

## Law and Policy Review (LPR)

Volume 3 Issue 2, Fall 2024


ISSN(P): 2076-5614, ISSN(E): 3007-4290

Homepage: <https://journals.umt.edu.pk/index.php/lpr>



Article QR



- Title:** **Examining the Legality of Surrogacy in Pakistan: An Analytical Perspective of Islam**
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- DOI:** <https://doi.org/10.32350/lpr.32.03>
- History:** Received: April 05, 2024, Revised: October 17, 2024, Accepted: October 31, 2024, Published: December 30, 2024
- Citation:** Rana, A., Gujjar, M. W., Manzoor, B., Akram, H., & Ahmad, M. (2024). Examining the legality of surrogacy in Pakistan: An analytical perspective of Islam. *Law and Policy Review*, 3(2), 43–62. <https://doi.org/10.32350/lpr.32.03>
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- Conflict of Interest:** Author(s) declared no conflict of interest



A publication of  
School of Law and Policy  
University of Management and Technology, Lahore, Pakistan

# Examining the Legality of Surrogacy in Pakistan: An Analytical Perspective of Islam

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## Abstract

The practice of surrogacy is prevalent worldwide, but it has yet to gain recognition in Pakistan. This study aims to explore the potential for recognizing surrogacy in Pakistan, examining its current status and the reasons it has been largely ignored. As a country founded on Islamic ideology, the practice of surrogacy needs to be justified according to the injunctions of the Holy Quran and Sunnah. This study explores whether the traditions of surrogacy in Abrahamic religions provide any jurisprudential grounds for its implementation in Pakistan. It also discusses the impact of increasing practice of surrogacy in other jurisdictions on Pakistan's legal system. To understand why there is lack of recognition and legislation regarding surrogacy in Pakistan, this study critically analyzes its societal and cultural acceptance in the context of Islamic society. It examines reasons why surrogacy is treated as a taboo in Pakistan's parliament and judicial system. In order to thoroughly understand these issues this study examines how the legal system in Pakistan works and how the laws are created. It critically analyses the judicial precedents in Pakistan and briefly explains its legal system to fathom the perimeters how law is created and enforced.

**Keyword:** child, Islam, medical condition, surrogacy, women

## Introduction

Surrogacy might seem as the miracle of the modernized world and science, but it dates back much further than many realize. The practice of women carrying other women's babies dates back to biblical times (Hall, [2017](#)).

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For example, in the Old Testament, Genesis Chapter 16, the story of Abraham and his wife Sarah illustrate surrogacy. Sarah, unable to conceive, asked her servant Hagar to bear a child for them. This early instance of surrogacy shows how, when a woman is unable to carry or conceive a child, another woman may be hired to bear the baby for her (Hall, [2017](#)).

Another example involves the story of Jacob and his wife Rachel who was barren and unable to have children. So, Rachel convinced Jacob to have a baby from their servant Bilhah (Smerdon, [2009](#)). Another way is travelling to another country to find a surrogate mother for the couples struggling with child conception (Jolly, [2017](#)).

Moving on from biblical times, even western history is enriched with cases of surrogacy. The Spanish monarch sometimes relied on surrogate mothers to give an heir to the throne. It is said that the king would spend time with several women until a male heir was born. After birth, the biological mother would act as caretaker, but the queen would be considered as the official mother of the prince.

Looking beyond historical examples, religious perspectives on surrogacy also vary. Hinduism and Buddhism accept and acknowledge surrogacy. Children are considered extremely important for expanding the family, and if a couple struggles with conception, they may seek medical assistance, including surrogacy (Halvrson, [2013](#)).

The UK based Daily Mail prints a story about surrogacy in India with the highly descriptive title, ‘The Designer Baby Factory: Eggs From beautiful eastern Europeans, sperm from wealthy westerner embryos implanted in desperate women’. What Follows in the article is a typical of such news stories. The reporter begins:

Above a cheap mobile phone shop in a chaotic street in north Delhi, there is a grimy apartment whose peeling walls are decorated with photographs of adoring mothers nursing their babies. The woman cooing at her child in the biggest portrait is beautiful, white and affluent looking in a stark contrast to the flat’s five residents, four of whom are pregnant, while the other is being pumped full of hormones in the hope she will soon conceive. They are all uneducated, bare-footed, dirt-poor Indian women from outlying villages and given the emotional turmoil that awaits them, one would have thought the very last thing they would wish to do is

spend their enforced nine months of confinement here gazing upon images of material bliss. (Rudrappa, [2015](#), p. 1813)

This paragraph highlights the brutal reality of commercial use of surrogacy in India, emphasizing how it violates the fundamental rights of surrogate mother. These women are often exploited, treated as mere vessels for reproduction, and subjected to poor working conditions throughout the surrogacy process. Once their purpose has been served, many of these women are discarded. This story sums up everything that is wrong with surrogacy in third world countries.

When the above mentioned issue was identified by the Indian government, they decided to take initiative by allowing surrogacy in all manners. Now, the surrogacy regulation Act 2021 prohibits surrogacy at commercial level.

### **Surrogacy**

The word surrogate originates from the Latin word, Surrogates, meaning a substitute. Black's Law dictionary defines surrogate parent as "A person who carries out the role of a parent by court appointment or the voluntary assumption of parental responsibilities" (Ber, [2000](#), p 155) . Surrogacy is a medical procedure where one woman, the surrogate mother, agrees to become pregnant and deliver a child for another party, namely the commissioning parents. There are several forms of surrogacy: partial surrogacy, which involves the insemination of the surrogate mother with the commissioning father's sperms. Alternatively, full surrogacy involves the creation of an embryo using usually both the eggs and sperm of the commencing couple; this takes place in vitro being transferred to the uterus of the surrogate mother (GOV.UK, [n.d.](#)).

From a philosophical perspective, feminist scholars have critiqued the commercialization of surrogacy, labeling it as a form of "labor." This is a sacred relationship in every culture and religion, and is condemned as it turns a woman's uterus into a "machine" for producing babies. Commercial surrogacy is a subject not limited to the medical circles. Within feminist discourse, there are different views, including liberal feminist perspectives that argue for a woman's right to choose how to use her body, including participating in surrogacy (Panday, [2014](#)).

However modern surrogacy includes more than having a relationship with other women. In modern times there are two types of surrogacies:

## **Traditional Surrogacy**

The first type of arrangement for surrogacy is traditional surrogacy or ‘Complete Surrogacy’. In this arrangement, the surrogate mother’s own egg is used for child conception. The surrogate mother is genetically related to the child and is therefore considered the biological mother of the child (Pande, [2010](#)).

## **Gestational Surrogacy**

The second form of surrogacy is gestational surrogacy. In this case, the egg is removed surgically from either an intended mother or donor and fertilised with the intended father’s or donor’s sperm. When the embryo is fertilised, it is passed to a surrogate mother and carried to term. The baby in this situation is not at all genetically related to the pregnant mother (Pande, [2010](#)).

## **Pakistani Law on Surrogacy**

To understand why there is lack of legislation and recognition regarding surrogacy in Pakistan, and why this topic is treated as taboo within the parliament and judicial system, it is important to first understand how the legal system in Pakistan works and how laws are created. An overview of the legal system of Pakistan is crucial in understanding the process by which the laws are enacted and enforced.

Pakistan, constitutionally known as Islamic Republic of Pakistan, became a state on 14<sup>th</sup> August 1947. Pakistani law is inspired by English Common Law, as the country was once a British colony, along with India, and governed by Britain. Most of the legislation was provided before 1940 by the English rule (Globalsecurity.org, [n.d.](#)). After gaining independence, Pakistan modified and adapted its legal system. It is also among one of those countries which follow common law. There have been three constitutions in the country since its formation. Pakistan is one of those countries which has been affected by military coup multiple times, to be precise three times. Out of those, two dictators passed their own constitutions. Currently, Pakistan is being ruled under the constitution of 1973 made by Prime Minister Zulfikar Ali Bhutto.

The judicial system of Pakistan consists of several different court system with overlapping and sometimes competing jurisdictions that reflect the distinctions in civil, criminal and Islamic jurisprudence

(Globalsecurity.org, [n.d.](#)). The court hierarchy begins with lower tribunal court, followed by district courts and then appellant court like High court and finally the Supreme Court. Constitution of Pakistan under article 184(3) and 199 gives the power to court for judicial review (Article 199, 1973) which keeps the power in check and law passed by parliament can be reviewed by the court if it contradicts the essence of constitution of Pakistan. Additionally, the court may pass the order to amend and review the law to parliament.

In 1949 the first prime Minister, Liaqat Ali Khan, introduced the Objective Resolution of Pakistan, which holds a significant place in the constitutional history of Pakistan. The resolution outlines the guiding principles for the creation of Pakistan's constitution and establishes that the sovereignty belongs to Allah Almighty (God) and any power exercised by anyone is only delegated by God. Furthermore, no law will be made which conflicts the Islamic rules, and any law conflicting with Islamic ideology will be abolished. The Objective Resolution makes it clear that laws in Pakistan must align with Islamic teachings. There are other principles related to Islamic ideology, however, the objective resolution is the substantive part of present constitution under the Article 2 (A) (HistoryPak.com, [n.d.](#)).

In Pakistan it is common for a single individual to support a large extended family, often consisting of his old parents brothers and sisters. The sense of loyalty to family is extremely strong, and personal interests are frequently subordinated to those of the family. You are recognized your whole with your family before any social indicator. Pakistani family traditions follow the patriarchal system where there is one male dominant person who controls and looks after the family business. In such a patriarchal society, a male figure is considered and trained as the provider and breadwinner of the family, whereas women are primarily responsible for household matters. However, women are not restricted from pursuing careers if they choose to do so. Pakistani marriages are arranged, brokered by the family elders. Most of the Pakistan families do not marry outside of their family, as the elders place a strong emphasis on protecting the blood lineage. In a society like this honourable judge pointed out that we live in a very closed society where there is strong concept marrying within the families and surrogacy will just complicate this but will find a very hard time to fit in (Immigration and Refugee Board of Canada, [2014](#)).

***Case Law: Farooq Siddiqui v Mst. Farzana Naheed (Sh. Petition No.2/I of 2015)***

The first case of this nature in the history of Pakistan was filled by Farzan Naheed in the Rawalpindi Court. The case, *Farzana Nahaeed vs Farooq Sadduqui*; is significant as this case is the only case in history of Pakistan where judges went in depth to explain their understanding of surrogacy and why it is not legalized. A comprehensive and critical analysis of this case is presented in this section. According to brief facts of the case, the suit was instituted in the court of Justice Ijaz Ahmed, Lahore High Court (Rawalpindi bench) for the determination of legitimate custodian of a baby girl born on 13<sup>th</sup> February, 2005, who was later named as Fatima. According to one of Pakistan's leading news industry Dawn news, the case was referred as 'the first case of its kind in Pakistan where no law exists on surrogacy' (Asad, [2012](#)).

Farzana, the surrogate mother of the child claimed that she was married to Farooq but he asserted that he just hired her after seeing the advertisement for surrogate mother and never married her. According to Farooq, she agreed for surrogacy for the sum of 1 million Pakistani Rupee. The agreement was that she would carry Farooq's child through the process of surrogacy and would not claim the child once the contract of surrogacy was completed. Farooq also agreed to be responsible for all medical expenses related to the pregnancy. Farooq later purported that as time progressed, Farzana started blackmailing him and his family for more money and threatening that if they did not comply, she would claim custody of the child. He also admitted the fact that, after her all the medical tests and artificial impregnation, he was not married to her. Although he had made the Nikahnama (marriage contract), but never signed it (Abbasi, [2017](#)).

After the baby, named Fatima Siddiqui was born, Farzana left the child under the custody of Farooq with the intentions of filling Writ of Habeas Corpus petition under Section 491 of Criminal Procedure Code Pakistan (The Code of Criminal Procedure, 1898). This section empowers family courts to recover a minor child from the custody of father if he claims. On 1<sup>st</sup> March 2005, upon the request of Farzana the surrogate mother, session court handed over two-week-old Fatima to her.

After four years, Farooq challenged the order of the session court, which provided the custody of baby Fatima to Farzana, in the appellant court

which is Lahore High court that, however, also dismissed the case and passed the order in favour of the surrogate mother Farzana. The Honourable Judge Justice Ijaz Ahmed passed several comments in his detailed judgement, which includes that the poverty of the mother does not make her unqualified for the custody of the child. As Farooq was Pakistani American and stated in his case that the mother does not have the necessary means to take care of the child and offer her the lifestyle as he can do. The Court also asserted on the fact that, he is not married to Farzana, therefore, he cannot claim the custody of Fatima, the child in question.

Due to the reason of the nature of the case as one of its kind, the judge remarked that surrogacy had not been proven as the law of the land, hence the acts of surrogacy cannot be accepted as legitimate. Even if it were, and the transplantation of a fertilised egg had been proven, there is no evidence to show that the sperm which fertilised the egg originated from the petitioner. Therefore, the custody of the child will go to the surrogate mother who housed the foetus for nine months. The absence of surrogacy laws and a marriage contract led the case in favour of the mother (Abbasi, [2017](#)).

Legal Expert Barrister Saeedur Rehman in his interview to Dawn news criticized the lack of legislation in this regard and stated surrogacy is the legitimate way of having child in Europe and United Kingdom. He further said that surrogacy is like a paid job in which the surrogate mother soon after the delivery of child hands over his custody to the couple who had paid her for that particular assignment (Khan, [2017](#)).

According to him whenever there is dispute like such cases where surrogate mother claims that the child was not born with the sperm of his father, the dispute can be resolved through DNA test (Saxena et al., [2012](#)). But, other legal experts have repeatedly emphasized that in the absence of surrogacy-related laws, there is no protection for the families who wish to have a child through artificial insemination.

It is to be emphasised that merely stating that the Pakistani law does not allow surrogacy is not enough. It is not the only case that has been instituted, there are many other and there will be even more as people are getting more awareness, travelling abroad and now have more exposure than ever. Parliament and courts cannot turn their eyes off for long on this chapter. In the case mentioned above, it is clear that Farooq paid the woman for



surrogacy and the transaction can be easily traced. If they were not married or related then there was no justified reason of this huge transaction acceptance of money by Farzana, the surrogate mother.

Unfortunately, on the grounds where they do not have any legislation, they cannot protect the rights of the couple who wants to surrogate. Sooner or later the courts have to realize with the increased cases of surrogacy there should be proper legislation addressing this issue even they do not legalize it. The courts cannot continue to deny its existence.

### **Ruling of Federal Shariat Court**

The hierarchy of the courts has been explained previously in detail. According to the constitution, there is pecking order of the courts, which divides the two branches of the government as Judiciary and Executive. The judiciary consists of the highest court that is Supreme Court of Pakistan, the provincial High courts and under their supervision come district courts which are further divided into two civil courts who can only hear civil matters like dispute between families and properties and then there are Sessions Courts which hear criminal cases (Burki & Zring, [2024](#)).

Pakistan is a country dominated by religious sentiments and it is clearly stated in the constitution of Pakistan that the country will be governed by Islamic laws and any law contradicting with the teachings of Islam will be considered null and void (United States Department of State, [2022](#)). Therefore, to ensure that there is no law which challenges the writ of Islamic law, a separate authoritative court was designed. In 1980, Federal Shariat Court (FSC) was established to ensure that the laws passed by the parliament are congruent with the precepts of Islam (Munir, [2008](#)). Federal Shariat Court derived its power from the constitution of Pakistan, 1973, under the Article 203D, the FSC has the power to examine and decide the question whether or not any law or provision of law is repugnant to the injunctions of Islam, as laid down in the Holy Quran and Sunnah of the Holy Prophet". Under this article FSC, has the power to strike down any law or provision of law which contradicts the teachings of Islam (203D). It is pertinent to mention that president Zia ul Haq introduced this court with the intention for the Islamization of the laws in Pakistan (Peters, [1994](#)). After his death, FSC not only continued to freely exercise its powers, but it also extended its jurisdiction through innovative interpretations of the relevant legal provisions. In one of the most famous recent cases on

surrogacy FSC did the same as they further extended its power and directed the government to create new offence against surrogacy under the Pakistan penal code (Abbasi, [2017](#)).

Regarding the said case the Federal Shariat Court led by Chief Justice Riaz Ahmad Khan said in his remarks on the judgment that surrogacy is complex issue not just medically but also have social and ethical dilemmas in the society of Pakistan. It is also the exploitation of the poor women who bear all the pain both physical and emotional and it is quite understandable if she develops emotional attachment with the baby (Farooq Siddiqui v Mst. Farzana Naheed, [2017](#)). Chief Justice in his remarks in this case also mentioned the rights of the child born by surrogacy that the baby born out of surrogacy needs and deserve all the love from the parents, but it may not be possible for couple who is paying to have a child to give that love. According to him, the surrogacy is the threat to the institution of family which is the basic unit of the society (Akhtar, [n.d.](#)). The judge in his judgment took a very substantial point of view by saying that the marriage is the only medium through which the children could be produced under Islamic law. He observed that surrogacy is likely to give rise to innumerable legal problems regarding paternity and maternity of the surrogate children, the relationship between actual children and surrogate children, and finally inheritance rights according the Islamic laws prevalent in the country (Akhtar, [n.d.](#)).

Honourable Chief Justice in his remarks also mentioned his concerns regarding the welfare of the child. He said any couple who is paying to have the child will not be able to give the same amount of love and affection as compared to natural process. He maintained that a child is born through the natural process when a girl and boy get married and consequently they bear the good news of having a child out of such marriage. A girl carries that child nine months in her womb, simultaneously the child feeds from his mother and then one day both the biological parents finally see their child opening the eyes for the first time. How can the comparisons be made to a couple who only spend money to have a child and how they can be equal in status. In deciding any case regarding custody of the child the first thing judges consider and give the outmost importance is the welfare of the child and where will he have a better future and gets maximum love.

The fact or concern would have made point when everything is banned. Set a rule only way to have a child is natural either you will be blessed by

child or do not. There is no other way to get one. If we put these same parameters that why families are allowed to adopt a child. Since we established the fact that only way to give unconditional love to child is if they are born through your body. Why this rule is imposed only on surrogacy. Other medical means are considered even back in Pakistan. Treatments like IVF being approved and legalized (Immigration and Refugee Board of Canada, [2014](#)). But the modern technology like surrogacy is still taboo to talk about. Adoption is normal in Pakistan many families who could not have a child adopt some but that is fine.

### **Legal Problems**

One of the concerns shown by the FSC was the complexity of the legality. The legal matters are as complex as medical procedures are. There are numerous things that need to be determined before its legalization. Honourable chief justice in his remarks said:

“give rise to innumerable legal problems regarding paternity and maternity of the surrogate children; the relationship between actual children and surrogate children; and inheritance rights.” (Akhtar, [n.d.](#), part 1).

He further added, that the surrogacy will not just complicate things and family trees, but will also raise inheritance issue with the strong possibility of surrogate mother demanding the custody of the child. It will make court’s decision and cases complicated and it will be very difficult to determine the status of deserving parents.

All the points regarding legal issue highlighted by FSC are valid and should be considered before taking drastic steps. However, this topic needs undivided intentions of legislature. The world is progressing in a rapid pace, you either adapt with the new phase or be left behind. The advancements in medical science are not stopping just by saying this will raise certain question or problems. You find the solutions and move on. In contrast, Pakistani legislature and members of parliament have closed their eyes on this topic by merely stating that it is not legal in Pakistan. When cases related to this matter are instituted, there is no act or regulation to decide the case, and judges are left to use their discretion and power without the guidance of any act. It will cause more problems than solutions.

## Islamic Perspective on Surrogacy

In order to understand the Islamic perception on surrogacy, it is important to understand that the surrogacy is a relatively new concept and Islam was born over 14<sup>th</sup> centuries ago (Islam et al., [2013](#)). There are several sources in Islam to derive any authority on the basis of primary and secondary sources. Primary source is accepted universally by all Muslims, and those are Quran (the Holy Book) and Sunnah (the teachings and sayings of Holy Prophet). The secondary source of law is the commentaries of prominent Muslim scholars and Ijma. Ijma is the consensus among Muslim jurist on a legal issue. The third source of Islamic rules is Qiyas (analogical deduction). Qiyas is the process of legal deduction according to which when the jurists are confronted with an unprecedented case, they base their arguments on the logic used in the Quran and Sunnah (Usmani, [n.d.](#)).

Before twenty-first century there was no law on surrogacy in Iran, the Islamic Council of Iran approved embryo donation and later Grand Council also approved it. The Sunni scholars of Iran disapproved it. There are more than 2000 births in Iran annually on the basis of surrogacy (Boulevard, [2023](#)).

As explained earlier, the concept of surrogacy is new and a recent breakthrough in medical science. Therefore, there is no answer to this problem in the primary source of law which is Quran and Sunnah. To whom there is no dispute. When any authority or law is derived from secondary source different sects of Islam will have different views on that. Scholar of one sect will come to one conclusion and the scholar of different sects might have exactly different opinions.

Sharmin Islam, a well-known professor in Northern University Bangladesh (BUN) in his article, discussed the Islamic approach about surrogacy. Is there any place of surrogacy in the eyes of Islamic jurists? According to him there is no place of surrogacy in Islam. In his journal he thoroughly explained different reasons why he and most of the majority of Islamic jurist think why surrogacy should not be allowed and how this is different than other medical procedures.

This section will be based on critical analysis of every concern mentioned by professor. The first reason given in the journal is; in Quran it is written “None can be their mothers except those who gave them birth” (Verse 5 - 7 Surah Mominun). Therefore, how could a woman claim over

the child even though she did not bear the child or give birth to the child as mentioned in the Quran?

The Verse from Holy Quran he mentioned says no one can claim to be a mother unless she had naturally given birth to a child. It is to be noted here that if we set this verse as a fundamental rule to be a mother only as a biological mother then what about those who breast feed a child and in Islam, she is considered to be a foster mother of the child (Huda, [n.d.](#)). Even in the Quran it is the concept of breastfeeding is mentioned:

“And if you decide on a foster-mother for your offspring. There is no blame on you, provided you pay (the foster-mother) what are offered, on equitable terms” (233, Surah Baqarah).

According to Quran woman who feed you is your foster mother and the child you share the feeding is your foster brother/sister. In some societies, it has been part of their customs to send children to be nursed in certain parts. In ancient Arabia, it was common for urban families to send their infants to rural areas to foster-mother in the desert. Even the Holy Prophet Muhammad himself was cared for during infancy both by his mother and a foster-mother named Halima. In Islam the foster mother has same rights as actual mother, and they have given the same status. In short, this will not be wrong to say that they may be mothers without giving birth to their child. And on the basis of analogical deduction (Qiys) it can be said that, the women other than biological mothers may be mothers as well, as in the case of foster mother.

Second reason given by the professor was, it must not be accepted because surrogacy is a clear form of using donor sperm, a foreign element, in the womb of a woman which results in the mixing of lineage. Mufti Sheikh Ahmad a Muslim scholar also backs the views of the professor by saying the introduction of male sperm into the uterus of a woman to whom he is not married transgresses the bound of Allah. He mentioned the following verses of Quran:

“And who are mindful of their Chasity, [not giving way to their desires] with any but their spouses or what their right hands possess; for then, behold, they are free of all blame, whereas such as seek to go beyond that [limit] are truly transgressor (Huda, [n.d.](#)).

The reason above stated by the professor and Islamic scholar that in Islam there is strict prohibition of immorality or fornication. In Pakistan the

case of surrogacy has not been properly presented. For this concern, there are two antiphons. First, in above mentioned verse, it is clearly mentioned that God is narrating about chastity. In the arguments given by the professor, the sperm of one man should not touch another's woman uterus. It is believed by professor and mufti Ahmad that this is crossing the line set by God in Islam, As mentioned earlier, surrogacy is today product and Islam was born 14th Century ago. World now and 1400 years ago is entirely different. No one in that era would have anticipated the world of today's times especially where we are living now. In Islam either Quran or Sunnah it is mentioned repeatedly do not come close to adultery. It is stated in Quran:

“And do not do anywhere near adultery: it is an outrage, and an evil path” (32, Surah Isra)

In another verse of the Holy Quran, it is mentioned:

“O Prophet! when believing women come to you giving you a pledge that they will not associate aught with Allah, and will not steal, and will not commit fornication, and will not kill their children, and will not bring a calumny which they have forged of themselves, and will not disobey you in what is good, accept their pledge, and ask forgiveness for them from Allah; surely Allah is Forgiving, Merciful.” (12 Surah Mumtahanah)

It is evident in every part of Quran that adultery and fornication are considered as crossing the line. It is the perception current times' scholars that putting a sperm in to uterus of another woman even though they have not met or will not see each other, and they put this breakthrough in the box of having sex. Having sex in Arabic it is referred as “Zina” and is prohibited strictly as in every religion of the world, but you cannot question the Chastity of a woman if she with the permission and supervision of her husband went through the process.

The concern are raised regarding the sperm of stranger contacting the uterus of woman. As mentioned earlier, there are two types of surrogacies. In the gestational surrogacy, the egg of the doner woman is removed from her body and placed in the surrogate mother. In this process one who donates and whose egg has been used will be considered as biological mother. Therefore, if the problem is with the regular form surrogacy where the surrogate mother's egg is using it should be banned. In this process surrogate couple is donating everything and third woman is just carrying in

her womb a baby on their behalf. Even if we consider this concern as rational then it would only be appropriate to ban surrogacy partially.

Another reason given by the professor in his journal to justify that why surrogacy should not be introduced in Islamic countries is, he said that human nature is very simple if somebody's is paying for something, he wants the full value of it.

A valid point to ponder upon raised by the professor is that what if the child is born with a disorder; what will be the future of the child. Law is very comprehensive. When surrogacy will be regulated and monitored by the contract unlike in UK where it is legal but not enforceable as it was analysed thoroughly earlier these problems arises there. When any legislation is permitted without the proper plan or study. As professor mentioned rightly to the point out the issue, it is a business transaction. If we see ground reality no woman will go to these hardships for the intentions of altruism. There must be something for a woman to say yes for this kind of treatment. To legalize and regulate it as other matters are. When there is proper legislation that act will talk about all the possible problem and their remedies. Which includes what will happen what it one or both of the parties do not want the child? What will happen if child died due to the negligence of either of the party? Law is basically the answer of the problems. Instead of getting scared of the challenges, it should be given a proper chance. Where the best of minds sits and make a thorough legislation.

## **Recommendations**

Surrogacy beyond any shadow of doubt is a modern-day wonder. No one in the past would have thought that it will be possible to have your own biological child but from alien body. It still needs more exploration and some countries have already acknowledged the worth of it and started working on it. Whereas, some countries are still in dilemma whether to accept it or not. But some countries are still in denial and have refused to allow it.

Surrogacy is a safe and secure method of procuring a baby. The history has witnessed that it has always been hard for human beings to accept change but eventually they come to know the importance of certain breakthroughs. Surrogacy is certainly one of those, it's not as recent, but still many countries have not recognized it. This is an inevitable reality that



will find its place in society like all modern technologies have. Countries who will work sooner on it rather than later will have the extra advantage.

When it comes to religion especially Islam and its teachings, this topic needs more research and work. This study was an attempt to analyse the concerns expressed by some prominent scholar and professors about their research. Iran has incorporated the concept surrogacy into its legal system. Muslims scholars have this custom of not recognizing changes which they cannot fully comprehend. For example, an Indian scholars puts a “Fatwa” (a fatwa is a nonbinding legal opinion on a point of Islamic law given by a qualified jurist in response to a question posed by a private individual, judge or government) on the use of loudspeakers for giving call to prayer. It was held by different scholars that it is illegal and after some years those scholars had one of the best sound systems in their own mosque (Islamweb.net, [2020](#)). With all respects to Islamic scholars their area of expertise might be on religion but to give such strong and substantial fatwa from the fields of either medical or science is exceeding the their abilities.

Commercial surrogacy though opposed very strongly on moral grounds and is considered to be unethical, but there are still some countries like Russia and Sweden who are just not making money but are doing research to make it more effective. Clearly, it’s the violation of one of the fundamental rights of freedom of lifestyle and freedom to choose profession. Every country who partially recognizes surrogacy admits this fact that it is not unethical if it is done for altruistic purposes. This is simply a hoax why will a woman go all these lengths for altruism. At the end of the day even in those countries it is about money. Every country believes this procedure is not unethical, it’s the attention which seems a paradox. Either something is ethical or not. Commercial surrogacy will open doors for woman to more employment and government by regulating it will just not earn money, but will ensure the safeguards of so many individuals. India before 2016 was administering this industry which resulted in tourism from all over the world coming to India for surrogacy. Which was later referred to as ‘Reproductive Tourism’. It should be a woman’s right to choose it is not, as it does not necessarily have any negative impact on the society.

Pakistan is one of the countries who does not legalize surrogacy at all. Pakistani law is derived from common law and has not done any legislation after the partition. Therefore, the law and legislation were done by the Britishers when united India was a colony. India is the neighbouring country



which also has the same laws as Pakistan, as both were colonies of Britain. Pakistani legislature can seek great deal of guidance from both countries as we share so much when it comes to law.

### **Conclusion**

Surrogacy is a modern medical achievement and should be dealt as a viable treatment for the person who cannot have a child for any reason. It is also widely discussed that a women who chooses not to bear a child just for her personal rather than medical reason is wrong. However, it should be treated as her personal choice. If she does not want to go through the maternity pains and difficult procedure, it should be her decision. Although surrogacy for commercial purpose is wrong where the exploitation of women's body may likely happen. The model Indian Government has opted is very efficient as discussed earlier. The Surrogacy Act 2021 prohibits the commercial use of surrogacy and considers the medical importance where couples who cannot bear child for justified reasons may have the opportunity to fulfil their lifelong dream of having their own biological child. Pakistan to this date have not allowed surrogacy at any level but it is being practiced illegally. To conclude, it is safe to say that surrogacy has become inevitable as many developed countries have already legislated on the issue and Pakistan might have to do this eventually.

### **Conflict of Interest**

The authors of the manuscript have no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

### **Data Availability Statement**

Data availability is not applicable as no new data was created.

### **Funding Details**

No funding has been received for this research.

### **Refernces**

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