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Investigating The Status Of Surrogacy As A Treatment Through The Lens Of Scientific And Islamic Perspective

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Abstract

The advent of Assisted Reproductive Technologies opens the door for the medical solution of the infertile couple in western societies. These include sperms and Ovum donation, artificial insemination, IVF and surrogacy etc. The present research aims to explore the status of surrogacy as a medical treatment through the scientific researches available. These including the side effects of the surrogacy not only on the health of the surrogate mother but also the psychological, emotional and financial effects of surrogacy to intended parents. This research will also investigate the status of surrogacy as a treatment in the Islamic perspective that solely relies on Islamic Jurist fatwa, who are based on the teachings of Quran and Prophet Muhammad's (P.B.U.H.) Ahadith.

Keywords: Surrogacy, Intended parents, Islamic Jurist

Introduction

Infertility is a condition in which a heterosexual couple fails to conceive a child naturally without any scientific assistance. Researches reveal that mostly the infertility is actually subfertility in which 1 out of 7 couple needs special help to conceive. This subfertility can be divided into primary subfertility and secondary subfertility. Primary subfertility can be defined as a condition in which couple fails to conceive their first child while in secondary subfertility is related with the delay of conceiving child after miscarriage or ectopic pregnancy (Anwar, 2016).

The causes of infertility can be traced from men, women or both as 40 % infertility is attributed to women, while 40 % is related to men, 10% due to both parties and 10 % is related to unknown reasons. The couples who fail to conceive child face pressure not only from family members but also from the society. This condition not only negatively affects their marital relationship but also their psychological wellbeing. Studies further show that in a couple the signs of psychological stress regarding infertility are more visible in women as compared to men. Because in most cultures woman is blamed as a failure to fulfill her role who is considered responsible for carrying the family lineage by producing children (Loke, 2015).

The most common causes of infertility in women are ovulatory dysfunction and tubal disease. 25% infertility in women is due to ovulatory disorders while 70% of anovulation is due to polycystic ovary syndrome (Kallen, 2021). The causes of male infertility includes poor sperm motility, increased viscosity of semen, teratozoospermia beside this smoking, excessive alcohol intake and excessive heat to testes are the root cause (E., 2012). The causes of infertility in male and female are due to different reasons and due to this variation different scientific treatments are used to overcome the hurdles in infertility. This paper aims to investigate the status of surrogacy as a treatment through the lens of science and Islamic perspective.

Review of Literature

Infertility has a promising treatment in form of surrogacy. It appears as a solution to the intolerable difficulties faced by infertile couples and their families. The attitude towards the acceptability for surrogacy varies from social, ethical, religious and legal level as it is subjected to debates and controversies. It is still considered as a treatment to infertile couples who through gestational surrogacy (when the sperm and ovum of husband and wife is fertilized by in vitro fertilization IVF technique and then transferred to surrogate mother) be able to get their genetic baby while the widespread usage of this technique prohibited in many cultures (Lasker, 2016).

Gestational surrogacy is a treatment option for those women who have clearly defined medical issues as an absent of uterus, repeated and persistent miscarriages, recurrent failure of in vitro fertilization IVF. The gestational surrogacy follows the transfer of IVF fresh or frozen embryo of commissioning parents to surrogate mother. The results of this treatment are good when embryo is derived from young mother and transferred to fertile fit young surrogate mother. IVF surrogacy is successful treatment for small group of mothers who otherwise were not able to have their own genetic child due to their serious medical issue (R.Brinsden, 2003).

Commissioning mothers who are nearly infertile has good reason to use surrogacy for her treatment. But due to the changing family dynamics in west the gay men also use surrogacy for their genetic offspring's. The commissioning parents invest their emotional energies by developing the genetic link to their surrogate child. And at the same time they have to arrange the financial layout to the services of surrogate mother. The consequences of this treatment on surrogate mother and child cannot be neglected as surrogate mother after handing over babies to commission parents face psychological depression and traumas (BA, 2010).

The treatment of infertility in Islamic sharia is bound to the teachings of Quran, ahadith and fatawa of Islamic Jurisprudence. Islam provides the foundation of medical treatment as Prophet Muhammad (P.B.U.H.) teachings provided remedies not only in spiritual and psychological levels but also in the physical health of human beings. Thus in Islamic tradition there is no objection if infertile couple pursue medical treatment until this treatment is lawful and are not incorporated the forbidden (haram) methods. Among these treatments one is IVF which is the essential bio technique of surrogacy. IVF is only lawful in Islam if ovum of the wife and sperm of husband is used in IVF and transplant in the womb of the wife. In other conditions where ovum or sperm are taken from besides husband and wife and implanted in wife is haram. Similarly ovum and sperm of husband and wife after fertilization implanted in surrogate mother is also haram. Sperm and ovum of one wife implanted in second wife is also Haram (Abu-Rabia, 2013).

Research Question

Is surrogacy qualifying the criteria of infertility treatment in scientific and Islamic sharia's perspective?

Methodology

As the research requires investigation of the status of surrogacy as a scientific treatment in two different spheres; scientific and Islamic. As these fields are different in their approaches; science relies on scientific proofs and reports while Islam relies on the Quran, Ahadith of Prophet Muhammad (P.B.U.H.) and fatawa of Islamic Jurisprudence. The information will be collected and discussed as per the approaches of science and Islam.

Discussion

The term medical treatment is defined as managing and caring to enable the patient to combat disease or disorder. This definition is related to the management and caring of patient body through medical treatment to attain the normal condition of human body that is free from disease or disorder (Fikadu). Thus medical treatment for each disease is different from other on the basis of diagnosis. Among these treatments one medical issue that requires different medical treatments is infertility which is a condition of not conceiving a child or due to miscarriages fails to carry a pregnancy to full term. There are many reason of above mentioned condition and due to this condition couple seeks assistance from medical treatments. The medical treatment is diagnosed by the doctor that differs for each other due to different factors. The initial female treatment for fertility is through fertility drugs to induce ovulation. These drugs can be divided into three main categories; 1) medication for ovarian stimulation, 2) medication for Oocyte maturation and 3) medication to prevent premature ovulation. In case of ovarian failure the treatment of female infertility differ for different condition. In case of polycystic ovarian syndrome the laser surgery may be used to destroy the cyst that sometimes restores hormonal balance. Some females has cervical mucus problem that can be treated with estrogen therapy that stimulate production of mucus to aid the sperm to reach the egg. Another option to this problem is Assistant reproductive technology in which sperms are collected and injected directly in to the uterus (Gaware. V. M. Parjane. S. K., 2009).

Successful fertility in man requires normal spermatogenesis and sperm mobility to fallopian tube in a sufficient concentration. Due to any issue in the above mentioned normal condition the male infertility results that is considered the reason of one third of all infertility problems. The male treatment of severe male factor infertility with pure FSH is beneficial when the duration of treatment is three months for the improvement of in vitro sperm fertilization. The improvement in semen parameters that are sperm counts with their forward progression through the swollen tails and their penetration test in cervical mucus have been reported in varicocelectomized men who were treated with pure human FSH for 3 month. The FSH treatment may improve the spermatogenesis quality in the light of evidences. Similarly the male partner of an infertile couple with decrease sperm density the patients are treated through the intracytoplasmic sperm injections (ICSI) technology. It is expected that more effective approaches can be seen by advancement in cellular and molecular aspects of the human male gamete physiology (Serafini, 2022).

The most recent scientific treatment for infertile couple is in vitro fertilization (IVF) in which the infertile female who was not able to conceive a child due to suffering of fallopian tube or she was facing difficulty in In Vivo Fertilization is treated by this method. IVF is giving the solution by external fertilization of gametes. This IVF procedure can be divided into five steps the first one is termed as super ovulation in which women is treated with fertility medicine that results in production of more than one egg as per month. The second step is named as egg retrieval in which eggs are collected from the follicles. The third step is insemination, when the eggs are mixed with the sperms either in a propitious environment or sperms are directly injected into the eggs. The fourth step is embryo formation and when embryo's cells start dividing after 5 days then the last step of transferring the embryo into the women's uterus takes place through a tube, containing the embryo. It is inserted in the vagina through cervix and into the uterus (Abid M, 2013).

The above mentioned scientific treatments are qualifying the scientific definition of treatment as these all treatments are treating the patient's body to enable it to solve the infertility problem. In the above mentioned scientific terminology of treatment if researcher elaborates the surrogacy to clarify its status as a scientific treatment. Firstly, surrogacy from its literal means substitute clarify its status as an option for those couple who can afford this alternate option whether they have any physical fertility ailment or not. As many homosexual couples (lesbians and Gays) and many professional ladies (film actresses) although having no fertility problem is availing this option.

Secondly, the scientific treatment of infertile couple give them hope for conceiving the child after treatment but studies reveals that surrogacy arrangement is psychologically stressful for both commissioning parents and surrogate mother. The infertile couple with the passage of time finds the solution of their infertility either through successful conception after treatment or accepts their destiny of being childless but for some it leads to a desperate search for the solution of their childlessness through surrogacy. Studies further reveals that those couple who intended the surrogate child are psychological more vulnerable. The search of a compatible surrogate is also additional stressor for intended parents. And some time the initial consent of the surrogate mother who changed her mind before proceeding to conception results in extreme degree of psychological turmoil. Similarly studies reveal that the surrogate mother is induced through financial gains. She donates her body for nine months which is further accompanied by regular test and treatment, by making major emotional and life investment for next nine months. Surrogate mother undergoes psychological issue of being away from her own children and husband. And during that period she developed a bond with commissioning parents but this relationship is abruptly terminated by the commission parents after the birth of child. This result in sorrow and distress for surrogate mother being parted from the child she gave birth (Edelmann, 2004).

Thirdly, medical treatment follows medical and bio ethics by not exploiting any human rights. Surrogacy in the context of human rights is not viewed as a scientific treatment but rather the exploitation of financially desperate women. The bodies of these vulnerable women are controlled by other; the intended parents, agents and doctors who treat their bodies as a rented commodities by reducing the status of human being (women) to uterus only. In other words these surrogates who usually belong to developing countries are treated as a factory and their babies as a product that can be purchased by the intended parent usually belong to developed countries on a very low price. The surrogacy arrangement can be seen in those areas where the women are socially, psychological and economical disempowered. This environment where she is facing gender inequality and discrimination, forced for the supplementary income through surrogacy (Sifris, 2015).

Fourthly, the maternity of child born after scientific treatment including IVF is clear and assigned to her mother but in surrogacy the maternal rights are also very controversial. This is the reason international law and policies found the surrogate contract especially the commercial one as illegal, unenforceable and a violation of public policy. Contrary to many court decisions where the decision of motherhood is based on genetic and non-genetic surrogacy most laws establish that the legal motherhood is assigned to birth mother (Shuster, 1991).

Fifthly, the study regarding mother child relationship in the book Mellanmoroch barn PiaRisholm Mothander refers to the importance of mother womb and child relationship where the child develops his/her senses and especial characteristics when child and mother are preparing for the first and most important relationship. The report regarding this child mother attachment presented by lone institute that when surrogate mother due to the monetary contract has to detach herself from the child it will affect the child development not only physically but also psychologically. The report further elaborates the need of further scientific research in this area. (Casparsson, 2014).

Sixthly, in surrogacy tourism (in which the surrogate mother is from developing countries like India and Ukraine and intended parents are from the developed countries) many surrogate mothers are unaware of mental and physical health risk with being providing the services of a surrogate mother. These physical risk involves 1) the acceptance of multiple embryos to maximize the implantation and undergoing the selective reduction abortions 2) delivery of child through caesarean sections without any emergency on the directives of intended parents 3) during their residence in surrogacy hostel missing their own kids and husband 4) surrogate go through postnatal

depression by handing over the child to intended parents with whom she was attached. And with all these hardships and difficulties Indian surrogate mothers are getting 10 % and Ukraine surrogates are getting 30 % of the amounts paid by intended parents. Moreover in case of pregnancy failure the surrogate will not be compensated with any amount as the agreed amount is paid after the birth of child. Similarly, in case if intended parents changed their minds by terminating the pregnancy then in this situation will they compensate the surrogate mother if she suffered from any injury or infected by any infection as a result of participation (Choong, 2015).

Seventhly, the practice of commercial surrogacy is controversial due to the medical side effects to surrogate mother due to the medical procedures she will go through mostly unaware for financial benefits. These medical procedures involve intake of birth control pills for synchronizing surrogate mother body to intended mother. The surrogate mother's body is treated with gonadotropin releasing hormone to prevent her premature ovulation. The preparation of surrogate mother's body for implantation requires hormonal manipulation by taking estrogen tablets for thickening of her uterine lining before implantation. The side effects of these hormonal treatments noticed in surrogate mothers are hot flushes, fatigue, headache, nausea, bloating and breast soreness. Reports further suggest that the women undergoing IVF are at the risk of border line ovarian tumors (Manjeshwar Shrinath Baliga, 2018).

In light of the above discussion the child is therefore born into uncertain family situations (Davis, 2012). It goes without saying that the child is therefore the most vulnerable party among all involved. Who will be considered as his or her parents; will he or she be legitimate with rights of inheritance; and what about issues like religion and domicile (Ahmad, 2011)? Further, what if the child was disabled and rejected by the commissioning parents as in the high profile case of Baby Gammy (Schover, 2014) What if the commissioning parents change their minds or got divorced before the child was born as in the case of Baby Manji, another high-profile case (Baby Manji Yamada v Union of India & Others 2008; Parks, 2010) The lack of screening of who could commission a child may also leave the child with unfit parents (Lee, 2009). Child may face difficulty in case of foreign intended parents as the rules of countries varies in determining the child's legal parentage, the child even risks being stateless thus devoid of recognition by or protection of any State (Kanics, 2014; Parks, 2010; Re X and Y (Foreign Surrogacy) (Choong, 2015)

The above mentioned scientific investigation of the surrogacy as a treatment further requires the Islamic religious point of view on the status of surrogacy as a treatment. Before discussing the status of surrogacy it is important to understand the concept of fertility and infertility from Quranic perspective. In Quran surah al Shurah verse 49-50 Allah Almighty says

"لِلَّهِ مُلْكُ السَّمَوَاتِ وَالْأَرْضِ ۖ يَخْلُقُ مَا يَشَاءُ ۚ يَهَبُ لِمَنْ يَشَاءُ إِنَاقًا وَيَهَبُ لِمَنْ يَشَاءُ الذَّكَوَرِ - أَوْ يَزْوَاجَهُمْ ذُكْرًا أَوْ إِنَاقًا ۚ وَيَجْعَلُ مَنْ يَشَاءُ عَقِيمًا ۚ إِنَّهُ عَلِيمٌ قَدِيرٌ" (Surah Al Shurah: 49-50)

"To Allah belongs the dominion of the heavens and the earth. He creates what He wills. He bestows (Children) male or female According to His Will, Or He bestows both males and females, and He leaves Barren whom He will" (Ali, 1410 H)

The above mentioned verses are explaining the fertility and infertility in theological perspective that it is Allah's creative power with which He is bestowing the gifts of son and daughter to mankind and it is also due to His Knowledge and planning that few remain barren. But each human soul is very precious to Allah's planning and these variations in Allah's distribution and their reactions on parenthood have their individual purpose to fulfill the Allah's planning. (Ali, 1410 H).

Quran has mentioned the stories of Prophet Ibrahim (A.S) and Prophet Zakariyya (A.S) who were childless but they supplicated from Almighty Allah for their progeny. Allah almighty bestowed Prophet Ibrahim (A.S) with two sons Prophet Ismail (A.S) and Prophet Ishaq (A.S) while Prophet Zakariyya's son was Prophet Yahya (A.S). Quran also mentions that the wife of Ibrahim and wife of Zakariyya were barren. When angel gave the glad tidings of son to Prophet Ibrahim his wife explained her condition in Surah al Huda verse 72 as

"قَالَتْ يَوِئْسَ لِلْيَاسِئَةِ مَا يَكُونُ لِي غُلَامٌ وَقَدْ بَلَغَنِيَ الْكِبَرُ وَأَمْرَأَتِي عَاقِرٌ فَقَالَ كَذَلِكَ اللَّهُ يَفْعَلُ مَا يَشَاءُ" (Surah al e Imran: 40)

"She said: "Alas for me! Shall I bear a child, seeing I am an old woman, and my husband here is an old man? That would indeed be a wonderful thing" (Ali, 1410 H)

"قَالَ رَبِّ أَنَّى يَكُونُ لِي غُلَامٌ وَقَدْ بَلَغَنِيَ الْكِبَرُ وَأَمْرَأَتِي عَاقِرٌ فَقَالَ كَذَلِكَ اللَّهُ يَفْعَلُ مَا يَشَاءُ" (Surah al e Imran: 40)

"He said: "O my Lord! How shall I have a son, seeing I am very old, and my wife is barren" "Thus," was the answer, "Doth Allah accomplish what He willeth" (Ali, 1410 H).

Thus Quran neither describes the blessing of having children as a reward nor the childless condition as a punishment rather it is a decree of Allah almighty to whom he bestowed only sons or daughter or to whom He blessed with both and to whom He decreed barren. It is worth mentioning here that Islam never stops the infertile couples from medical treatment but Islam is a complete code of life so it guides the Muslims about lawful and unlawful medical treatments.

All assisted reproductive technologies are permitted in Islam if it is not disturbing the bond of marriage (which is the only lawful way of procreation in Islam). This permissibility of the assisted reproductive technologies can be

seen in the guidelines included in Fatawa from Dar El Iftaa, Cairo (1980) and a Fatwa from the Islamic Fiqh Council, Makkah (1984), the Islamic Organization for Medical Sciences (IOMS) in Kuwait (1983), the Fatawa of International Islamic Fiqh Academy in 1986, and the International Islamic Centre for Population Studies and Research, al. Azhar University. These fatwas clearly explain that Muslim can benefit from these technologies in a condition when the semen source, ovum source and the incubation place (uterus) is from the married couple in the span of their married life. It is worth mentioning here that in case of any third party involvement rather in semen, ovum or rental uterus is not compatible with Islamic injunction related to human reproduction. In case of frozen embryos of married couple the women can utilize these frozen embryos when husband and wife are intact in their married bond but in case of divorce or death of husband wife cannot reproduce through these frozen embryos. Thus it is clear that third party involvement is ban in many fatwa and bioethical decree issued since 1980 in the Sunni Islamic Country including Kuwait, Qatar, Saudi Arabia and the United Arab Emirates (Mohammed Ali Al-Bar, 2015).

The surrogacy is another form of Assisted reproductive technology that involves third party involvement but this involvement can be further divided into two types. In the first type the surrogate mother's uterus is rented from the implantation of the embryo to the delivery where embryo is the product of intended couple husband and wife while in other case the surrogate is artificially inseminated with the intended father. These both cases results in triangulation of relationship in the first case child is the result of biological father, biological mother and rearing surrogate mother while in case two there will be a biological father, biological surrogate mother and a rearing intending mother. Muslim Jurist unanimously prohibited the surrogacy as treatment due to the complexity of lineage that is the result of this procedure. This surrogacy is even prohibited by the Muslim Jurist in polygamy marriage. The retraction from the earlier position of allowing surrogacy in same husband (polygamy) by The Muslim World League's Islamic Fiqh Council closed the door of surrogacy in co-wives also. Similarly the stance of Al Mubarak (2014) who argues the permissibility of surrogacy in the context of lactating mother is also rejected on the basis of Hadith of Prophet Muhammad (P.B.U.H) because lactation (wet nursing) establishes a special relationship among breastfed children and the lactating mother (wet nurse) and her family according to the Shariah (Matthews, September 2021).

Conclusion

In the light of above mentioned discussion it will be concluded that surrogacy cannot qualify the scientific treatment as it fails to treat infertile body's own problem like other medical treatment but rather involves third body services on commercial basis that further involves physical, psychological, emotional and financial exploitation of the surrogate mother and intended parents. In Islamic perspective the decision of lawfulness of any treatment is based on Quran, teachings of Prophet Muhammad (P.B.U.H.) and Islamic Jurisprudence who forbade the surrogacy services for attaining child.

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