

A Jurisprudential Perspective on Surrogacy and its Forms and Rulings

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Abstract:

Surrogacy is deemed among the most significant issues that is debatable both legally and religiously, due to the unjustified infringement it represents on the human body, as well as its clear departure from the scope of lawful legal transactions. The practice of renting wombs is considered one of the modern techniques that have emerged from scientific and medical advancements in the field of reproduction and artificial insemination. This research examines the ruling on surrogacy in its five different forms, particularly from an Islamic perspective. It sheds light on the opinions of scholars and their schools of thought regarding this issue and clarifies the evidences upon which these positions are based, including Qur'anic verses, Prophetic traditions, juristic principles, and rational arguments. The study concludes with a discussion of the evidence for each school individually and determines the view most likely to be correct, namely, the prohibition of surrogacy in all its forms, based on its consistency with foundational and juristic principles.

Keywords: wombs, surrogacy, jurisprudential perspective.

Introduction:

Our modern era is considered an age of scientific advancement, vast cultural expansion, the discovery of the unknown, and the rise of artificial intelligence. Among the fields that have witnessed remarkable and astonishing progress is the science of wombs and embryos. Among the issues that have sparked considerable debate is the matter of surrogacy, also referred to as a surrogate mother, embryo transfer, and other related terms. This issue, alongside the tremendous development in medicine, has generated wide controversy because it concerns human dignity and also relates to one of the fundamental objectives of Islamic law: the preservation of lineage, ensuring that genealogies do not become confused or that the lineage of one man is not mixed with that of another. Offspring are a provision and a gift from Allah, granted to whom He wills and withheld from whom He wills, as stated by the Almighty: “يَشَاءُ الذَّكَورَ أَوْ يَهْبِ لِمَنْ يَشَاءُ إِنَاثًا وَيَهْبِ لِمَنْ (:)” He grants females to whom He wills, and grants males to whom He wills, or He combines them, males and females, and He makes whom He wills barren...” (The Holy Quran: Surah Ash-Shura, 49-50).

Surrogacy is a modern medical technique developed by physicians, involving the introduction of a third party into the marital relationship between a husband and his wife to enable reproduction. This is done by using the womb of another woman due to the wife's inability to carry and deliver a child safely. The process typically involves fertilizing the wife's ovum with the husband's sperm outside the body, then placing it in a tube until the fertilized egg begins to divide into a cluster of cells. This cluster is then transferred and implanted into the womb of another woman, where it develops until birth, after which the child is handed over to the biological parents in exchange for a sum of money. In some cases, the arrangement is based on

voluntary agreement, meaning the process occurs without any financial compensation, for example, when a woman carries a child for her daughter, sister, or friend.

This contemporary issue requires further study, research, and clarification of the views of scholars, jurists, legal experts, and medical professionals. Therefore, in this research paper entitled “A Jurisprudential Perspective on Surrogacy and Its Forms and Rulings,” we attempt to introduce the concept of surrogacy, its history, the reasons for its emergence, its various forms, and the opinions of Islamic jurists regarding it.

Research Problem:

The issue addressed by this study is to clarify the position of contemporary juristic reasoning and positive law regarding surrogacy and the rulings related to it. It also examines whether surrogacy can serve as a solution to infertility or whether, on the contrary, it leads to further complications.

Significance of the study:

The importance of this research is reflected in the following:

1. Its connection to lineage and genealogy.
2. Its clarification of the juristic characterization and ruling concerning this contemporary issue.

Research Objectives:

1. To understand the reality of surrogacy.
2. To identify the various forms of surrogacy.
3. To determine the juristic classification of surrogacy.
4. To establish the ruling on surrogacy.
5. To examine the consequences resulting from surrogacy.

Research Methodology:

This study adopts a comparative juristic approach by presenting the opinions of scholars, discussing them, and identifying the most preponderant view.

Research Structure:

This topic will be examined, along with its practical implications, through two main sections. The first addresses the concept of surrogacy, its history, and the reasons for its emergence. The second discusses the various forms of surrogacy and the opinions of scholars regarding them, followed by a conclusion outlining the main findings and recommendations.

First Section: The Concept, History, and the Reasons of Surrogacy

The practice of surrogacy is a form of artificial insemination. Instead of returning the fertilized egg to the wife's womb, it is transferred to the womb of another woman unrelated to the couple, who serves as a carrier or gestational mother for the fertilized egg until the pregnancy term is complete, in exchange for a sum of money through which she effectively relinquishes her motherhood. This typically occurs because the wife's womb is not suitable for receiving the fertilized egg, or due to infertility in one or both spouses, or as a result of recurrent miscarriages caused by congenital issues that prevent her from maintaining a pregnancy. Since a proper ruling on any matter depends on an accurate understanding of it, it is necessary to clarify the reality of surrogacy by defining it, identifying its various forms, and examining the motivations behind it. This is followed by determining its legal nature and its relationship to artificial insemination. (Fatima, 2022). These issues will be addressed in this section through several subtopics.

First: Definition of Surrogacy

Since the term is composed of two parts “leasing or renting” and “womb” it is necessary to define each part individually and then define the term as a whole.

One: Definition of Leasing Linguistically and Terminologically

Branch One: Linguistical and Terminological Definition of Surrogacy or Leasing Wombs

First: Linguistically: The word *استئجار* *isti'jār* (leasing) is derived from *اجارة* *ijārah* (renting/hiring), and *ijārah* comes from the verb *ajara, ya'jiru* meaning to hire or rent. *اجارة* *ijārah* refers to a payment given in exchange for work or service, and later it came to be used specifically to refer to a contractual agreement. It is said: “*I rented out the house,*” meaning I became a lessor. The *ujrah* refers to rent or wage. It is also said: “*A woman hired herself out,*” meaning she offered herself for compensation, and the term *تاجير* *ta'jīr* (leasing) is a derived verbal noun from the intensified form *ajjara*, and both carry the same meaning. (Ibn Manzur, n.d.)

Second: Terminologically: Jurists have defined leasing *اجارة* (*ijārah*) with closely related meanings: The Hanafis defined it as: “A contract over benefits in exchange for compensation.” (Al-Sarakhsi, n.d.) The Malikis defined it as: “The transfer of ownership of permissible benefits of something for a known period in exchange for

compensation.” (Al-Khattab, n.d.) The Shafi’is defined it as: “A contract over a known, intended benefit that is permissible to provide, in exchange for compensation.” The Hanbalis defined it as: “A contract over a permissible, known benefit taken gradually over time.” (Al-Shirbini, n.d.) Thus, leasing (ijārah) is essentially a contract over benefits in exchange for compensation. (Al-Buhuti, n.d.)

Two: Definition of the Womb Linguistically and Terminologically

First: Linguistically: Womb “أرحام Arḥām” is the plural of “رحم raḥim.” “رحم raḥim” refers to the womb of a female, which is the place where the fetus develops and is contained within the abdomen. (Ibn Manzur, n.d.) In classical linguistic sources, it is stated that the womb originally refers to the woman’s womb, then came to be used metaphorically for ties of kinship, as reflected in scriptural usage. (Ibn Duraid, n.d.) The term “raḥim” is also used to denote relative, those connected by lineage, whether they are entitled to inheritance or not, and whether they are unmarriageable kin (محارم maḥārim) or otherwise. (Al-Razi, n.d.) Some limited it to maḥārim only, but the broader definition is more accurate, as restricting it would exclude uncles and cousins, who are indeed considered among kin. Thus, “raḥim” signifies kinship and familial connection.

Second: Terminologically:

In technical usage, “arḥām” generally refers to relatives; however, in the context of this study, it specifically denotes the female womb, which is the place where a fetus develops. (Al-Kuwaitiyyah Fiqh Encyclopedia, n.d.). It is defined as “an anatomical structure consisting of a thick muscular wall, lined with a soft mucous membrane, and surrounded externally by a protective peritoneal covering. It is a site prepared to receive the fertilized ovum, where it grows and develops into a new being. The walls of the womb are thick yet soft like a cushion, providing an ideal environment for the new life during the period in which it requires nourishment and protection. It gradually expands in accordance with the growth of the fetus within it.” (Fatima, 2022; Fadil, 2021)

Three: Definition of Surrogacy as a Compound Term

From a compound perspective, surrogacy has been defined as “the use of another woman’s womb to carry a fertilized ovum formed from a man’s sperm and a woman’s egg, most often a married couple, where the surrogate carries the fetus and gives birth, after which the couple assumes care of the child, who is legally considered their offspring.” (Arab Encyclopedia, n.d.; Fadil, 2021). It has also been defined as: “the implantation of the wife’s ovum, fertilized by her husband’s sperm, into the womb of another woman, who carries the embryo until birth, in exchange for an agreed sum of money or without compensation, such as when the surrogate is a relative of the wife, like her sister, particularly when the wife is unable to conceive or cannot afford to hire a surrogate.” (Al-Aysarah, 2009; Al-Hammadi & Sayed, 2022)

The nature of this study requires clarifying certain terms associated with or similar to surrogacy, including: wet-nursing womb (embryo transfer), surrogate or substitute mother, gestational carrier, proxy motherhood, and pregnancy on behalf of others. All these terms share a single medical meaning: “the fertilization of a man’s sperm, whether from the husband or another man, with the ovum of the wife or another woman in a laboratory environment outside the womb. After confirming suitable biological and psychological characteristics and once cell division begins following fertilization, the embryo is then transferred either to the wife’s womb or to the womb of another woman.” (Al-Qaisi, 2015; Al-Hammadi & Sayed, 2022)

Among the key terms related to surrogacy are:

1. Embryo Transfer: The removal of the embryo at an early stage of development (as a fertilized ovum) and its implantation into the womb of another woman, who then carries it through the stages of development.
2. The Rented Womb: Terms such as pregnancy on behalf of others, surrogacy, rented womb, or substitute womb are commonly used. The term “rented womb” is frequently predominantly used because such arrangements usually involve compensation. In this context, the woman is referred to as a surrogate mother, proxy mother, or substitute mother. Other expressions include proxy embryos, delegated motherhood, or rented uterus, all of which essentially refer to the same concept of surrogacy. (Al-Hammadi & Sayed, 2022)
3. The Biological Mother: She is the woman who provides the ovum fertilized by her husband’s sperm, whether the pregnancy occurs in her own womb or in that of another woman. (Al-Haikal, 2007; Al-Hammadi & Sayed, 2022) She is called “biological” because she is the source of the fertilized egg. She has also been defined as “the woman who contributed to the creation of the embryo through participation with the ovum, not the womb.” (Al-Mansour, 2012)
4. A surrogate mother is a woman who uses her womb, with or without compensation, to carry a fetus resulting from the fertilization of a sperm and an egg through artificial insemination for a couple who

are unable to conceive naturally. (Al-Haykal, 2007) This may be due to the wife's uterine damage, her inability to complete a full pregnancy term, or the absence of a uterus altogether.

From the above, it is understood that surrogacy involves a woman whose womb is medically sound and capable of carrying a pregnancy, offering it, whether for payment or voluntarily, to another woman who wishes to implant her fertilized ovum (fertilized with her husband's sperm). The surrogate then endures the burdens and hardships of pregnancy, with the agreement that she will hand over the newborn to the biological mother, whose womb is typically incapable of carrying a pregnancy. (Al-Hilali, 2011)

To complete the definition of this term, it is necessary to identify its essential elements. Upon examination, it becomes clear that it consists of four pillars, similar to those of a lease contract: (Al-Qaisi, 2015; Al-Buhairan, n.d.)

The first pillar: The formula (offer and acceptance). The second pillar: The contracting parties, namely, the lessor and the lessee. The lessor is the woman who owns the womb in which the fertilized ovum will be placed, while the lessees are the spouses who own the fertilized ovum. The third pillar: The subject matter of the contract, which is the benefit, namely, placing the fertilized ovum in the womb for the duration of the pregnancy. The fourth pillar: The compensation, which is the payment given by the lessee to the lessor in exchange for this benefit.

Second Subsection:

Reasons for Resorting to Surrogacy

Surrogacy is pursued for several reasons, including those related to the spouses as well as those related to the woman who offers her womb. These reasons can be outlined as follows:

First: Reasons for the Couple Resorting to Surrogacy

Medical Reasons:

Artificial insemination is considered a form of medical treatment and is used in the following cases:

1. Weakness of the womb and inability to retain the fetus throughout pregnancy, leading to miscarriage.
2. The woman suffers from illnesses that cause repeated fetal death before the completion of pregnancy and delivery.
3. Pregnancy may cause severe health complications, such as preeclampsia or congenital defects in the womb.
4. The womb has been surgically removed despite the ovaries remaining functional, or the woman was born without a womb.
5. Infertility affecting one or both spouses. (Muhammad Zahra, 1993; Karda Fatima, 2022)

Health-Related Reasons:

Surrogacy may be chosen when pregnancy poses a serious risk to the wife's health, or if she wishes to avoid the physical burdens of pregnancy and childbirth due to fear of pain or concern for her well-being. (Fatima, 2022)

Cosmetic Reasons:

A woman may resort to surrogacy out of convenience or concern that pregnancy could affect her physical appearance, such as changes to body shape or facial features. (Al-'Aysarah, 2009)

Second: Reasons for the Surrogate Woman

Financial Reasons:

These relate to poverty and financial need, which may drive a woman to offer her womb despite the physical challenges and risks associated with pregnancy and childbirth, in exchange for monetary compensation. This phenomenon is more prevalent among economically disadvantaged women in developing countries, particularly migrant women from parts of Africa, as well as in countries like India, where financial incentives are offered for carrying pregnancies. (Fatima, 2022)

By way of donation and lending: in this case, a woman offers her womb for use by others not for financial compensation, but for other motives, such as repaying a favor, showing sympathy for women who are unable to have children due to reasons related to them, or for the sake of fame. (Al-Sahmawi, 2013; Fatima, 2022)

Section Two: Forms of Surrogacy and Scholars' Opinions on Them

Surrogacy has various forms, and each form has its own ruling. Therefore, in the first section, it will present the forms of surrogacy, and then the second section discusses the opinions of scholars regarding each of these forms.

First Section: Forms of Surrogacy

The process of renting wombs has several forms, as different methods through which this process can be carried out. However, despite the variety of these forms, they do not depart from the essential nature of the process, which is resorting to another woman to rent her womb. These forms are as follows:

1. The first form: In this case, the husband's sperm and the wife's egg are taken, and the fertilized egg is implanted in the womb of another woman after external fertilization is performed in a test tube and examined in a laboratory. This method is used when the wife is unable to carry a pregnancy due to illness, a diseased uterus, or when she seeks to avoid the pain, difficulties, and risks of childbirth, or to preserve her body. (Al-Balu, 1987)
2. The second form: The husband's sperm and his wife's egg are taken and fertilized in a dish, and after the embryo develops, it is transferred to the womb of another wife of the husband who volunteers for this. This method was proposed by Sheikh Muhammad ibn Uthaymeen, may Allah have mercy on him, in the Islamic Fiqh Council of the Muslim World League during its seventh session in 1404 AH. It was initially accepted by the council, but later prohibited in its eighth session. This method occurs among Muslims, as polygamy is more common among them. (Al-Balu, 1987; Fatima, 2022)
3. The third form: In this case, the egg of a foreign woman (not the wife) is fertilized with the husband's sperm. This method is used when the wife is infertile, her womb is incapable of carrying a pregnancy, and her ovaries are not healthy. The egg donor may be the same woman who donates her womb, or it may be another woman. Thus, it becomes clear that it is not necessary for there to be only three parties in this process; rather, there may be more than three. (Hussein, n.d.)
4. The fourth form: A foreign woman donates an egg, and a foreign man donates his sperm, while another foreign woman donates her womb. This method is used when the wife is infertile with no hope of recovery or childbirth, and likewise the husband is infertile with no hope of having children. In such a case, they turn to a sperm bank to purchase a frozen embryo, and in agreement with the sperm bank or other companies specializing in surrogacy, they rent the womb of a foreign woman capable of pregnancy. After delivery, the couple receives the newborn as their own child. (Hamza, n.d.)
5. The fifth form: In this case, a woman donates her egg and a man donates his sperm, then the fertilized embryo is implanted in the womb of another woman who volunteers her womb. After the completion of the pregnancy and the birth, the child is handed over to them, and they consider the child to be their biological offspring. (Hussein, n.d.; Fatima, 2022)

Second Section: The Ruling on Surrogacy in Islamic Jurisprudence

The issue of surrogacy in its various forms is among the contemporary matters that have emerged in our present time. It is one of the issues on which earlier jurists did not provide a ruling. Therefore, contemporary scholars have clarified the legal ruling on this matter in its different forms, resulting in multiple fatwas in this field. Despite the diversity of their schools of thought and opinions, scholars have agreed on the ruling of some forms of surrogacy and differed on others, as follows: (Islamic Fiqh Academy, n.d.; Abdul Hadi, n.d.)

Muslim scholars in this era have unanimously agreed that the third, fourth, and fifth forms of surrogacy previously mentioned are prohibited and not permissible under any circumstances. This is because the man's sperm is foreign to the woman's egg, and the embryo is implanted in the womb of a woman unrelated to both, after which the child is handed over at birth to another woman who has no connection to the previous parties (the third form). This resembles adoption, which is strictly prohibited in Islam. It is because the husband's sperm is fertilized with the egg of another woman (a stranger to him), and the resulting embryo is then carried in her womb.

Alternatively, in the fourth form, the husband's sperm fertilizes the egg of a foreign woman, who then carries the fetus in her womb. This closely resembles adultery, were it not for differences in its legally defined form that would otherwise necessitate a prescribed punishment. As for the fifth form, its prohibition is also clear, since the man's sperm is foreign to the wife, and the womb owner is likewise unrelated to them. It is therefore similar to the fourth form, with differences only in the donating parties. These forms can be considered inherently prohibited, regardless of any additional prohibitions involved in the procedure or the harms and negative consequences they entail. The disagreement among scholars is limited to the first and second forms, with some permitting them absolutely, others prohibiting them, and some allowing them in certain cases but not others, as will be explained in detail below.

First Branch: The Views of Scholars on the Surrogacy

Jurists have differed regarding the first and second forms of surrogacy into three schools of thought:

The first view: Its proponents hold that both the first and second forms of surrogacy are prohibited. This is the position adopted by the Islamic Fiqh Academy in its third session held in Amman in 1986, the Islamic Fiqh Council in Mecca in its eighth session in 1985, and the Islamic Research Academy in Cairo in 2001. It is also the opinion of the majority of contemporary scholars. (Al-Sanbihli, n.d.; Qart, n.d.; Ghuybah, n.d.; Al-Shirbini, n.d.; Al-Qaradawi, 2009; Al-Khouli, 2011). Among those who hold this view are: Dr. Jad al-Haqq Ali Jad al-Haqq, former Grand Mufti and Shaykh of al-Azhar; Dr. Shaykh Sayyid Wafa, Secretary-General of the Islamic Research

Academy in Cairo; Dr. Ali Gomaa, former Grand Mufti of Egypt; Dr. Muhammad Sayyid Tantawi, former Shaykh of al-Azhar; Dr. Yusuf al-Qaradawi, professor of jurisprudence at Qatar University; Dr. Mustafa al-Zarqa, member of the Islamic Fiqh Academy; Dr. Muhammad Ra'fat Uthman, Dean of the Faculty of Sharia at al-Azhar University and member of the Islamic Research Academy; Dr. Ahmad ibn Abd al-Aziz al-Haddad, Grand Mufti in the Department of Awqaf and Islamic Affairs in Dubai; Dr. Abla al-Kahlawi, professor of jurisprudence at al-Azhar University; and Dr. Suad Salih, Dean of the Faculty of Islamic Studies at al-Azhar University, among others.

The resolution of the Fiqh Academy held in Amman states: "The first five methods are all prohibited in Islamic law and are absolutely forbidden, either in themselves or due to what they lead to, such as the mixing of lineages, the loss of true motherhood, and other legal concerns." (Islamic Fiqh Academy, n.d.; Al-Zuhayli, 2006; Al-Khouli, 2011). The Islamic Research Academy also stated: "It is prohibited to involve a third party in the process of pregnancy, whether the subject is sperm, an egg, or an embryo, and whether the third party is involved through renting, donation, or voluntary contribution." (Al-Khouli, 2011) This opinion has also been supported by some experts in medicine and law. (Ghuaybah, n.d.)

The second view: Its proponents hold that surrogacy is permissible in the first and second forms. This opinion, with conditions, was adopted by Dr. Abd al-Mu'ti al-Bayoumi, a member of the Islamic Research Academy at al-Azhar and former Dean of the Faculty of Usul al-Din, who set specific conditions for its permissibility.

Dr. al-Bayoumi states: "Surrogacy is permissible in Islamic law," considering that it resolves many problems faced by mothers suffering from infertility and helps preserve the cohesion of thousands of families threatened with disintegration due to childlessness. (Alarabiya, n.d.; Almotamar, n.d.; Sayidaty, n.d.; Ghuaybah, n.d.) However, he maintains that surrogacy is permissible only between spouses and is not allowed when used for commercial purposes. He outlined several clauses for a surrogacy contract, including: (Al-Khouli, 2011)

1. The surrogate mother must undergo the necessary medical examinations to ensure her good health.
2. The surrogate mother must be placed under continuous and complete observation throughout the pregnancy and remain under the supervision of the attending physician.
3. The surrogate mother must be of a suitable age for pregnancy and must commit not to marry if she is unmarried, or to abstain from her husband if she is married, throughout the duration of the pregnancy until delivery.
4. The surrogate mother must commit to carrying the fertilized egg throughout the pregnancy and to avoiding any effort that may negatively affect it.
5. The surrogate mother must acknowledge that the child she gives birth to will belong to (...) and (...), that she has no right to claim anything related to the child, and that she has no material or moral rights except for the financial compensation she receives for undertaking the process. (Al-Khouli, 2011) (Maktoob, n.d.; IslamOnline, n.d.; AZSS, n.d.)

This opinion has also been adopted by some Shiite scholars and supported by certain medical professionals. (Islamic Fiqh Academy, n.d.; Qart, n.d.)

The third view: Its proponents hold that only the form involving the co-wife's womb is permissible, to the exclusion of all others.

This was the opinion of the Islamic Fiqh Council in Mecca during its seventh session in 1404 AH (1985 CE), but it later retracted this view in its eighth session held in 1405 AH (1985 CE), due to the suspicion of lineage confusion arising from the possibility that the co-wife might conceive naturally from her husband. (Al-Khouli, 2011). Accordingly, this view was deemed invalid, and its proponents joined the first school, which holds absolute prohibition. Thus, the discussion of evidence will be limited to the first and second views, as follows:

Second Branch: The Evidence of Scholars on the Issue of Surrogacy

First: The evidence of the first group (those who prohibit): Those who argue for the prohibition of surrogacy rely on evidence from the Noble Qur'an, the Prophetic Sunnah, legal principles, and rational considerations. (Al-Khouli, 2011)

1. From the Noble Qur'an, they cite the verse: " **وَالَّذِينَ هُمْ لِأَفْوَاجِهِمْ حَافِظُونَ إِلَّا عَلَىٰ أَزْوَاجِهِمْ أَوْ مَا مَلَكَتْ أَيْمَانُهُمْ فَإِنَّهُمْ غَيْرُ مَلُومِينَ** And those who guard their private parts, except from their spouses or those whom their right hands possess, for indeed they are not to be blamed." (The Holy Qur'an Sura Al-Mo'minun:5) The point of evidence is that this verse clearly indicates the prohibition of surrogacy, because guarding one's private parts is absolute and includes protecting them from the involvement of another's private part, from another's fluid, or from what contains that fluid (the fertilized ovum). The addresser here includes both men and women equally, as in all legal commands. Accordingly, this

act carries a resemblance to adultery, and it is not excused by the fact that what is placed in the womb is a fertilized ovum rather than pure semen. (Dar al-Ifta, n.d.; Al-Azman, n.d.; Al-Khouli, 2011)

Those who permit surrogacy respond to this argument by stating that the claim of resemblance to adultery is not accepted, since fornication in Islamic law is defined as unlawful sexual intercourse, whereas what is placed in the surrogate's womb is not merely semen but has transformed into a developed fertilized ovum. The response to this is that the transformation of the man's fluid into a fertilized ovum does not negate its original nature as semen, which remains prohibited from being placed in a location other than what is lawfully permitted. Indeed, placing it even after fertilization with the wife's egg remains prohibited, akin to adultery; and were it not for the deficiency in fulfilling the full legal definition of fornication, the prescribed punishment would have applied. (Othman, n.d.)

From the Prophetic Sunnah:

It is reported from Ruwayfi' ibn Thabit al-Ansari that he said: He stood among us delivering a sermon and said: "Indeed, I only tell you what I heard the Messenger of Allah (peace and blessings be upon him) say on the Day of Hunayn: 'It is not lawful for a man who believes in Allah and the Last Day to water his seed into the crop of another.'" Meaning approaching pregnant women. "And it is not lawful for a man who believes in Allah and the Last Day to have intercourse with a woman from among the captives until her womb is cleared, and it is not lawful for a man who believes in Allah and the Last Day to sell spoils until they are distributed." (Abu Dawud, n.d.; Al-Tirmidhi, n.d.)

The point of evidence: This hadith clearly indicates the prohibition of surrogacy. If the woman whose womb is rented is married and her husband has intercourse with her after the embryo has been implanted, the fetus will be nourished by his fluid just as it is nourished by her through the placenta. The Prophet (PBUH) explicitly forbade this in the hadith. (Al-Suyuti, n.d.)

Those who permit surrogacy respond to this argument by stating that the contract requires the surrogate mother to abstain from her husband if she is married, and not to marry if she is unmarried; thus, the situation falls outside the prohibition mentioned in the hadith. (IslamOnline, n.d.)

Those who permit surrogacy respond to this argument by stating that a condition is included in the contract requiring the woman who lends her womb to refrain from sexual relations with her husband if she is married, and not to marry if she is unmarried. In this way, they argue, the situation is excluded from the prohibition mentioned in the hadith. This can be replied to by saying that the validity of the contract itself is not accepted in the first place, let alone the validity of such a condition. Even if we assume, for the sake of argument, that the contract is valid, this condition would still be invalid, because it unlawfully prevents the husband from his marital right of sexual relations with his wife (the surrogate mother). In fact, fulfilling this right may become obligatory upon him if he fears falling into what is forbidden, and preventing an obligation is itself unlawful. Anything that leads to something prohibited is also prohibited. We may also ask them: what consequences would arise for the woman if she fails to abide by this condition after the embryo has been implanted in her womb? Would this not inevitably lead to disputes and conflict, in addition to the possible mixing of lineage? (Al-Khouli, 2011)

From legal principles:

- 1- The legal maxim states: "The basic principle regarding sexual relations (al-abṭā') is prohibition." (Ibn Nujaim, 1999) Therefore, sexual relations are not permissible except through a valid marriage contract as prescribed in Islamic law. It is also known that the womb is considered subordinate to sexual relations. (Ibn Nujaim, 1999) The juristic principle says: "The subsidiary follows the ruling of the principal." (Othman, n.d.) Thus, just as sexual relations are not lawful except through a legitimate contract, likewise the womb remains prohibited from being used for pregnancy except that which results from marriage. Accordingly, it remains under the original ruling of prohibition.
2. The principle: "Preventing harm takes precedence over bringing benefit." (Al-Zuhayli, 2006)

The harm arising from surrogacy lies in the suspicion of lineage confusion, as the preservation of lineage is one of the five essential objectives protected by Islam, which prohibits everything that leads to its loss or harm. (Othman, n.d.)

This doubt arises from the possibility that the woman with the uterus may be married, in which case her husband's subsequent intercourse with her after the implantation of the embryo may directly lead to confusion regarding the origin of the fetus: whether it is a natural pregnancy from her husband or the result of the implanted embryo. (Islamic Fiqh Academy, n.d.)

This has indeed occurred in practice. In Germany, it was found through medical testing that the implanted embryo in a surrogate womb did not attach, and instead the woman became naturally pregnant from her husband. She was then forced to relinquish the child after receiving a payment of eight thousand dollars. She thus bore her own child and then gave it up. Moreover, medicine confirms the possibility that the

womb may transmit genetic traits to the fetus during pregnancy, in addition to the traits inherited from the sperm and egg of the biological parents. This inevitably increases the risk of lineage confusion. Islamic law aims to block the means to harm before it occurs, not merely treat it after it happens. (Al-Khouli, 2011)

The response to this argument is that it is not accepted that the womb transmits hereditary traits; rather, it is merely a container and incubator for the fetus. Accordingly, the claimed harm of lineage confusion is only hypothetical, and this view is supported by a number of physicians. The reply to this is that what the proponents of permissibility claim is not even agreed upon by medical experts themselves. (Alarabiya, n.d.; AZZaman, n.d.; IslamOnline, n.d.) The issue of whether the womb is merely a container or also a transmitter of hereditary traits remains a matter of debate and discussion among physicians. Indeed, modern studies have shown that DNA found in the nucleus is also present in the cytoplasm of the cell, and this portion of DNA is highly influenced by its surrounding environment, namely the womb. Therefore, the surrogate mother may contribute certain hereditary traits to the fetus, and many physicians support this view. (Al-Khouli, 2011)

3. The principle: "Whatever leads to what is prohibited is itself prohibited." (Al-Bakistani, 2002)

Surrogacy leads to prohibited outcomes, as it opens a wide door to disputes, conflicts, and disagreements. (Othman, n.d.; Al-Shirbini, n.d.; Qart, n.d.; Dar al-Ifta, n.d.) Reality attests to this in many cases that have occurred in the West. For example, a British woman who acted as a surrogate refused to hand over the child after birth to the American couple despite having signed a contract and received payment. The matter escalated to the courts and judiciary, where financial factors played a decisive role. (Islamic Fiqh Academy, n.d.) Global statistics have also shown a large number of disputes and legal cases concerning children born through surrogacy arrangements. In Islamic law, whatever leads to what is prohibited is itself prohibited. (Al-Khouli, 2011)

4. The principle: "There should be neither harm nor reciprocating harm." (Malik, n.d.; Abu Dawud, n.d.; Al-Bayhaqi, n.d.; Al-Daraqutni, n.d.; Al-Hakim, n.d.; Ibn Majah, n.d.)

Surrogacy leads to harm for the woman whose womb is rented, particularly on the psychological level. Psychologists, including Dr. Ali al-Harjan, a professor of psychiatry, affirm that the surrogate mother develops a sense that she is the child's mother, as she has endured the pains of pregnancy and childbirth. (AlKhaleej, n.d.; Sayidaty, n.d.) This is supported by the statement of a Lebanese woman who acted as a surrogate: "This cost me a great deal of psychological suffering and exhaustion. I felt as if I were living in two bodies: one for life and one for reproduction... I am the child's mother, yet the child belongs to a couple to whom I have no real connection." (Al-Khouli, 2011) (Othman, n.d.)

From rational considerations:

1. The womb is not something that can be lawfully given or made permissible. Whatever cannot be given or made permissible cannot be validly gifted, nor can it be leased, because leasing is a contract over a known, intended benefit that is permissible to give in exchange for known compensation. (Al-Shirbini, n.d.)
2. This method of fertilization necessitates exposing the woman's private parts, as well as looking at and touching them. The matter is that this is prohibited in Islamic law except in cases of necessity. Even if such necessity is accepted for the woman providing the egg, it is not accepted for the surrogate, as she is not the wife who is in need of motherhood. (Al-Khouli, 2011)
3. The surrogate mother must fall into one of two categories: either she is married, in which case the problem of lineage confusion arises, or she is unmarried, in which case the harm is even greater, as she exposes herself to accusations and slander. Moreover, carrying a pregnancy for others removes harm from the woman who provided the egg but imposes harm on the one who carries the pregnancy, as she does not benefit from the result of her effort (the child). The legal maxim states: "Harm is not removed by causing harm." (Al-Suyuti, n.d.)

These are the most important evidences of the first group, who hold the impermissibility of surrogacy in all its forms. As we have seen, their arguments are based on the Qur'an, the Sunnah, legal maxims derived from the general principles of Islamic law, and rational considerations. Before presenting the preponderant opinion on the issue, it is necessary to mention the main evidences relied upon by those who permit surrogacy.

Second: The evidence of the second group (those who permit):

Those who permit surrogacy argue based on analogical reasoning.

They draw an analogy between the surrogate mother and the wet nurse (the nursing mother), based on the similarity that both only provide nourishment to the child without transmitting any hereditary traits. Thus, they compare the woman who carries the fetus in her womb to the nursing mother, with the shared factor being nourishment without genetic transmission. They also cite the verse in which Allah says: "وَحَمْلُهُ وَفِصَالُهُ ثَلَاثُونَ شَهْرًا" And his bearing and his weaning are thirty months" as evidence that pregnancy and

breastfeeding are mentioned together in the Qur'an. (The Holy Qur'an: Sura Al-Ahqaaf: 15) They argue that the wisdom behind combining pregnancy and breastfeeding in this verse is to unify their legal consideration, as both are sources of nourishment for the child.

Based on this, they conclude that whatever is prohibited in natural breastfeeding should also apply to surrogacy, and vice versa, due to the shared nature of nourishment between the womb and the breast. Both involve feeding the child through substances derived from digested food within the mother's body, which are originally not palatable in taste. (Al-Sahmawi, 2013)

The fetus is nourished through the umbilical cord without any need for changes in taste, whereas feeding a child through the mouth requires a change in taste so that it becomes palatable, since it comes into contact with the tongue, which is the center of taste in living beings. This is based on the saying of Allah Almighty: "وَإِنَّ لَكُمْ فِي الْأَنْعَامِ لَعِبْرَةً لَتُسْقِيَهُمْ مِمَّا فِي بُطُونِهِ مِنْ بَيْنِ فَرْثٍ وَدَمٍ لَبَنًا خَالِصًا سَائِغًا لِلشَّارِبِينَ" And indeed, for you in the cattle is a lesson. We give you to drink from what is in their bellies from between excretion and blood, pure milk, palatable to those who drink it." (Qur'an Sura Annahl: 66)

There is a direct relationship between the growth of a pregnant woman's breasts and the growth of the fetus, as the development of the former is linked to the development of the latter, until the breasts are ready to take over the function of the womb in nourishment once the fetus is born as a child. Accordingly, if it is permissible for a woman to show kindness to a child who is not her own by breastfeeding him, and she may even be entrusted with his upbringing when he moves from his mother's care to the foster mother's household during the nursing period without any valid impediment, then it becomes conceivable that the womb of one woman may take the place of another whose womb is defective in carrying a fetus.

If transferring a child at an early age from his family to the family of a wet nurse is considered potentially harmful due to the human factor in shaping the child's personality and development, then pregnancy on behalf of another has no direct harmful effect on the fetus, because the dominant role during pregnancy is played by natural factors that are not subject to human will or intention. (Al-Sahmawi, 2013 (Abdullah, 1983; Othman, 2001) Thus, the combination of pregnancy and breastfeeding in a single period of thirty months has no interpretation except that the unseen wisdom of Allah has presented it in this form as a direct indication of the permissibility of surrogacy. It is also noted that Allah explicitly permitted breastfeeding from others despite it being a well-established necessity among Arabs and other peoples since ancient times, and it would have been sufficient not to mention it in the Qur'an to indicate its permissibility. Therefore, this emphasis may serve to reassure hearts when facing the issue of surrogacy and by analogy with breastfeeding. And Allah knows best. (Al-Sahmawi, 2013)

A group of physicians hold that Allah has linked pregnancy and breastfeeding together in many verses of the Qur'an, thereby unifying the ruling between them. (Hafiz, n.d.; Al-Sahmawi, 2013). Thus, whatever applies to breastfeeding also applies to pregnancy, on the basis that both are sources of essential nourishment for sustaining the fetus. Accordingly, renting a womb to sustain a fetus is lawful just as renting a breast for breastfeeding a child is lawful, by way of direct analogy. As for the juristic formulation, the medical reality, as confirmed by a specialist in obstetrics and gynecology, includes the following facts: the genetic formation of the fetus is exclusively determined by the husband, who provides the sperm, and the wife, who provides the egg. Once the egg is fertilized by the husband's sperm, it cannot in any way be fertilized again by any other sperm, because at the moment of fertilization the zygote secretes a barrier around itself that prevents the entry of any additional genetic material, thereby preserving its genetic structure. (Abdullah, 2005)

Furthermore, the womb does not transmit any hereditary traits, nor does it contribute to genetic formation; it functions only as an incubator for the fetus, protecting it and providing what it needs for growth. Therefore, there is absolutely no possibility of lineage confusion. In fact, the likelihood of a successful pregnancy in the biological mother is far higher than the likelihood of pregnancy in a womb transferred from another woman. (Al-Sahmawi, 2013)

This analogy has been responded to by stating that it is invalid; rather, it is an analogy with a significant difference, as there are several fundamental differences between the original case and the case being compared, as follows: (Majalisna, n.d.; Dar al-Ifta, n.d.)

1. The permissibility of breastfeeding was legislated out of necessity to preserve the life of an already existing being, namely the infant child. However, the benefit of the womb is not based on necessity in the same sense, as it is intended to bring a new being into existence, not to preserve the life of one that already exists. What is permitted due to necessity is limited to its specific scope, because necessity is assessed proportionately.

2. Breastfeeding does not result in the harm of lineage confusion, because the child's lineage is firmly established from the outset to its parents without doubt. In surrogacy, however, there is a potential suspicion of lineage confusion, so the two cases are not equivalent.
3. The breastfed infant can be sustained by alternative food if needed, whereas the fetus in the womb cannot survive without the nourishment it receives through the placenta from the blood of the surrogate woman.
4. The breastfed child is a fully formed human being with established rights; therefore, retaliation (qisas) or blood money (diyah) applies in case of unlawful killing. As for the fetus, such rights are not fully established, and only a compensatory payment (ghurra) is due in case of miscarriage.
5. The effective cause (‘illah) is “nourishment,” which is a clear and well-defined attribute in the case of breastfeeding, as it is regulated by the condition of fullness or a specific number of sucklings, depending on the differences among jurists. However, the effective cause in the case of the benefit of the womb is not well-defined or regulated. Therefore, one of the essential conditions of a valid legal analogy is not fulfilled, and the analogy becomes invalid. Furthermore, leasing in general was legislated as an exception to the original rule, which is the ownership of both tangible assets and their benefits together. Anything that is established contrary to the original rule should not be expanded through analogy; rather, it must be restricted to the specific cases mentioned in the textual evidence. Accordingly, it is even more inappropriate to extend analogy based on the ruling of hiring a wet nurse to the case of surrogacy. This view is based on considering the effective cause in breastfeeding as general nourishment or feeding. However, if the effective cause is considered to be milk itself, as held by the Maliki school and some Hanafi scholars, then the analogy becomes invalid, because the cause (milk) is not present in the new case. (Al-Kuwaitiyyah Fiqh Encyclopedia, n.d.; Al-Zuhayli, 2006). Thus, no valid analogy can be made. In this way, the argument falls outside the scope of valid legal reasoning due to the invalidity of analogy from all aspects.

Third: The preponderant opinion

After presenting the evidences of both groups and their responses, it becomes clear that the stronger view is the one that holds the prohibition of surrogacy in all its forms. This is due to the strength and soundness of its evidences in preventing the practice, and the absence of any strong opposing proof capable of refuting them, in addition to the weakness of the evidences of those who permit it and their susceptibility to criticism. In particular, the analogy upon which permissibility is based has been shown to be invalid; therefore, it cannot be relied upon. And Allah knows best.

Conclusion

Through our study of the topic of surrogacy and the opinions of contemporary jurists regarding it, we have reached the following conclusions:

1. Surrogacy is not permissible, whether for compensation or as a donation, due to the resulting confusion of lineage. It also raises the problem of determining the true mother, because of the multiplicity of motherhood: a mother by womb, a mother by genetic material, and a mother by breastfeeding. Thus, a person may one day say: this is my brother by womb, this is my genetic brother, and this is my brother by breastfeeding.
2. Reproduction through surrogacy reduces the woman carrying the child to merely a tool or device whose only function is pregnancy and childbirth. The process becomes similar to a form of “temporary borrowing” of the female body to satisfy the desires of others. It may even turn into commercial exploitation of the woman's body, thereby leading to the exploitation of the surrogate mother by the commissioning couple.
3. These procedures turn the child into a commodity or object, as the surrogate mother delivers the child immediately after pregnancy and childbirth to those who hired her.
4. This issue is based on several legal principles and questions, including: the principle of blocking the means (sadd al-dharā’i’), the principle that the original ruling regarding sexual organs is prohibition, the question of whether surrogacy can be analogized to breastfeeding, and whether the womb can be considered a subject of contract.
5. The ruling on surrogacy is that it is prohibited in all its forms.
6. It is noted that disagreement regarding lineage still exists among jurists: some consider the true mother to be the woman who carries the child, others consider the mother to be the woman who provides the egg, while a third group does not attribute motherhood exclusively to either.
7. A child born through surrogacy is prohibited (mahram) to both women involved and to their ascendants and descendants, because one of them is the biological mother and the other is

considered a mother in legal effect, regardless of the juristic disagreement in determining the true mother.

8. The womb holds a great sanctity in Islam and is not a subject for commodification or misuse. Surrogacy constitutes a violation of human dignity, as motherhood has taken on a commercial character and has become a commodity bought and sold due to the spread of specialized agencies that have turned wombs into a commercial market, whereas they were previously surrounded in all religions and customs with sanctity and respect.
9. Those who permit surrogacy have stipulated conditions and relied on evidences that cannot be considered strong enough to support its permissibility.
10. Surrogacy is not a solution to a problem; rather, it creates many other problems, including confusion of lineage.
11. Surrogacy leads to disorder in determining motherhood and may result in disputes over the child in some cases and situations.

Recommendations:

1. It is necessary to reconsider legal texts that grant legal protection to the marital relationship and the family bond, in order to prevent the spread of surrogacy practices, which have contributed, according to this view, to the emergence of sexual deviance and unlawful relationships. It is also important to expedite the enactment of legislation capable of addressing these emerging medical issues so as to prevent moral decline in society.
2. Islamic jurists and scholars should establish principles and guidelines for evaluating modern scientific developments and for addressing surrogacy as one of the contemporary medical issues within the framework of Islamic rulings (permissible and forbidden), so that Muslims are aware and informed about the matters surrounding them.
3. A specialized juristic committee should be established within advanced medical centers specializing in artificial insemination. This committee would be responsible for providing religious advice and necessary ethical guidelines for such medical procedures, and for enforcing strict oversight to ensure the competence of doctors and staff, in order to prevent lineage confusion. This should be done through specialized committees composed of reproductive medical experts, in addition to requiring official licensing for such centers.
4. It is necessary to introduce the subject of medical law in Islamic institutes and universities. It is also important to publish books and journals that include major juristic opinions on various issues, such as surrogacy, and to distribute them widely among the public.

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