

## Diverse conformations to espouse the mother's womb-decrees, inferences and dilemmas Islamic anhydrous

Ishtiaq Ahmed Gondal\*

Faiqa Imran\*\*

Romesa Mariam\*\*\*

### Objectives:

Progeny being a natural desire, is something that all forms of life believe in and yearn for. Therefore, we intend to discuss this subject in light of Quran, Hadith and Islamic laws. The study goals are:

- To understand the process and different genres of surrogacy.
- Historical background of human artificial insemination.
- Surrogacy in the light of Quran and Hadith.
- Views and rulings of Islamic scholars.
- Social implications of surrogacy.

The implications of different conditions and situations during the process have also been highlighted and questions regarding the child genealogy have been tried to answer. Pedigree also poses a serious concern.

Allah Almighty has blessed man with thousand of his benisons, one of which is posterity. Progeny is an object of one's affection. One perceives complacency to have them. All blithes subsist only because of them. A man doesn't feel lumber while doing economic struggle for his posterity. This is a divine law; that to some people, Allah confers the ability to spawn while He deprives many of them from this blessing because of the crucible effects and prudence.

As said in surah AS-SHURA;

﴿لِلَّهِ مُلْكُ السَّمَوَاتِ وَالْأَرْضِ يَخْلُقُ مَا يَشَاءُ يَهَبُ لِمَنْ يَشَاءُ إِنَاءً وَيَهَبُ لِمَنْ يَشَاءُ الذُّكُورَ أَوْ يُرْوِّجُهُمْ ذُكْرَانًا وَإِنَاءً وَيَجْعَلُ مَنْ يَشَاءُ عَقِيمًا إِنَّهُ عَلِيمٌ قَدِيرٌ﴾. (١)

“To Allah belongs the dominion of the Heavens and Earth; He creates what He wills. He gives to whom He wills female [children], and He gives to whom He wills males. Or he makes them [ both] males and females, And He renders whom He wills barren. Indeed He is knowing and competent.”

Despite of all this; to have off- springs is such covet for which man is ready

\*Associate Professor, Sheikh Zayed Islamic Centre, Punjab University, Lahore, Pakistan.

\*\*BS. Islamic Studies, Sheikh Zayed Islamic Centre, Punjab University, Lahore, Pakistan.

\*\*\*Lecturer (Visiting) Sheikh Zayed Islamic Centre, Punjab University, Lahore, Pakistan.

to make every feasible procuration. Erstwhile, the oodles that were abate of this benediction, they used to foster a child of their relatives or of someone who does not even belong to them. But in the present age, many child descendant people are now able to have children because of the freak aberrant lush in the various tracks of medical science. Medical science has came out with the different trials and avenues to down scale esteem rate of childlessness, one of which is to espouse the mother's womb or to have it on paycheck.

It can be defined as

هو تلقيح ماء رجل(النطفة)بما امرأة (البويضة) تلقياً خارجياً فى وعاء اختيار ثم زرع هذه البويضة الملحقة(اللقيحة)فى رحم امرأة أخرى تتطوع بحملها حتى ولادة الجنين أو مقابل-(٢)

This method could be elucidate as “when the both man and woman are having healthy sperms and eggs respectively and women's egg is also on line, but either the woman is not having the womb in which embryo head ways, after the fertilization of egg or uterus is having any sought of frailty which is considered as a stumbling block in the development of embryo.”Then, by having sperms of such a man you can artificially outgrow them with woman's specimen and then can finally transfer it into the womb of another woman.

That woman is purposive to withstand all the miscomforts of pregnancy and its puerperal and then after its birth , she will hand over the child to its parents. In Arabic, الرحم الطئر، الرحم المستعار، مؤجرات البطن، الام البديلة، المضيفة، الرحم الطئر، الرحم المستعار، مؤجرات البطن، الام البديلة، المضيفة، الام بالوكالة various parlances can be used for it whereas in English it is termed as Surrogate mother, substitute mother, alternative mother and as rental womb too.(4)

### **Historical Flank:**

It all began in 1790 when the world experienced the first successful case of human artificial insemination.

- .In 1884, first artificial insemination using donors sperm; US Doctor William Pan coast inseminates a patient with sperm from one of his students.
- .In 1954, first successful pregnancy using frozen sperm.
- .In 1968, Robert Edwards and Co-workers in Britain fertilize human eggs in a test tube.
- .In 1971, first sperm bank was established on commercial basis in New York.
- .In 1977, first successful IVF pregnancy achieved, although no birth resulted.
- .In 1978, Louis Brown, IVF (test tube) baby, is born in England.
- .Sequentially, In 1980 and 1981, first live birth in Australia via IVF (2<sup>nd</sup> country in the world).Elizabeth Jordan Carr, first American baby to be conceived by the IVF, is born in Norfolk, Virginia (3<sup>rd</sup> country).

- .In 1984, first baby born from frozen embryo and first live birth from the donated egg.
- .In 1985, first successful use of the gestational carrier.
- One woman donated both her eggs and womb for this purpose. Her egg was infused with the sperm of the man and again inducted to her uterus. Next year she gave birth to a baby girl which was named as “baby-M”.

After this trial, over one million children have been produced by using this technique, thirty-five thousand of which belongs to America. (5)

There could be two possible prospects of donating a womb for the breeding of someone else egg;

- .either the woman donates it for the sake of human commiseration and doesn't receive any paycheck.
- .she donates it for a specific cause and demands a hefty outlay.

This business has adopted a lucrative form in the west and India. In America, you have to spend eighty thousand to one lac dollars in order to have a child by using this technique. Whereas, India is on the top of the index because here you can have the baby only by spending an outlay of fifteen to twenty thousand dollars. It is enumerated into the list of edifying industries. According to a solicit of 2011, a stake of 20 billion rupees had been invested in this industry. This posture has given India the Stratum of “CAPITAL OF THE SURROGATE WORLD”. (6)

### **Various Forms of the Substitute Mother**

"مؤجرات البطون" means there could be different possible situations to inseminate the egg of one woman by using the womb of another woman.

#### **Traditional Surrogacy:**

“A traditional surrogate is one who is artificially inseminated with the sperm of a man who is not her husband. The female companion in this situation is called “intended mother”.(7)

هي ذاتها الصورة السابقة ، ولكن تكون المتطوعة بالحمل هي زوجة ثانيه للزوج صاحب النطفة  
فتتطوع لها ضررتها لحمل اللقبيحة عنها(8)

The sperm of the man and the egg of the woman are artificially inseminated and are placed in the womb of the other woman who is also her wife. It is exactly alike the first situation.

#### **Geostational Surrogacy:**

A woman is incapable of reproduction. She is unable to produce egg. Any other woman can assist them so that the man's sperm and the substitute's ova are allowed to inseminate and fertilize in her ovary. It is termed as geostational surrogacy. (9)

- None of the sperm's and ova's is of husband and wife. Both are taken from the extraneous persons and are inseminated. After that they are

placed into the womb of the third woman. To achieve this goal, many sperm and ova banks have been established.

- Ova are of wife and the sperm is not from the husband. As the husband is not capable of reproduction and the wife is also not able to conceive although her egg is always on line. In this case, wife's ova and sperm of the choice from the sperm bank is inseminated and are placed into the second woman's womb.

### **Islamic Standpoint Pertain to Espoused Womb-Scholar's Verdict:**

If we talk about the vindication and conviction of espoused womb by keeping Islamic regulative teachings in front of us, it would not be difficult for us to evaluate that there are more dissensions in it than benefits. Basically, the process is malfunctioned in terms of moral, religious and legal prospects. In the subsequent lines we will deliberate on the conviction and vindication of espoused womb according to Islamic point of view.

### **In The Light Of Quran:**

Islam has made husband and wife the original channel for proliferating the human race and for this, conjugality is the first important legal condition.

As said in surah AN-NISA:

﴿يَأْتِيهَا النَّاسُ انْتِفُوا رَبَّكُمْ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَ خَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً﴾ (10)

"O mankind, fear your lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women."  
Allah has said in surah AL-BAQARA:

﴿نِسَاءً كُمْ حَرْتُمْ لَكُمْ فَاتُوا حَرْتَكُمْ أَنَّى شِئْتُمْ﴾ (١١)

"Your wives are a place of sowing of seed for you, so come to your place of cultivation however you wish".

According to this Islamic teaching pseudonym, the process of espoused womb proves to be a conviction.

### **According To Hadith:**

It is not licit for a man to inject his sperm into the vagina of some other person's wife and also not legitimate for him to irrigate the fetus of some other person's wife with his own sperm. It is absolutely not permissible in Islamic Shari'a that a person donates his sperm to a woman with whom he is not having a marital relationship.

As narrated by Ruwayfa bin sabit:

لا يحل لا مرى يومن بالله واليوم الآخر ان يسقى ماوه زرع غيره- (12)

"It is not licit for a man to be intimate with a non-native woman if he believes on Allah and the judgment day."

### In The Light of Legal Maxims:

legal maxim is *ابضاع* and *الاصل فى الابضاع التحريم* بضع

This means vagina or private sexual organ and is defined as:

“The actual Sothic relationship is illegal and it only becomes licit with wedlock.”

Allama wahba azzahili describes it as:

"والمراد بالقاعده : ان المرأة المقصودة للزواج الاصل فيها تحريمها على الرجال ويدخل فيها كل نواحى الاستمتاع بالمرأة"- (13)

Dr. Muhammad Raffat Usman explains it as :

"فلا دباح البضع الا بعقد زواج صحيح كما نص الشرع ، ومعلوم ان الرحم تابع للبضع-والقاعدة الفقهية تقول : "التابع تابع" فكما ان البضع لا يحل الا بعقد شرعى فكذلك الرحم شغله بحمل غير الحمل الناتج عن الزواج، فهو باق على اصل التحريم"- (14)

Means Private sexual organs (شرم گاه) are not licit without marital relationship. As it is proven by Islamic manual and we are well aware of the fact that womb is subordinate of vagina. , One more jurist maxim is [التابع تابع] which, means:

“The thing which is ancillary to another thing remains its subordinate in percept too.”

According to this, if vagina is not licit without legal wedlock, then on the basis of this ,the womb is also not legitimate. In short, womb is supposed to carry and nourish a child as a result of wedlock. Only in this case, its sanctity can be sustained.

### Maxim 2:

*مقدم على جلب المصالح* means to remove the vitiation supercede on achieving lucre. To have a baby by espoused womb also declares the conviction of pregnancy because it creates a strong skeptic feel of the conflate geneology. (15)

### In The Light of Scholar’s Verdicts:

Dr. Razi Ul Islam writes in this context:

“There are a lot of vitiations in lodging the womb. In Quran, the believers(men and women)are ordered to protect their private organs. The woman who nourishes the fertile sperm of a non-native man transgresses the order. In the same way, Islam has imposed the condition of wedlock on reproduction and pedigree. The woman, who gestates the sperm of a man in her uterus, is not having wedlock with him. That’s why Islam has emphasized to guard the pedigree, whereas by the use of this technique there comes a strong suspect of the intermixture of geneology.” (16)

### According to Dar ul Ifta, jamia banwariya, Karachi:

In this situation, for the further nourishment of the contingency obtained by the immix of sperms and ova, the womb of the non-native woman is used

which is not only an anomalous course but also interdict. It is compulsory to avoid getting off-springs by using such technique.(17)

### **OPINE OF THE INTERNATIONAL FIQH ACADEMIES:**

According to international fiqh academies, various forms of this process are actually interdicted.

#### **According to the decision of المنظمة الاسلامية للعلوم الطبية**

"بحرم استخدام طرف ثالث في عملية الحمل سواء كان الموضوع سائلاً منوياً أم بويضة أم جنيناً والطرف الثالث سواء عن طريق التاجير أو التبرع أو التفضل" - (١٨)

They have agreed upon this if there is any conflate by the third side, either it is sperm, egg, fetus and womb, in all of the above situations, the process remains illegal and it remains prosaibe if done for the morality or affection.

**In the 3<sup>rd</sup> cortege of the international Islamic Fiqh academy of Jeddah,** has declared all of the above situations illegal. They declared those situations legal in which the uterus is not used but the contingency is injected to the womb. (19)

**Under the supervision of world organization, islamic fiqh academy Makkah** (مجمع الفقهي الاسلامي مكة المكرمة تابع رابطة العالم الاسلامي), arranged a cortege (which was held on 28<sup>th</sup> rabbi us sani to 7 jamadi ul ula hijri / 1985).(20)

And According to the edicts of the Urdan (الجنة الطبية الفقيهه الدائمة فى الاردن), pregnancy in the posterior bellies is illicit. (21)

An infrequent notion is of Dr Abdul mutaa bayumi (member of مجمع البحوث الاسلاميه):

"This could be permitted on some specific conditions that the infusion of wife and husband is kept in the womb of another woman and she nourishes the fetus and then handover the child to his original parents. He deduced all the matter on fosterage and he also considers illegal to have paycheck on it". (22)

### **Decorum of Espoused Womb:**

If a man has two or more than two wives, one of which is sterile than, by getting the egg of this sterile woman and inseminating it with the sperm of the man into the test tube you can infuse it into the womb of the 2<sup>nd</sup> wife(healthy one).Contrary to this, if the egg is not healthy ,so, by getting the egg of the other wife and by repeating the same process, injecting into the womb of the sterile woman, What does Islamic Shari'a say in this regard?

Scholars of Islamic fiqh academy Jeddah term it prosaibe too.(23) Whereas in the 7<sup>th</sup> procession of Makah fiqh academy, they have given consent to take up this process but in the 8<sup>th</sup> cortege of regressed from it because they gave testimony that by doing such process there is a doubt of the conflate geneology.(24) But some scholars like Sheikh Ali Tantavi and Sheikh Badar ul Mutawalli Abdul Basit have made serenity in this

context.(25) However scholars of subcontinent have called this situation legal.

**Abdul Rehman Killani:**

If a man is having two or more than two wives, one of which is infertile. He thinks that there is no incommmodity by placing the immix of sperm and ova of infertile wife into the womb of fertile one. Because the geneology will perdure from his father.(26)

**Maulana Burhan uddin:**

If both are the wives of the single man, one from whom the ova is taken to infuse with the sperm and the other one in who's womb it is placed, only than there is a hap of plea.(27)

**Maulana Saif ullah Rehmani says in this context:**

If the wife is not able to conceive or she is not able to reproduce because of some medical reasons only than by getting the sperm and ova from the husband and the other wife, emulsion could be placed in the womb of the second wife.(28)

It is the only possible situation of making it a legal process otherwise there are a lot of dissensions in it.

Maulana Abdu Rehman kailani says:

If a woman is willing to donate her womb on wages on or loan, then there are a lot of problems like insemination and fulfilness of crave, all of which are illegal.

And once you chose a path of such prosaibe, it would lead you to the profound depth. We could not even imagine the smashes and scary sequels of all this. Legit forms can only be used in extreme helplessness with proper cautions. Otherwise, with the excess liberal use of legit forms, illegitimate forms always make their way.(29)

**Various Decrees and Dilemmas about the Different Situations of Espoused Womb:**

This is the Islamic Shari'a law that it specifies the limits and layouts for the proper check of any stagnant situation even before it came into existence. But if it occurs than it is very much important to confix the layouts in order to prevent its ruins. For example: Adultery is impermissible in Islamic Shari'a and there is a fixed punishment for the adulterer. But there are also sentences about pedigree, inheritance and various issues of fornicate child in Islamic law.

Depending upon this peculation, it is mandatory to discover the layout about the conditions and effects of new born in case of adultery. We will infer all the issues with the opinions of scholars and jurists about the various situations of the espoused womb. Scholars call artificial fertility impermissible on the basis of immix of geneology. That's why it is very important to have a look on its layouts in every situation.

### 1<sup>st</sup> Condition:

Sperm of the husband and egg of the wife are artificially inseminated and fetus is placed into the womb of another woman. This condition is licit. Determination of following layouts is important if such situation occurs:

- .As it is forbidden so, is there any implementation of hudood on the people who have done this or it is taken as penal (castigate)?
- .After birth from whom the geneology will run? Sperm donor? Or if the woman is married than his husband or if she is unmarried, what will be the order in such case?
- .Who is responsible for the maintenance of the espoused mother?
- .Who will be the real mother of the child? Egg giver or whom has given birth to the child?

### Hudood or Penals (حد يا تعزير):

It is mandatory to explain whether to espouse the womb resembles adultery? There are two opinions in this regard. Some scholars termed it equal to fornication. They confirm it as;

ان إدخال ماء رجل في رحم امرأة ليس بينها وبين الرجلنا هذا العمل يعتبر زنا . (30)

“If the sperm of a man enters into the vagina of the other woman without wedlock than this process is termed as adultery.

One group of the scholars termed it a mischief but didn't consider it infidelity. They give reasons of their persuasion as there is a big difference in adultery and artificial insemination in various aspects:

- Sexual hyphenation is mandatory in infidelity whereas in artificial insemination there is no sexual relationship, because this process takes place with the help of surgery in which sperms and eggs are infused and placed in the ovary where womb presents itself as food providing tool.
- In adultery, sperm and ova are infused in the sexual tract and then nourishment of fetus takes place in the womb but there comes a question of sanctity as the process takes place without wedlock.
- This process is different from infidelity in this regard that infidelity is not aimed for procreation but is aimed to gratify the sensual aspire. Whereas by this process, fetus is nourished for the desire of having off-springs.

On such basis, limit of adultery is not forced and despite of being sin and impermissible the process is not included in the category of infidelity but any penal could be imposed on it .(31)

### Altaf Hussain Langaryal explains it as:

We deduct this process on the basis of fosterage. In fosterage, a woman nourishes the offspring by giving milk, but is not able to transfer the inheritance features in the same way. The substitute mother plays the role of

an incubator by placing into the womb and provides the offspring food through her blood but cannot transfer the inheritance features. That's why to deduct this adultery is (قياس مع الفارق) deduction with a difference.(32)

Hence we have to understand this incurring this process infidelity either "hudoob" is imposed on it or penal (تعزير).there is no doubt that in term of credence of the aftereffects, it is outlawed. And this is a suspect of misconduct زنا. That's why according to Shari'a it is not considered as adultery and hudoob is not imposed on it but in credence of mischief's, penal must be imposed on it as it is more grotesque than infidelity.

### **Child genealogy:**

Between scholars, there is a difference of opinion, in ascribing the child's genealogy.

### **First group:**

Child genealogy will be with the sperm and eggs donating persons, because the child is their inheritor on basis of genes. Whereas, the substitutive mother is the one who provides food to the fetus. That's why she is supposed to have the rights upper than fosterage but the child will belong to the person who is donating the sperm.

### **Doctor Hashim jameel gives his opinion in this context as:**

بان الجنين بعد زرعها لن يستفيد من المستأجرة غير الغذاء، والرحم لا ينقل أياً بصفة وراثية، ولا يعمل إلا كحضانة للجنين تحميها وتمدهم بما يلزم من موهه . (33)

As after becoming fetus, the offspring is not taking anything except from the substitutive and the womb does not have the ability of transition of inheritance and does not have any role except nourishment.

### **Altaf hussain langryal describes it as:**

The woman whose womb is being used for pregnancy while the egg not being her own than both non-native egg and sperm were fertilize and placed in her womb. Hence, the genealogy of the husband of espoused one is not certified because he had not taken any genetic finger print from her husband that's why child genealogy and any outlay are also not proved.(34)

### **Second group:**

They have the opinion that if the woman whose womb is espoused is in wedlock, then the pedigree of the child will be from her real husband.

According to a hadith:

الولد للفراش وللعاهر الحجر . (35)

### **Maulana Abdu Rehman kailani has describes this issue with arguments:**

For example:

- Hinda's husband -----Umer
- Child born by artificial insemination-----Bakar

According to Islamic point of view:

- Bakar is Hinda's son who kept him in her womb and gave birth to him.

There are two affairs that resembles to Bakar's geneology:

- Firstly at the time of death Utba bequested Saad bin abi Waqas that the son of Zammah's basset, Abdul Rehman is from my sperm therefore you must take him in your custody. When Saad went to take him, the son of Zammah, Abd, said he is my brother and the child of my father's bond woman. They kept quarreling and came to Muhammad (p.b.u.h): "الولد للفراش وللعاهر الحجر" The baby is for the owner of the bed (ZAMMAH), and the share of the prostitute is the stone. Prophet SAW was well aware of the fact that Abdur Rehman is Utba's son but He declared him as Zammah whose basset was responsible giving birth to him.
- From the above example, BAKAR (newborn), is the son of umer (Hinda's husband), and not of Zaid(sperm donor)
- In the case of giving the womb on rent we are of the fact that sperm is of Zaid but according to the first example Bakar will legally be termed as Umer's boy.
- Zaid and his wife Jamila will not be termed as adulterers as the description of adultery is not candid.
- That's why no hudud will be imposed on them but they will remain quilters. (37)

But in the opinion of scholars if the substitute mother is unmarried then the child pedigree will be adjoined with her while doing deduction on adultery (ولد الزنا پر قیاس)

**المنظمة العلوم الاسلامية للطبيعة:**

واما اذا كانت المرأة التي حملت اللقيحة غير ذات زوج، فان مولودها لا ينسب الى اب، وانما ياخذ حكم ابن الزنا، وينسب الولد حينئذ الى امه ، لانه لا يوجد فراش صحيح ينسب الولد اليه . (38)

### **Maintenance of the substitute mother during pregnancy:**

The father is responsible for the substitute who fertilizes the fetus because it is credible that the child gets food from her blood and this sustention will start from pregnancy and will last till the birth, their paren is approved by this ayah of Quran

﴿ وَإِنْ كُنَّ أَوْلَاتٍ حَمَلٌ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَارْتُوهُنَّ أَجُورَهُنَّ ﴾ (39)

### **Ascertain of the real mother:**

Who will be the real mother of the child if the egg is of one woman and the womb is of another?

There is a strong difference of opinion in this situation that who will be able to call the real mother either the woman who gave the ova or the

woman whose womb is taken on the rent for the nourishment of the fetus. The woman who's ova is taken, child is a part of her and as she is termed as "root" in Arabic. Both demand that the real mother is one from whose egg child is born. We came to know about the real mother by these ayahs of Quran. The real mother is the one who kept the fetus in her womb and then gave birth to the off-spring.

Al-Nahl:

﴿وَاللَّهُ أَخْرَجَكُمْ مِنْ بُطُونِ أُمَّهَاتِكُمْ لَا تَعْلَمُونَ شَيْئًا﴾ (40)

And Allah has extracted you from the wombs of your mothers not knowing a thing.

Al-Mujadila:

﴿إِنَّ أُمَّهَاتِهِمْ إِلَّا اللَّائِي وَلَدَتْهُمْ﴾ (41)

Their mothers are none, but those who gave birth to them.

Al-Ahqaf: ﴿حَمَلَتْهُ أُمُّهُ كُرْهًا وَوَضَعَتْهُ كُرْهًا﴾ (42)

His mother carried him with hardship and gave birth to him with hardship.

The description of their altercation is as; first group: adjoins the newborn with the mother who bears the pain of gestation.

### First group:

is of the opinion that the woman who bears the pain of gestation will be the real mother of child, they give the argument

Arabic

Their mothers are none but those who gave birth to them.

Claim: here Allah Almighty restricts the motherhood with gestation, that's why the ayat proves to be incontrovertible and incontestable.(43)

﴿وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ﴾ (44)

### Claim: Allama Yusuf Al-qardhawi says;

ان الله تبارك تعالیٰ نسب المولود للوالدات بقوله (اولادهن) واعطى الوالدات حق ارضاع من ولدن ، ثم ان الله تبارك وتعالیٰ اطلق على الام اسم الوالدة، وليس حاضنة بقوله (لا تضار والدة بولدها)، والوالدة اسم فاعل بمعنى: التي تلد، فمن تلد هي التي منع الله ان يضارها احد بمولودها، اما صاحبة البيضة فانها لم تلد، وبالتالي لو تسمى والدة، فهي اذن ليست اما نسبية للمولود . (45)

Which means Allah Almighty called the newborn (اولادهن) their "off springs" and adjoined them with their mothers. Mothers are allowed to breast feed because the child is their progeny. Then Allah uses the noun of mother (والده) who gives birth and according to the saying of Allah Almighty (لا تضار والدة بولدها) which means the mother is the subject which comes from the verb "birth" (ولادة), whereas ova donor does not give birth to the child, that's why she is not termed as child's genealogical mother .

Surat Luqman: ﴿وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ إِحْسَانًا حَمَلَتْهُ أُمُّهُ كُرْهًا وَوَضَعَتْهُ كُرْهًا﴾ (46)

And we have in joint upon man (care) for his parents. His mother carried him, (increasing her) in weakness upon weakness.

Al-Baqara: (47) *وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ حَمَلَتْهُ أُمُّهُ وَهْنًا عَلَيَّ وَهْنًا*

Mothers may breast feed their children two complete years for whoever wishes to complete the nursing (period)

**Claim:** it becomes obvious that flicker or hardship is necessary for motherhood, whereas this attribute elicited to ova donor, whereas womb donator posses this attribute.(48) Maulana abdur Rehman kailani is of the same opinion.(49)

**Darul ifta, dar ul uloom dewband,U.P, india** gave the verdict that the child's genealogical mother will be the one who is responsible of bearing the pain and flicker of gestation.(50)

**Second group:** geneology will be from ova donor.

ينسب المولود إلى صاحبة البيضة أما المرأة المستأجرة التي حملته وولده في مثل أمالرضاعية .

لا يثبت لها النسب بليثتها كما لرضاع.(51)

Child will be adjoined to the ova mother and the mother who carries the child in her womb and gives birth to him resembles to the foster mother. Geneology will not be proved by her side but there will be the outlay of fosterage.

This group paren that the child has two sorts of relationships with her mother.

- . First is of the origin and inheritance(whose origin is ova)
- . Second one is birth and incubation (whose original source is womb)

In the following ayah, giving birth actually means to give birth from ova because it is the original source.

If the medical science thrives to this extend that it is able to prepare an artificial womb or it makes fertile human fetus in the womb of the animals then either the child will be adjoint to the artificial womb or animal?(52)

### **Second situation:**

Scholars called one more situation legit; if the insemination of sperm and egg is placed in the womb of the second wife then orders will be different. That's why by keeping in view all these points Islamic teachings will decide the outlays:

- . Child geneology.
- . Type of permission.

Scholars agreed at sperm giver will be the child father because both egg and womb donors are his wives. (53)

We have to keep one more thing in the mind; it is really not permitted by scholars of this rule (الضرورات تتبع المخطورات) means “necessities made licit things illicit.

If the necessities greater than these illicit things then the process will become legit. (54)

It is only permitted by keeping the reflex situation in mind that's why it will not be included in the common codifications.

### **Third condition:**

- . Sperm, egg and womb donor are non-native which is the most repugnant form of espoused womb.

### **First form:**

Egg and sperm of husband and wife are inseminated and are placed in the second woman's womb and after birth they are called as child's parent

### **Second form:**

For infertile couple egg and sperm of non native people are inseminated and then are placed in the womb of the wife for the nourishment of fetus.

In the above three conditions there is the strong intermixture of genealogy that's why if the espoused womb mother is married then the child is adjoined to her and her husband unless they will find a strong definite altercation in this regard.

if the woman is un married then the child is termed as "ابن الزنا" (adulterer boy ) and there will be no aptitude to adjoin him to the sperm donor(father).(55)

### **Conclusion:**

There is no doubt that to use the espoused womb is the cause of Islamic mischiefs, community mischief's and devilishment of the health. The relation of a child to his mother is on the basis of both egg and ovary. But if both are from separate woman, the relation remains incomplete. This is against in the natural laws, that's why it has become a cause of social and moral breakdowns, the woman who presents her womb on veggies instead of compaction her only purpose is the gain of materialism, due to which the great purpose of motherhood cumulus.

Whether the child born by this technique has proven genealogy but will always be having the suspect of pedigree and in the same way contagious genetic process leaves the psychological effects on him.

Ova donor will never be able to feel the strong love for the child because she has not felt the flickers of gestation. Although the permission of such process flattens the way of various mischief's. But if is permitted under special conditions and circumstances, it will never be able to achieve the universality because it is the demand of ingenuity.

### **Social Implications:**

Each year an increasing number of children are born through surrogacy and thus lack a gestational link with their mother.

Here we will discuss the impact of surrogacy on mother-child relationships, effects of surrogacy on society, both its positive and negative out – turns and children’s physiological adjustment.

### **Mother Child Relationships:**

Surrogacy is a solution for the couples that are considering a baby, but are facing infertility problems. After the baby is born, the intended people will adopt him and the surrogate mother will have to give him up. The relationship between the surrogate mother and the baby may vary from case to case. The intended parents will decide if the surrogate mother will be the part of child’s life.

Some intended parents will not accept the presence of the surrogate mother in their child’s life and may not even tell the child about the surrogate mother. This should be accepted by the surrogate mother. If she is first time surrogate, she may benefit of a few distancing techniques that will help her give up the baby more easily.

The intended parents may decide to allow the surrogate to keep in touch with the child, but this relationship should be less intensive than the relationship between the intended parents and the child. If chosen to be part of the baby’s life, the surrogate mother may play the role of an aunt. (56)

### **Effects of Surrogacy on Society:**

Surrogacy has challenged the traditional concept of family by taking out the act of procreation out of the realm of wedlock, and sphere of family by introducing a surrogate mother. Surrogacy has fragmented motherhood into three: competing women, the genetic mother and the social mother, and thereby challenges the paternity and concept of parentage.

Thus, surrogacy challenges the most fundamental or primary unit of society, family, the institution of marriage, social concept of parentage and relationships. (57)

Surrogacy makes motherhood a commercial service available on rent. It by its very nature presents a form of polarization in society by permitting the use of poor to produce children for economic advantage.

Surrogacy refers as form oppression and exploitation by one group of the group or class index the garb of producing children and construes social relationships, the status of women in society differently. It is viewed as a social problem. Challenging or changing the notions of family, marriage, parentage and means of attainment of parenthood. (58)

### **Pros and Cons:**

While Islam basically looks at surrogacy through the lens the Islamic scholars, it is also pertinent to look into the matter through a neutral social mind set, with the realization of surrogacy being a practice reality in the modern time. That’s why surrogacy has many positive and negative effect aspects.

**Positive Effect:**

- It allows infertile couples, single people and members of LGBT to become parents when they may not be able to have children.
- In most cases, it allows one or both parents to be biologically related to their children.
- It gives hopeful parents the opportunity to raise a child from birth.
- Surrogacy gives intended parents the opportunity to know and form a special bond with their surrogate.
- Surrogate enjoy a deep sense of personal satisfaction and pride knowing they have helped another family in such an incredible way.(59)

**Negative Effects:**

- The surrogacy contract involves to some extent the “sale of a self” which is morally questionable.
- Becoming a surrogate is also very difficult and may lead to physical and emotional problems.
- Surrogates may not have the complete information about all the implications and potential emotional and physical side effects of their decision when they sign the contract.
- Some women are exploited and forced into becoming surrogate mothers.
- Sometimes surrogates change their mind and want to keep the custody of children which may create legal problems.
- Surrogacy is usually very expensive, so most people cannot afford it. It contributes to social divides. (60)

**Child’s Psychological Adjustment:**

Surrogate born children are more likely to suffer depression than those carried by real mother. Children struggle to cope with the idea that they were carried by a woman other than their mother and they are not biologically related to the people bringing them up. Hence, they are more likely to display behavioral and emotional problems. (61)

## References

1. الشورى: 49-50
2. د. هند الخولي، تاجير الارحام في الفقه الاسلامي، مجلة جامعة دمشق للعلوم الاقتصادية والقانونية، جلد: ٢٤، شماره ٣، ٢٠٠٤، ص: ٢٤٤
3. ايضاً
4. <http://www.merriam-webster.com/dictionary/surrogatemother>
5. Theresa M.Ericksong, Surrogacy and Embryo ,Sperm and egg donation: What were you thinking, (I, Universe, Ink, New York Bloomington, 2010)pg:6
6. محمد رضی الاسلام ندوی، ڈاکٹر، رحم مادر کا اجرت پر حصول - اسلام کا نقطہ نظر، سہ ماہی تحقیقات اسلامی، مدیر: جلال الدین عمری، سید، جولائی - ستمبر ٢٠٠٣ء، جلد: ٣٢، شماره: ٣، ص: ٠
7. Charles P. Kindregan, Maureen McBrien, Assisted Reproductive Technology,(ABA,Publishers, USA,2006),Pg:130
8. محمد خالد منصور، الدكتور، الاحكام الطبية المتعلقة بالنساء في الفقه الاسلامي، دار لنفائس، للنشر والتوزيع، الاردن، ٢٠٠٤ هـ - ٩٩٩ ع، ص: ٠٠
9. Assisted Reproductive Technology, pg: 132
10. النساء: ١٠
11. البقرة: ٢٢٣
12. ابوداؤد، سليمان بن الاشعث، السنن، كتاب الزكاح، باب: في وطى اسبايا، رقم الحديث: ٥٨٠؛ بيت الافكار الدولية، عمان، ٩٩٩ ع، ص: ٢٣٥؛ الترمذی، محمد بن عيسى، الحب مع، كتاب الزكاح، باب: ما جاء في الرجال يشترى لجارية وهي حامل، رقم الحديث: ٣، بيت الافكار الدولية، عمان، ٩٩٩ ع، ص: ٢٠٠
13. وهبه الزحيلي، د، اصول الفقه الاسلامي، دار الفكر، ٢٠٠٤ هـ - ٩٨٠ ع، ٥٢ /
14. بحواله د. هند الخولي، تاجير الارحام في الفقه الاسلامي، ص: ٢٨؛ د- كريمة عبود جبر، استمجار الارحام والآثار المترتبة عليه، مجلة اجاث كلية التربية الاساسية، جامعة الموصل، جلد: ٩، عدد: ٠، ٢٠٠٣، ص: ٢٢
15. ايضاً
16. محمد رضی الاسلام ندوی، ڈاکٹر، رحم مادر کا اجرت پر حصول - اسلام کا نقطہ نظر، سہ ماہی تحقیقات اسلامی، مدیر: جلال الدین عمری، سید، جولائی - ستمبر ٢٠٠٣ء، جلد: ٣٢، شماره: ٣، ص: ٥
17. فتویٰ نمبر: ٠٩، بتاريخ: ٢ ستمبر ٢٠٠٩ء
18. عکس فتویٰ



33. الطاف حسین نگٹریال، عہد جدید میں کرایہ کی ماں سے متعلقہ مسائل شریعت اسلامیہ کے تناظر میں، ص: 289
34. بحوالہ۔ استخبار الارحام والآثار المترتبہ علیہ، ص: ۲۳۸
35. الطاف حسین نگٹریال، عہد جدید میں کرایہ کی ماں سے متعلقہ مسائل شریعت اسلامیہ کے تناظر میں، پاکستان جرنل آف اسلامک ریسرچ، جلد: ۳ دسمبر ۲۰۰۴ء، ص: ۲۷۸
36. بخاری، محمد بن اسماعیل، الحب مع الصحیح، کتاب الحاربین، باب للعاہر للحجر، رقم الحدیث: ۴۳۲، دار ابن کثیر، دمشق، بیروت۔ سن، ص: ۲۴۹۹
37. المنظریہ الاسلامیہ للعلوم الطبیئہ، ص: ۸؛ الاحکام الطبیئہ المتعلقہ بالنساء فی الفقہ الاسلامی، ص: ۴۰
38. کیلانی، عبدالرحمن، مولانا، انسانی پیدائش کے لئے مصنوعی تخم ریزی، ص: ۳۵
39. المنظریہ الاسلامیہ للعلوم الطبیئہ، ص: 168؛ الاحکام الطبیئہ المتعلقہ بالنساء فی الفقہ الاسلامی، ص: ۴۰
40. الطاف حسین نگٹریال، عہد جدید میں کرایہ کی ماں سے متعلقہ مسائل شریعت اسلامیہ کے تناظر میں، ص: ۲۸، عقد الاجارۃ بینا لظہر والاباحۃ، ص: ۲۲۸
41. النحل: ۷۸
42. المجادلہ: ۲
43. الاحقاف: ۵
44. الاحکام الطبیئہ المتعلقہ بالنساء فی الفقہ الاسلامی، ص: ۴۰؛ القرطبی، الجامع لاحکام القرآن، بذیل آیت: المجادلہ: 2، دار الکتب العلمیہ، ۹۹۸ء
45. البقرۃ: ۲۳۳
46. فتاویٰ معاصرہ، ص:
47. الاحقاف: ۵
48. لقمان: ۴
49. الاحکام الطبیئہ المتعلقہ بالنساء فی الفقہ الاسلامی، ص: ۵۰
50. کیلانی، عبدالرحمن، مولانا، انسانی پیدائش کے لئے مصنوعی تخم ریزی، ص: ۳۵
51. محمد اسد اللہ، مصنوعی بار آوری۔ صورتیں اور احکام، ماہنامہ دارالعلوم، مدیر: حبیب الرحمن، مولانا، اپریل: ۳، ۲۰۰۳ء، جلد: ۹۷، شمارہ: ۴، ص: ۲۹
52. قرارات الصحیح الفقہی الاسلامی بمکرمہ المکرمہ، ص: ۵؛ المنظریہ الاسلامیہ للعلوم الطبیئہ، ص: ۸؛ الاحکام الطبیئہ المتعلقہ بالنساء فی الفقہ الاسلامی، ص: ۴۰
53. کریمہ عبود جبر، استخبار الارحام والآثار المترتبہ علیہ، مجلہ: بحاث کلیہ التریبۃ الاساسیہ، جامعۃ الموصل، مجلد: ۹، عدد: ۲۰، ۲۰۰۳ء، ص: ۲۵۷
54. ایضاً
55. الاحکام الطبیئہ المتعلقہ بالنساء فی الفقہ الاسلامی، ص: ۲۰
56. سیوطی، جلال الدین، عبدالرحمن، علامہ، الاشباہ والنظائر فی قواعد و فروع فقہ الشافعیہ، مکتبہ نزار مصطفیٰ الباز، مکہ المکرمہ، الریاض، ۲۰۰۸ء، ص: ۹۹
57. الاحکام الطبیئہ المتعلقہ بالنساء فی الفقہ الاسلامی، ص: ۸۰
58. Surrogate Motherhood: Politics and privacy, larry Gostin, 1990, Pg: 45, 46.
59. Sociological understanding and implications of surrogate Motherhood in Indian Societies, Sonali Kusum, international research journal arts and education, V1, issue 2, November 2014.
60. Parenthood in modern society: legal and social issues for the twenty first century, John Eekelaar and Peter Sarcevic, Martinus Nijhoff publishers, 1993, V1, pg:520-530
61. Surrogacy was the way: twenty intended mothers tell their stories, Zara Griswold, Nigtingale press, 2006, pg:110
62. Cambridge checkpoint HSC community and family studies 2017-2019, Kate payner and Kelly bell, 2016, Cambridge university press, pg:98
63. Handbook of child's psychology and development science, socioemotional process, Richard M.Lerner, 1946, V1, Wiley publishers, pg: 525.