science doubtfully in light of the fact that there is no such disease on the planet which has not its treatment. The Prophet (ﷺ) said,

“Abu Hurairah (R.Allah) narrated that the Messenger of Allah (ﷺ) said, “There is no disease that Allah has sent down but He also has sent down its treatment”¹⁴

It is evident from the above hadith that there is cure for each and every disease. The Prophet (ﷺ) himself encouraged the people for the treatment of diseases by saying;

“Usama bin Sharik said that Bedouin asked “O Prophet (ﷺ) of Allah! Would it be advisable for us to make utilization of restorative treatment?” He (ﷺ) said, “O Allah's

¹⁰ Whitfield Dianne, “*Surrogacy: An Essential Guide to the Surrogacy Process, Surrogacy Costs, and Finding a Surrogate Mother*”, Independent Publishing Platform, (2015), 5.

¹¹ Al-Abid, Osama Muhammad, “*Islamic Law Ruling on Certain Medical Question*”, (10 April 2004), 4. (retrieved) http://islamset.net/ioms/code2004/Islamic_vision2.html

¹² <http://www.yale.edu/ynhti/curriculum/units>.

¹³ Lahoree, Hafiz Mubasher Hussain, “*Jadid Faqhe masaial kitab-o-sunnat ke Roshne Mein*”, (Lahore: Maktaba Qadosia, nd), 59.

¹⁴ Khan Muhammad Muhsin Dr., “*Sahih-ul-Bukhari*,” (vol.3) (Arabic-English), (Ryadith: Darussalam, 1997), 326.

slaves! Make utilization of cure because Allah has never made an ailment on the planet without cure, except for one illness. They questioned regarding that sickness, he answered "Old age."¹⁵

This Hadith has been narrated in Sunan Abu Dawud with the addition of few words:

"Osama bin Sharik narrated: I went to the Messenger of Allah (ﷺ) and the companions were sitting in the way that the birds were on their heads. (Sitting silently) I greeted them with Salam and sat. Then the Bedouin arrived from here and there. They inquired O Messenger of Allah! (ﷺ) Would they make utilization of cure? He answered; make utilization of medicinal treatment, as Allah did make any sickness without its cure, except for one ailment that is Old age."¹⁶

On other occasion, the Messenger of Allah (ﷺ) encouraged for the treatment as:

"Hazrat Abu Hurairah (R.Allah) narrated that he heard Prophet (ﷺ) saying that there is curing in "Black Seed" for entire illnesses excluding "alSam" Ibne Shahab said that "alSam" mean death and "Black seed" is black cumin."¹⁷

These Hadiths clearly show that all treatments are allowed in Islam except those which are Ma'siya. In the case, if someone is actually deprived of uterus, she should agree to what Allah has chosen for her. She must submit before His Will and believe that Allah has power to bless someone with the children or deprive him. The Holy *Qur'an* clearly mentions it in different verses. For example it is said.

"Allah is the owner of the dominion of the heavens and the earth. He creates what He wants. He grants (children) female or male and makes someone frigid or unfruitful according to His will, which He needs. Undoubtedly, He is Knowing and Competent."

So they must be comfortable with their fate. They need to have firm faith that the real lovers aren't always in a position to have children. It is Allah's Will to squander the motherhood. They therefore pray Him to bless them with offspring while resorting all available treatment they are able to get but within the limits set by sharia. If it's will of Allah, He will certainly grant their supplications. At another place Allah motivates the believers to pray by saying:

"And your Lord says, "If you ask Me; I will response your (prayers)."
He says that He listens the suppliants. The *Qur'an* testifies it.

"So when My servants ask thee regarding Me, I am indeed close (to them). I respond to every suppliant when he appeals me."

There are many examples which show that Allah blessed children to those who were not able to have children. The first example is of Prophet Ibrahim (PBUH) and Hazrat Sara both of them were very old, but still Allah provided them the happy news of a child in the following verse;

"And his wife was standing up (there), and she laughed: But We provided her glad tidings of Ishaq, and of Yaqoob after him."

¹⁵ Khaliyl Abu, "*Sunan-al-Tarmidzi*", (Ryadith: Darussalam, 2007), Hadith: 2038.

¹⁶ Hassan. Ahmad Prof. (Translator), "*Sunan Abi Daud*", (vol.3), (English Translation), (Lahore: Sh. M. Ashraf, 1984).

¹⁷ Daraz M Dawood, (Translator) "*Sahih-ul-Bukhari*", (vol.7), (Lahore: Maktaba Qudoosia, 2004), 284.

History shows that Allah blessed Hazrat Ibrahim (PBUH) with Hazrat Ismail (PBUH) at the age of 86¹⁸ while the other son Hazrat Ishaq was blessed when he was hundred years old¹⁹ and Hazrat Sara, his wife was about 90 years old.²⁰

Therefore, they should remember that praying for progeny is the Sunnah of the prophets. The Holy *Qur'ān* mentions many supplications of many prophets. Hazrat Zakariya (PBUH) For example, prayed in the following words:

"Hazrat Zakariya (PBUH) prayed to his Lord! Saying: O my Lord! Offer me from you an offspring. Verily You hear the prayers"

In respond of the prayer Allah replied as;

"O Zakariya! We present you the glad tidings of a boy, whose name will be Yahya (John). None of them by that name have We conferred before"

Hazrat Zakariya (PBUH) was astonished at it and said,

"O My Lord! How shall I beget a boy, whereas my wife is sterile, and I've reached my extreme old age?"

Allah replies:

"Your Lord says, "So (It'll be) thy Lord said, that is easy for Me. I created thee before, when thou have been nothing."

They should keep these examples in their mind and continue praying, avoiding sins and do upright deeds that are essential for approval of supplications.

Holy *Qur'ān* mentions the example of Prophet Zakariya (PBUH):

"So, we paid responded to him: and we bestowed him Yahya (John) we cured the infertility of his wife for him. It is because they were hastened for good deeds and supplicate us and used to ask us with love and veneration, and both of them were quite humble before us."

In Surah Al-A'raf Allah teaches the decorum of praying by expressing:

"Invoke your Almighty Allah humbly and secretly. He does not love those who cross their limits"

And again:

"And invoke Him in anxiety and optimism. Definitely, Allah's Mercy has been those who perform kindly."

If they plea Allah with earnestness, He'll pay responsiveness to their prayers and gives them children. If they are unable to have child after the prayers they should be contented on their fate.

There are certain situations in which a woman is unable to give birth to a child then she can adopt a legitimate procedure for giving birth to a child. If she deliberately avoids giving birth to her child and wants to hire someone else as surrogate, Islam does not allow her because entering of sperms in other woman other than wife is equal to zana. It's the most shameful, abomination able and disgusting fault; because she wishes to escape from the obligation levied her by Allah i.e. carry out the family by the birth of babies.

It is mentioned in the fatwa of Dr. Al-Qaradhaawi, "If we seek the religious legitimacy of this matter, it is my belief that Islamic jurisprudence (Fiqh) does not welcome or trust this contrivance and is not satisfied with its outcome and consequences. It rather strives

¹⁸ "*Kitab-e Mukadas*", (new and old testament) (nd) (Lahore: Bible Society Lahore), 17.

¹⁹ *Ibd* p.20-21

²⁰ Al-Azhari Pir Muhammad Karam Shah, "*Zia-ul-Quran*" , (vol.2), (Lahore: Zia Publications , 1402 AH), 378.

to prevent it. Probably one of the most evident effects of such a transplant is the fact that it spoils the concept of motherhood, as created by Allah and known by people.”²¹ Hence this technique is undesirable because by implementing this technique one crosses all limitations prescribed by Allah.

“Sheikh Ahmad Kutty”, lecturer and Islamic scholar at “Islamic Institute of Toronto”, Canada says, “According to the rules set by sharia surrogate motherhood is prohibited, since it involves the inserting of the sperm of male in to the uterus of a female to whom he's not married and so it obviously comes under the specific category of transgressing the limits of Allah.”²² To support his point of view he mentions to the following verses of surah “Al-Muminun”:

“Triumphant undoubtedly are the believers, who are humble in their prayers. And who shun vain chat. And who protect their modesty, save using their wives or the (slaves) that their right hands hold. They aren't blameworthy. But the one who seeks beyond that he will be among the transgressors “

“Dr. Muzammil Siddiqi”, former chief executive of the “Islamic world of The United States” says:

“Surrogacy, i.e. giving the embryo to another woman to carry on the pregnancy in her womb is not permissible in Islam. It is also not permissible for a Muslim woman to act as surrogate mother.”²³

Islam does not allow surrogacy because of the following reasons;

(i) In surrogate motherhood, the zygote of wedded couples is transferred into a female other than a spouse; after the procedure the zygote will develop into a child whose father has no conjugal connection with female, bringing forth the child. As per sharia that female cannot be thought to be a mother of an infant that conceive the baby, nor the one who performs as third party i.e. the donor of egg. According to sharia a woman can deliver a child after nikah and after having sexual intercourse with husband and in case of any medical issue she can implant a zygote which is fertilized by the sperms of her husband and her egg. Whereas the above mentioned case can be supposed as zana. Moreover, the host mother does not play any role in the fertilization of zygote and this is again the negative aspect of the process.

(ii) In this arrangement of surrogacy the two parties settle on some conditions, including payment of a handsome amount to the host woman for the services which she renders. However, over the passage of time when the baby is developing in her womb, she is connected to the child by the profound bond of motherhood. Thus, when the child is born, she finds it difficult to part herself from the baby. She is then under the influence that she would perish without this baby.

(iii) This business deal, involving zygote and the fragile bond of motherhood, can never be accepted as lawful in the refined societies where this process is considered unethical and immoral; both in its definition and applications.

(iv) This process of surrogacy will lead to many complications in future such as inheritance, mixing up of race, lineage and upbringing of the child. Therefore, we cannot present it as legitimate or acceptable method of babyhood, maternity and paternity.

(v) Islamic Sharia, in particular and the sophisticated world in general, considers the rental usage of uterus as a taboo and against its approved norms.

²¹ Does Islam Allow “Surrogate motherhood”?-islamonline.net-Ask the Scholar, Dec.27, 2007, 3.

²² Ibid

²³ Siddiqi, Muzammil Dr. *In vitro fertilization: Islamic view*-islamonline.net-Ask the Scholars, 27, Dec. 2007, 2.

- (vi) The sensitive bond of marriage and complicated system of heredity, both are affected irreparably by surrogacy.
- (vii) To avoid pregnancy, the healthy and wealthy wedded ladies will take up rental uteruses as a fashion and to avoid labor pain.
- (viii) This process will elevate the number of illegitimate children in the world. This will also lead to the communal, moral and ethnic problems.
- (ix) Furthermore, the ethical values will deteriorate at an alarming speed. The birth of grandchild by a woman in west as mentioned above is its living example.²⁴
- (x) Some feminists describe surrogacy merely as a "mother machine" or "women as wombs" and therefore consider it invalid.²⁵

Hafiz Mubashar Husain Lahoree wrote in his book if other woman is co-wife then she can be served as surrogate mother because the sperms which were used for zygote were her husband's therefore it will not be zana. But condition is that she must be agreed for it as well.²⁶

Surrogacy leads to various problems like the maternity. In tradition, the lady who delivers a child is called the mother. However in case of surrogacy, who will be the actual mother, the one whose egg initiates the baby or the one who carried the baby in her uterus? According to hadith of Prophet (ﷺ) the maternity belongs to the lady from whom the baby is born.

The word mother has two meanings in Arabic language, "A mother" and "Umm" literally the term: mother" is a woman who born the baby not the one who provides egg. The other phrase "Umm" is employed in wider sense; it can be used for a real mother, paternal or maternal grandmother. However in the Holy *Qur'ān* the term "Umm" is limited to those women who give birth to the children. It is said,

"Their mothers are just those who deliver them."

And again, it is said in Holy *Qur'ān*.

"And he was taken by his mother with a whole lot of pain and born by her with a great deal of pain."

The above quoted verses mean that female who bears pain and delivers a child should be titled as mother. Thus proven that the mother is the woman who delivers the child and not the one who lends her egg. This is proved by a hadith narrated by Hazrat Ayesha (R.Allah)²⁷

"Narrated Aisha (R.Allah), Utba bin Abu Waqqas took a firm promises from his sibling Saad bin Abu Waqqas to adopt the boy of the slave woman of Zam'a into his guardianship as he was his (Utba's) child. In the year of conquest of Makah, Saad bin Abu Waqqas took him, and said that he was his brother's child, and his sibling took a promise from him to that effect. Abd bin Zam'a stood and said, "He's my brother and child of the slave girl of

²⁴ Lahoree Hafiz Mubasher Hussain, "*Jadid Faqhe masaial kitab-o-sunnat ke Roshne Mein*", (Lahore: Maktaba Qadosia, nd), 56.

²⁵ E. Scott Sills, "*Handbook of Gestational Surrogacy: International Clinical Practice and policy issue*", (Cambridge: University Press, 2016), 43.

²⁶ Lahoree, Hafiz Mubasher Hussain , "*Jadid Faqhe masaial kitab-o-sunnat ke Roshne Mein*", (Lahore: Maktaba Qadosia, nd), 65.

²⁷ Bukhari Abi Abdullah Muhammad bin Ismail, "*Sahih-ul-Bukhari*", (Ryadith: Darussalam, 1999), Hadith: 2053.

my father and was born on my father's bed. Then both went to the prophet (ﷺ). Saad said O Allah's prophet (ﷺ)! He's child of my brother and he has taken a promise from me that I will take him. Abd bin Zam'a said (he's) my brother and the son of my father's slave lady and was born on my father's bed. Allah's messenger (ﷺ) said "The child is for you, O Abd bin Zam'a!" Then prophet (ﷺ) said, "The boy is for the bed (i.e. the person on whose bed he was born) and stones for the one who did unlawful sexual activity (zina)." The prophet (ﷺ) advised his wife Hazrat Sauda bin Zam'a to screen herself from the young man as he discovered a similarity between the boy and Utba. Therefore she didn't see till he passed away."²⁸

This convention validates that Holy Prophet (ﷺ) did not see the boy's resemblance with father instead he announced that the child belonged to Zam'a as he was born by his slave girl. Therefore that woman is known as mother who born him. As per "ACOG (American College of Obstetricians and Gynecologists)", "The woman who gestates and gives birth to the child is the legal mother- her contribution of time, effort, and the intimate relational nature of the maternal environment are sufficient for her to be considered the mother."²⁹

While as indicated by decision of "Majlas-ul-Majma-ul-Fiqh-ul-Islami" Makah 11-16 Rabi-ul-sanni 1404 AH, "The ancestry of infant will be connected with that couple who give zygote. What's more, the lady, who bears pregnancy from the co-spouse, will be non-permanent mother, as the infant got advantage from her body than that woman who sustain the youngsters in feeding period."³⁰ It is in contradiction of the *Qur'anic* and Prophet's sayings, as discussed above.

Conclusion:

Surrogacy is considered as a modern method of conceiving a child for those who are infertile, having the disability of implanting a zygote or naturally un-impregnated. Although this method is fruitful yet, it is unethical, immoral and against the nature of Islam. In Islam it is unlawful to have illegal sexual relations with others because it destroys the lineage of a family. Same case is with surrogacy. The woman who implants the zygote, produced by other than her husband is a form of zina because only the real and legal wife is permitted to have the sperms of her husband in her uterus. Surrogacy may also result into a new industry called "Child birth". The poor women will adopt this to fulfill their daily needs. The spouses from who want to save themselves from the labor pain will hire the women for begetting their children. It will definitely affect the relationship between the children and the parents. The true relationship of parentage will be abolished. Ultimately the respect and regard of humanity will be under severe threat. Least but not the last, there will be "Sperms Banks" or "Eggs Banks" available for the masses which will lead the society towards unending series of unethical and unlawful activities. Although zygote made by the sperm and egg of a wife and husband, implanted in his second wife can also create a number of problems for both wives in future. So, it is better for medically infertile woman to be patient and wait for the further medical development to assist her in conceiving a baby in reasonable way.

²⁸ Khan Muhammad Muhsin, Dr. "Sahih-ul-Bukhari", (vol.3), (Arabic-English), (Ryadith: Darussalam, 1997), Hadith: 2053.

²⁹ Qasmi Molana Mojahid Islam, "Asare hazar kke pacheda masail ka sharahe Hal", (Karachi: Adara Al-Quran wal-Aloom Islamia, 1422 AH), 153.

³⁰ Lahoree Hafiz Mubasher Hussain, "Jadid Faqhe masaial kitab-o-sunnat ke Roshne Mein", (Lahore: Maktaba Qadosia, nd), 70.