

Surrogacy — An Islamic Perspective

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Abstract

From the scientific and technological point of view, we are living through a reproductive revolution in which alternative means of reproduction are now available. Surrogacy is one of these alternatives and takes on different forms. In Islam the only legitimate pregnancy is that which results from the union of sperm and ovum of a legally married couple. New techniques of implanting the fertilized ovum, grown in vitro, in the uterus of the wife is allowed if the sperm and the ovum are those of the husband and wife during their life span, i.e., within the frame of matrimonial legitimacy. Thus a child delivered of a surrogate mother is the product of an illegitimate relation. Based on Islamic argument, I believe that the surrogate mother who carries the fetus through pregnancy and who passes through the experience of delivery is the child's legitimate mother.

Key words: Surrogacy, alternate reproduction, Islamic viewpoint

One of the main functions of marriage is procreation. Allāh says:

“And out of your consorts He created children and grandchildren for you and provided for you out of his bounty. Will they then believe in vain things and be ungrateful to Allāh's favours?”¹

Allāh instilled in us the desire to have children. They are described as the beauty of life.

Allāh says:
“Wealth and progeny are the beauty of worldly life.”²

However, the Qur'ān reminds us that the children are a grant from Allāh. There will be those who may not be granted this gift. Part of the piety of the heart is to accept the will of Allāh and submit to it.

“To Allāh belongs the dominion of heaven and earth. He creates what He wills. He bestows females

upon whom He wills and bestows males upon whom He wills or He couples them in males and females and He leaves barren who He wills. For He is all knowledgeable, all powerful.”³

Based on that, we appreciate progeny. If we are afflicted by infertility we seek remedy, which is quite legitimate. The remedy should be one that may enable us to get children within the frame of a legitimate marriage, that is, when a marriage contract is in effect and when the source of offspring are the legitimate consorts.

Recently, surrogate motherhood has been advanced as a method for “alternative reproduction.” There are two types of surrogate motherhood:

1. A woman is solicited by a married couple to be impregnated by the husband's semen. After delivery the surrogate mother gives the child to the married couple. In this case, the baby will be the biological offspring of the husband and the surrogate “mother,” while being the legal offspring of the couple. The baby is biologically alien to the “legal” mother.
2. A husband and wife provide sperm and ovum but the wife can not or does not want to carry the pregnancy so they “hire” the womb of a surrogate. The in vitro fertilized egg/embryo is transferred into the womb of a surrogate mother and the baby is given to the couple after delivery. Surrogate mothers of either type get pregnant with

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the premeditated intention of giving away the child they will deliver. Since it is usually done for money, motherhood is reduced from a value to a price. Children become a commodity, subject to buy/sell rules and the supply and demand of the market.

Surrogacy is not acceptable in Islam on the premises that pregnancy should be "a fruit of the tree of a legitimate marriage."³ The consensus of the symposium, "Reproduction in the Light of Islam,"⁴ attended by medical and juridical Muslim scholars, was that the technology of in vitro fertilization and embryo replacement (into the genetic mother) is acceptable. The acceptability of the technique is, however, conditional on its performance within a family structure of husband and wife, during the span of their marriage, and without the intrusion of another party, through the provision of sperm, ovum, embryo, or uterus. Pregnancy otherwise achieved is illegitimate. By that definition "surrogate pregnancies" are illegitimate. For such a baby, the father is known, but the question is, which one is the mother? This question is important for the baby and for the mother, both for psychological as well as legal and financial considerations.

Is the mother the one who gave the ovum (in the second type of surrogate motherhood) or the one who carried the pregnancy and gave birth (in either type of surrogate motherhood)? As it was eloquently asked, "Who has the legitimate claim on the crop: the farmer or the seed merchant?"⁴ The separation of the womb relationship from the ovary relationship is a new event. Because jurists did not face this question in the past, contemporary jurists have to find an answer. Doctors and jurists, during that symposium,⁵ considered the following data in order to reach a conclusion:

1. In the Arabic language, the word for parents is derived from natality, "wīlādah". The verb "walada" means gave birth to. The father is "wālid" and the mother is "wālidah," the feminine form. Both parents mentioned in the dual sense is "wālidān" or "wālidayn." Both wālid and wālidah would mean the person who gave (or produced) the birth of a person.⁴ Although Allāh knows that we are related to both the ovary and the womb of our mother, the reference in the Qur'ān was always made to the womb relation, and it was repeatedly stated in the Qur'ān that our mothers are those women who gave birth to us:

"None can be their mothers except those who gave birth to them."⁶

One of the pseudo-intellectual authors several years ago was commenting on this Qur'ānic verse, considering it as ridiculously redundant! He was not aware that the time would come when the guidance

of this verse would be badly needed.

Allāh says:

"And we have enjoined on man to be good to his parents (his wālidayn), in travail upon travail did his mother bear him and in years twain was his weaning . . . (hear the command): show gratitude to me and to your parents (wālidayn), to me you shall return."⁷

"We have enjoined on man kindness to his parents (wālidayn) . . . in pain did his mother bear him and in pain did she give birth to him."⁸

By terminology and by description the mother is the one who gives birth.

2. In the Arabic language, "al-raḥim (and its plural "arḥām") means the womb (and wombs). However, al-raḥim is not only an organ where the embryo develops, it also refers to a value/concept of blood relations and the tie of compassion that binds them together (ṣilat al-rahim).⁴

Allāh says:

"And those related by arḥām (kindred by wombs) have prior rights against each other in the book of Allāh."⁹

Based on this concept, it can be derived that the raḥim (womb) represents the compassionate, intimate relationship between the fetus and the mother.

3. The last, but not least argument, in favor of the surrogate mother being the mother, from an Islamic perspective, is derived using allegorical deduction ("Qiyās") to "lactation fosterage," that is, brotherhood and motherhood attained through shared nursing. The in utero existence and development over a period of 40 weeks is definitely a more effective and far-reaching relationship than three breast feedings (sucklings of an infant) each one to satisfy, which could make a woman a mother, and make her sons and daughters brothers and sisters, to such an infant.

To discover certain knowledge and master a technology should not automatically legitimize its utilization. The technological advance is a tool that can be used for the betterment of life or to its detriment. Be it the release of atomic energy or the alternate ways of procreation, the guided heart and mind of a pious human being should direct the utilization of technology "to enjoin what is right and forbid what is wrong" as has been ordered by Allāh.¹⁰

References:

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2. Glorious Qur'ān, Chapter 18, Verse 46.

3. Glorious Qur'ān, Chapter 42, Verse 49-50.
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6. Glorious Qur'ān, Chapter 58, Verse 2.
7. Glorious Qur'ān, Chapter 31, Verse 14.
8. Glorious Qur'ān, Chapter 46, Verse 15.
9. Glorious Qur'ān, Chapter 8, Verse 75.
10. Glorious Qur'ān, Chapter 3, Verse 114.