

Iran's experience with surrogate motherhood: an Islamic view and ethical concerns

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ABSTRACT

Gestational surrogacy as a treatment for infertility is being practised in some well-known medical institutions in Tehran and some other cities in Iran. While the majority of Muslims in the world are Sunni, the majority of Iranians are Shiite. Most Sunni scholars do not permit surrogate motherhood, since it involves introducing the sperm of a man into the uterus of a woman to whom he is not married. Most Shiite scholars, however, have issued jurisprudential decrees (*fatwas*) that allow surrogate motherhood as a treatment for infertility, albeit only for legal couples. They regard this practice as transferring an embryo or fetus from one womb to another, which is not forbidden in Shiite jurisprudence. Nevertheless, there are some controversies concerning some issues such as kinship and inheritance. The main ethical concern of Iran's experience with gestational surrogacy is the monetary relation between the intended couple and the surrogate mother. While monetary remuneration is practised in Iran and allowed by religious authorities, it seems to suffer from ethical problems. This article proposes that this kind of monetary relation should be modified and limited to reimbursement of normal costs. Such modification requires new legislation and religious decrees.

Infertility, defined as “the inability of a couple to conceive or carry a baby to term”,¹ and its increasing rates,² poses considerable challenges for many young couples worldwide as well as for their families and even societies.

This problem has its own set of specificities and implications in Islamic countries such as Iran, since most of them are developing and have traditional societies with their own cultural values.³ An important factor in this regard is the significance of childbearing among most Muslim (including Iranian) families. The inability to have a child may greatly distress the infertile couple and may even threaten their marriage.⁴ In some cases, though rarely, the inability of a couple to have a child may cause the husband or his family to consider a second marriage as a solution, bearing in mind that polygamy is permitted by Islamic law. This second marriage, however, may be a great misfortune for his first wife. Infertility may be used as a stigma in such societies and is an intolerable situation for most couples, especially those living in more traditional and conservative parts of the society or in lower socioeconomic classes. Consequently, such couples are eager to find a way to solve this problem and are willing to pay what it costs. Of course, owing to the lack of insurance coverage for infertility treatments, these costs are heavy and even unbearable for poor people. Although poor infertile couples usually seek financial support

from their families or other available sources, there are some who cannot afford such treatments. Keeping this background in mind, it appears that everything is in place for the development and growth of different methods of assisted reproduction. However, besides economic and financial limitations, the main obstacle confronting the widespread use of such technologies in these countries is religious opinions that prohibit certain kinds of procedures and technologies—for example, surrogacy in countries with mainly Sunni populations.

SURROGATE MOTHERHOOD

Surrogacy, or surrogate motherhood, is a method of assisted reproduction whereby a woman agrees to become pregnant for the purpose of gestating and giving birth to a child for others to raise. The most popular method of achieving surrogacy is the transfer of an embryo that is the genetic offspring of the future parents and has been created by in vitro fertilisation (IVF) into the womb of the surrogate mother. Other methods, however, may be used, such as artificial insemination, in which the sperm of the future father is transferred into the womb of the surrogate mother.⁵ Surrogacy is a promising treatment for many infertile couples and can potentially solve many of the intolerable difficulties these couples and their families face. But there are some religious considerations hindering its popularity in Islamic countries as well as some considerable ethical concerns in those countries in which this kind of treatment is accepted and practised.

Iran is an Islamic country in which surrogate motherhood is being practised. There are some well-known medical centres in Tehran, Isfahan and other cities in which surrogacy is one of several assisted reproductive options being offered to infertile couples.

In this article, the attitudes and opinions of Islamic authorities and scholars on surrogate motherhood are described and some ethical aspects concerning its practice in Iran are explained. Finally, some proposals for its ethical improvement in Islamic countries in general and Iran in particular are presented.

SUMMARY OF THE LEGISLATIVE PROCESS IN IRAN

The highest-ranked jurisprudential authorities among the Shiite clergy are called grand ayatollahs (*maraj-et-taghlid*). Grand ayatollahs are the most learned clerics among ayatollahs (*mojtahedin*, which is the plural of *mujtahid*). Ayatollahs are clerics who are able to issue religious decrees (*fatwas*). In cases where there are no relevant rules, practitioners can

base their practice on such decrees. In addition, most people put their questions concerning issues such as life, death and reproduction to such religious authorities. The drafts of governmental rules are supposed to be prepared based on or consistent with these decrees and then should be passed by the Islamic parliament (*majlis*). Afterwards, these passed rules should be approved by the Guardian Council. This consists of six jurists and six clergy (or 12 members in all), who have to agree that the rules passed are consistent with the constitution and Islamic law.

ISLAMIC PERSPECTIVES

There are two main branches of Islam—Shiite and Sunni—each with its own jurisprudential, theological and ethical school(s). Whereas the majority of Muslims in the world are Sunni (about 90%), the majority of Iranians are Shiite (again, about 90%). In Iran, the laws and regulations regarding such subjects as surrogacy are based on Shiite jurisprudence (*fiqh*).⁶

Islamic jurisprudence, including Shiite jurisprudence, has four main sources. The first and most important one is the Holy Qur'an, the primary source of Islamic law. The second source of Islamic law is Sunna, which is what the prophet (and imams in the Shiite school) said, did or agreed to. The third source is *ijma*, which is the consensus of Islamic scholars, and the fourth is reason (*aghl*) in the Shiite schools and analogy (*qiyas*) in the Sunni schools of jurisprudence. The difference between *aghl* and *qiyas* is an important point that clarifies one of the most prominent aspects of difference between these two branches of Islam. According to the Shiite theology, moral goodness and badness can be revealed by reason (*aghl*) on its own. Therefore, newly emerging jurisprudential and ethical issues (including bioethical ones) should be categorised and discussed in the light of both reason and scripture. According to the majority of Sunni schools, however, every jurisprudential topic, including bioethical issues, should be examined only on the basis of scripture and the prophetic tradition. Therefore, in dealing with newly emerging issues, one can use analogical deduction (*qiyas*) to find the most compatible response with the holy scripture.⁷

Sunni views

Most Sunni scholars regard surrogacy as forbidden (*haram*).⁸ They argue that surrogacy involves introducing the sperm of a man into the uterus of a woman to whom he is not married, thereby contradicting the commands of the Holy Qur'an, which describes believers as

Those who guard their private parts except from their spouses ... but whoever seeks to go beyond that, these are they that exceed the limits. (Sura 23, v. 5, 6, 7).

The aforementioned scholars also mention the confusion resulting from surrogate motherhood (eg, who is the real mother—the genetic mother or the birth mother?), and refer to a Qur'anic definition of motherhood, which says,

... (as for) those of you who put away their wives by likening their backs to the backs of their mothers, they are not their mothers; their mothers are no others than those who gave them birth ... (Sura 58, v. 2)

They also mention the dehumanisation of human reproduction by reducing the womb to the level of a commodity that can be bought or rented.⁹ In addition, such a process requires looking at the private parts of the body (*awrahs*), which are forbidden to be seen.¹⁰

There are, however, some Sunni scholars who permit surrogacy on the basis of considering this practice within "polygamy", which accords with the principles of the Islamic way of life (*sharia*).⁸ This argument, of course, does not seem plausible except for cases in which the surrogate mother is another wife of the intended father, whereas in most cases this condition does not obtain. Others consider the "surrogate mother" to be equivalent to the "milk mother", a relationship that is permitted and has its own rules in Islamic law (*fiqh*).⁸ Besides, this group of scholars regards the aforementioned Qur'anic definition of motherhood to be non-inclusive. They argue that the verse is intended to forbid *zihar* (ie, calling one's wife one's mother), not to give an all-encompassing definition of motherhood.^{11 12}

Shiite views

Among Shiite authorities (grand ayatollahs), most regard surrogacy as permitted (*jayez*) only for legally married infertile couples, as a treatment for their infertility; these authorities do not agree with the condemnation of the practice and don't see any sin in the practice, although a minority of Shiite authorities regard it as forbidden (*haram*).¹³ Among the first group, one (Grand Ayatollah Hossein Ali Montazeri) permitted surrogacy provided that the surrogate mother is not married.¹³ On the question of whether payment to the surrogate mother is permitted, most authorities of the first group granted permission, while others did not provide an answer on this issue.¹³

Shiite scholars consider the embryo to be different from sperm and so do not regard introducing the embryo into the womb of the surrogate mother to be the same as introducing the sperm of a man to whom she is not married. Thus, they consider the surrogate mother to be very similar to the milk mother or wet nurse and do not see any sin in this practice. In fact, they regard this practice as transferring an embryo or fetus from one womb to another, which is not forbidden in Shiite jurisprudence.¹⁴ This viewpoint is consistent with a jurisprudential principle called "*isalat-ol-ibaha*", according to which everything should be considered allowed unless it is explicitly forbidden by the Holy Qur'an or Sunna.

The confluence of religious permission, the aforementioned needs of infertile couples and the existence of many poor women who are willing to get pregnant as a surrogate mother for the financial benefit has resulted in a rapid growth of assisted reproduction clinics in which such services are being offered.¹⁵ A draft version for legislation concerning the issue of gestational surrogacy has been prepared,¹³ but ratification by the parliament and then approval by the guardian council take a long time. As a result, today, in the absence of any related ratified legislation in Iran, the existing practice is based on religious decrees. Nonetheless, many practical problems remain. For instance, in identity documents, the name of the woman who gave birth to the newborn is recorded as the child's mother; therefore, the surrogate mother's name should be recorded in such identity documents. These centres solved this problem by admitting the birth mother with another name: the name of the intended mother!¹³

Concerning motherhood, most of the Shiite religious authorities who regard surrogacy as permissible consider the genetic (intended) mother as the actual mother (for example, in inheritance) and some of them consider the surrogate mother similar to a wet nurse (*reza'i*). Thus, according to the rules of the milk relationship in Islamic jurisprudence, the resultant child should not marry this woman or her children in the future.¹⁵ Of course, this is controversial. For example, some Shiite

authorities regard the birth mother as the actual mother based on the aforementioned verse of the Holy Qur'an, while other authorities say that these children have two mothers.¹⁶

ETHICAL CONCERNS

Surrogate motherhood as it exists in Iran has raised some noteworthy ethical concerns, the most prominent being concerns about monetary remuneration,¹⁷ which, while allowed by religious authorities in Iran, appears to be unethical and needs correction.¹⁸

There are many ethical arguments against monetary remuneration in surrogacy, including its contradiction of human dignity, its exploitative nature,¹⁹ its consequences such as lessening of altruistic donation and the worldwide consensus that it is unethical.¹⁹

Obviously, all such arguments are about monetary remuneration and do not refer to reimbursement of normal costs that are imposed on the surrogate mother. These normal costs encompass all the pregnancy-related medical expenses as well as the loss of actual income, if they are not covered by any other sources (such as insurance).²⁰ Such reimbursement is clearly ethical.

In the context of commercial surrogacy, the exploitation of poor women is very likely to occur. They may be forced by their husbands or fathers to obtain money through surrogate motherhood, even though the practice may be hazardous for them.¹⁷ So, commercial surrogacy is unethical and, in the absence of appropriate religious decrees and legislation, probably will constitute the main ethical problem of surrogacy in Iran.

CONCLUSIONS

Surrogate motherhood is an ethically acceptable method for the treatment of infertility. There are many debates among religious scholars worldwide concerning this method. In Iran, a Shiite country, surrogacy is being practised on a relatively large scale, although there are no formal statistics available in this regard. However, this practice, in its commercial form, suffers from ethical problems, many of which are rooted in poverty and cannot be eliminated unless the socioeconomic status of societies in which commercial surrogacy is being practised is improved. However, we can fight this gross violence against human dignity even in poor societies. In attempting to rectify this problem, the following propositions may be considered:

- ▶ Commercial surrogacy should be forbidden by law in all of its forms and should be replaced by altruistic surrogacy.
- ▶ The process of obtaining informed consent should be improved, so that an independent committee (composed of members without any conflict of interest) can observe and approve each case.

Shiite decrees concerning surrogate motherhood in addition to many other issues, such as abortion, embryo donation and stem cell research show the valuable flexibility of Shiite jurisprudence in dealing with newly emerging developments in science and technology. Moreover, it has facilitated some

great advances in these fields in Iran.²¹ I think the Shiite approach to such scientific issues can be considered a noteworthy model for dialogue between science and religion in the contemporary Islamic world.

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