

Surrogacy and Infertility in Islamic Culture: Psychological, Ethical, Socio-Cultural, and Religious Issues

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Infertility's effects on people and its psychological, emotional, and social ramifications are complicated issues influenced by various factors. According to research, most infertility cases can now be related to a physiological condition in the male or female. The way of life in Islam is Shariah, of which medication is an essential component. The Prophet (S.A.W.) laid the groundwork for a medical tradition that looked at people as a whole, spiritually, psychologically, and physically, all within the context of their social environment. Children are seen as Allah's great and blessed gift in Islam, as the Prophet (S.A.W.) defined marriage as half of the religion. Despite the significant occurrence of male infertility, infertility is commonly thought to be a woman's issue. As a result, the impact of male infertility in Middle Eastern countries is severely underappreciated and perhaps under-reported. Medical intervention is consistent with Islamic tradition; Islamic codes of ethics make no theological objections to an infertile couple seeking medical therapy for infertility.

INTRODUCTION

Surrogacy has been a contentious topic for a long time. Surrogacy is prohibited and considered adultery (zin) by many contemporary Muslim scholars, who cite numerous verses of the Holy Quran and the Sunnah of the Holy Prophet Muhammad (S.A.W.) to state that such a method is contrary to the Lawgiver's intention. Although surrogacy and the process of doing so do not fall under the definition of zin, declaring surrogacy procedures to be adultery and the resulting kid to be illegitimate without considering the essential notions will dilute the true spirit of Islamic law and jurisprudence. We all know that biomedical issues relating to personal laws, particularly those about human sexuality and infertility, have been hotly contested for a long time. However, specific concerns are still new and controversial, such as surrogacy, or "hiring a womb" to overcome infertility through artificial means, which poses a challenge to bioethicists and current theologians and jurists. These challenges make it difficult to determine other religions' ethical and moral principles, including Islam because they have their objections to these issues. As a result, surrogacy and the status of the surrogate mother are topics that require in-depth investigation from the standpoint of Islamic law, concerning Shariah's primary aims and those of other world faiths, as well as biomedical and biotechnological norms.(Dayan, 2017)

BACKGROUND

According to the Prophet Muhammad (S.A.W.), marriage is "half of faith" (al-zawaj nif al-iman). In Islam, marriage has two fundamental purposes: acceptable sexual delight and procreation. Children are thus seen as a magnificent and blessed gift from Allah in Islam: "Wealth and children are an ornament of the world's life". In Islam, procreation is seen as an inalienable right; it is one

of Islamic law's five primary aims (zaruriyat), alongside preserving religion, property and self, mind. "Marry women who would love you and give birth to numerous children," the Prophet Muhammad stated, "because I shall take pride in the vast number of my Ummah on the Day of Judgment." (Rabia,2013)

According to Islam, Allah's will determines both the reproduction of offspring, whether males or females, as well as infertility: "Allah is the only one who has authority over the sky and the earth. He creates what he desires (and plans). He bestows male or female children according to His Will (and plan), or He presents both men and females, leaving whom He will barren: because He is clever and powerful." 1st. The Qur'an mentions two Prophets, Ibrahim/Abraham and Zakariyya, who had trouble bearing children at first but eventually succeeded.

These instances demonstrate that, while married couples may not be capable to produce babies right now, they may be able to do so in the future, despite their problems, if Allah's will be done. If one is confident that conception is impossible after exhausted all authorized avenues of medical assistance, one should recognize that this is Allah's decision since only He can initiate conception. Religion continues to have a profound meaning in Muslim countries, influencing behavior, rituals, and policymaking. (Serour, 2008)

Fertility is an issue that is extremely important in today's culture. Infertility, defined as a decreased or complete inability to create children in either gender, is not as permanent as sterility. Infertility in women can be caused by hereditary issues such as a blocked or nonexistent fallopian tube, failure to ovulate, an allergic reaction to the proteins in sperm, or even ovulation during a period when sexual activity is prohibited. A woman's fertility is essentially non-existent when she is born without a uterus.

According to WHO estimates, infertility affects eight to twelve percent of couples between the ages of 15 to 49 globally. As a result, infertility has become a global public health issue affecting almost 80 million individuals, with Muslims responsible for more than half of those affected. Ten to fifteen percent of married couples in Middle Eastern countries are expected to experience infertility. According to anthropological research conducted by Inhorn (Inhorn,2012), infertility is more common in men than women in childless Middle Eastern marriages, contrary to popular belief. Inhorn examines assisted reproduction couples' marital, moral, and financial obligations, exposing how modern technology is altering their lives and religious sensitivities. She also looks at the evolving manhood of spouses who go on international "egg hunts" to support their barren wives in the face of war and economic insecurity. (Inhorn,2012)

CONSEQUENCES IN SOCIAL, CULTURAL, AND PSYCHOLOGICAL ASPECTS

In most people's lives, having children is inescapable. There can be various psychological, emotional, and cultural effects when couples are unable to produce children. Today, almost 80 million people on our globe are childless by choice. Infertility affects about 5% of married couples in the developed world. A variety of physical variables influences the impact of infertility on individuals. Children's social and psychological relevance, on the other hand, varies from society to civilization and from time to time. Childlessness is a significant difficulty in most cultures, causing a tremendous deal of sorrow and having numerous severe social effects, particularly for women. Because childlessness is culturally defined in various ways, treatments and solutions must be tailored to the socio-cultural environment. (Van, 2004)

According to a study, most infertility cases can now be related to a physiological cause in the man or woman. Women have a physiological condition one-third of the time, males have a physiological condition one-tenth of the time, and both spouses have a physiological condition one-tenth. In ten to twenty percent of instances, the etiology of infertility is unknown. While the causes of infertility are nearly solely medical, the associated suffering, often exacerbated by

infertility therapy's physical and emotional rigors, can have a substantial psychological impact. Disappointment, grief, depression, anger, frustration, and a loss of self-esteem, confidence, and control over their future are common feelings experienced by infertile couples. Infertile couples are more likely to experience anxiety-related sexual dysfunction and other marital problems.(Miller, 2009)

Having children is anticipated in Middle Eastern communities, and not having children lowers one's social status. If a couple does not have children, they do not fulfill societal expectations and benefit from their parents' higher social position. When a pregnancy does not materialize, both men and women suffer psychologically due to this predicament. In most situations, the postulated causes of reproductive issues have gender-specific effects. Women's psychological load significantly increases when they are blamed for their inability to conceive. For males, having children is a public display of masculinity that results in social recognition of their manhood and thus legitimizes their feeling of dignity. As a result, not having children has a negative impact on their understanding of honor. The fact that men cannot maintain the patrilineal family line affects their psychological burden.

TRADITIONAL BELIEFS ABOUT INFERTILITY

Even though male infertility is frequent, it is often assumed to be a female issue. As a result, in many countries, the extent of male infertility is grossly underestimated, and the problem is under-reported (e.g., hidden). Childlessness is not treated as a "sensitive private matter" in Middle Eastern societies. It can become a source of community gossip and a source of interpersonal sorrow for the couple. Infertile couples are shunned or punished, cursed, and abused, and as a result, their self-esteem suffers. Women's infertility can lead to divorce, polygamy, social separation, loneliness, and depression. Moreover, infertile Muslim women are considered a menace in the Middle East as a possible source of harm to other people's children. According to the notion that jealousy might cause her to cast an evil eye on other people's children. As a result, fertile women who are concerned about the safety of their infants may avoid her. Worrying that their husbands will take another wife, infertile women face a bleak future. A childless lady's home is said to be cursed and is therefore avoided; it is never utilised as an informal gathering place for ladies.(Rabia, 2013)

She is generally referred to as "God's cursed" or a "victim of witchcraft or sorcery." Some childless ladies believe they have no place in Islam or their communities. Anxiety, grief, fear, domestic abuse, economic deprivation, and polygamy are common among infertile women, and they may require life-saving medical intervention. When a man marries a new (e.g., second) wife, he usually does not divorce her childless, like in Arab-Bedouin societies. There could be other factors at play here. The initial marriage could be a Badal (exchange marriage), designed to fulfill reciprocal Arab-Bedouin tribal obligations while protecting tribal honor from unmarried women. Another possible explanation is that the childless wife falls pregnant after 5–10 years. She helps her co-wife and shares household tasks during her years of infertility, and her participation is vital and respected in society. If the new wife bears children, primarily male progeny, the position of the child-bearing lady will rise above that of the childless wife.

SURROGACY, SURROGATE MOTHERHOOD AND LEGAL ISSUES:

Surrogacy mothers and assisted reproduction technologies are not new topics in Islamic law. Various verses of the holy Quran make the preservation of genealogy and the procedure for doing so very plain. On the other hand, Jewish law, as seen by the compositions of law in the Jewish system, strives to deal with challenges in its unique way, and Christian law is no exception. In secular and technologically advanced states, there is widespread concern about medical professionals' irresponsibility in placing fertilized embryos in the incorrect wombs and assigning fetuses to the wrong tickets. What may be done in such circumstances, which not only result in disagreements but also in litigation, with grave consequences? Several instances were filed in

various nations, but two well-known cases concerning parentage in the United Kingdom can be cited as examples. Other situations where the surrogate mother decides to keep the kid and seeks custody of the minor because she has a stronger claim to the child than the biological parents. Such problems have arisen in both secular and Islamic countries, such as Pakistan. However, there is currently a significant deal of worry over the legitimacy of surrogate motherhood. It is being discussed under the purview of Islamic law, with the surrounding morality rules and Shariah aims. (Dayan, 2017)

SURROGACY AND ISLAM

Since the mid-1980s, surrogacy has been a complicated matter from a Shari'ah standpoint, and it continues to be so. In Islam, it is typically regarded impermissible. This topic was first addressed in 1404 H/1985 CE at the Muslim World League's Islamic Fiqh Council's seventh session. The Council allowed zygote fertilization only among married couples under particular conditions the following year. Further, it reversed its previous position on surrogacy between co-wives of the same husband (Mubarak, 2014). Surrogacy could be acceptable only between married couples and in specified situations, according to the Fiqh Council of the Organization of Islamic Conference (OIC) in 1986. Despite these two renowned fiqh councils' restricted opinions, some Muslim scholars have argued for surrogacy, which requires further study.

IS SURROGACY PERMISSIBLE IN SHARIAH?

Surrogacy is a procedure in which a woman carries a couple's sperm and ovum in her womb to give the intended parents a child. Traditional surrogacy and gestational surrogacy are the two most prevalent types of surrogacy. In conventional surrogacy, the surrogate mother carries her ovum, fertilized by sperm of the future father. As a result, the surrogate child shares genetic ties with the surrogate mother and the intended father. On the other hand, the intended parents donate both the ovum and the sperm in the gestational version of surrogacy. The surrogate carries the donor ovum and sperm in her womb before giving birth to the kid. The infant is genetically linked to the ovum and sperm donors but has no connection to the surrogate "mother."

Although most experts feel surrogacy is completely prohibited in Islam, a few academics have argued in favor of it. They reasoned that Qur'anic passages that reference pregnancy do not preclude surrogacy. Second, proponents of surrogacy believe it is permissible in Islam, much like "wet-nursing." The surrogate mother nourishes the kid through surrogacy as the foster mother did by breastfeeding and providing food. As a result, they don't see a difference between surrogacy and wet-nursing, and legal decisions should be the same in both circumstances.

IMPERMISSIBILITY OF SURROGACY: THE EVIDENCE

The main reasons were based on the passages al-Muminn: 5–7 and al-Ma'arij: 29–31 of the Qur'an, which indicates that Muslims must keep their virginity. 6 According to the verses, insemination of one's sperm into another woman's uterus, unless it is one's wife, is a contravention of the Quranic commandment. Similarly, al-Nal: 72 adds, "And Allah has made for you mates (and companions) of your kind, as well as sons, daughters, and grandchildren..." This means that Allah (S.W.T.) produced offspring through marriage "out of them" - the women - rather than "out of others" (surrogates), meaning that surrogacy out beyond marriage is prohibited in Islam. In addition to the Qur'anic prohibitions, there are also scientific and rational considerations in favor of surrogacy restrictions. First and foremost, there is a significant likelihood of lineage mixing. Surrogacy in a polygamous relationship, i.e., between co-wives where one co-wife supplies the egg and the other co-wife carries it as a surrogate mother, was already validated by the OIC Fiqh Council in an earlier meeting. The Council invalidated it even between co-wives after evaluating multiple cases due to the substantial risk of lineage mixing. For example, a lawsuit was presented to the committee in which the surrogate gave birth to twins, resulting in a disagreement over the newborn child's lineage. 8 Due to the existence of gharar, it is by definition a void agreement from a legal and contractual standpoint (uncertainty). Gharar is used in contracts in which the items are unknown, and there is a chance of failure.

In this scenario, as in Judy Stiver and Alexander Malahoff, there is no guarantee that the surrogate will live until the kid is delivered or that the infant will be healthy and sound. Judy Stiver agreed to be the mother of Malahoff and his wife's child. When the baby was delivered, it was revealed to have microcephaly. It is a disorder in which the head is smaller than usual, indicating mental disability or underdevelopment. Both parents renounced the child.

Furthermore, following delivery, the child is very likely to disagree with both mothers regarding their bond. What role should the other mother play, and who should she view as a mother? This could jeopardize the child's mental health, and the surrogate mother, who carried him during the pregnancy and formed an emotional attachment with him, now faces the potential of relinquishing the child. Doctors now believe that depression is a form of harmful exposure for the unborn child. In surrogacy, the carrier's mental health must be considered, as depression causes significant harm to the fetus, something the intended parents would never want. According to Christina Chambers and her colleagues' research, women who take fluoxetine during pregnancy are more likely to have babies with three or more minor congenital disabilities. Another group of researchers from Massachusetts General Hospital discovered similar results. As a result, surrogacy should be considered unacceptable to protect the fetus from suffering more harm (sadd al-dharah). Surrogacy, whether paid or voluntary, is regarded by the majority of academics as illegal. Paid surrogacy is now widespread in the West. Yet, it is prohibited in Islam as a "worse evil." The Shariah forbids using or renting a person's private parts or uterus unless there is direct Shariah proof. Surrogacy is regarded unlawful because there is no specific scriptural evidence to support such a claim.(Mubarak,2014)

CONCLUSION

Surrogacy has been rated by some Muslim scholars based on the traditional definition of zin (adultery) because they believe it contains elements of unlawfulness. In contrast, others have placed it based on Shariah's objectives to protect one's dignity and honor because the legitimacy of lineage purity has not been established. However, we conclude that surrogacy is not zin since it lacks crucial requirements based on convincing data. Islamic law encourages the preservation of the human species, which is one of Shariah's primary goals. Indeed, nothing in the text prohibits such action. Similarly, there are sufficient evidence and classical writings in Islamic literature to support such a method of infertility treatment. As a result, this study claims that surrogacy and surrogate mothers do not fall under the technical definition of zin because one of the critical ingredients of zin is sexual intercourse. As a result, surrogacy and surrogate parentage may be regarded lawful if specific requirements are met following Islamic law and jurisprudence. It provides vital assistance to disillusioned infertile couples through assisted births.

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