

Jurisprudential Analysis of Surrogacy from the Perspective of the Five Islamic Schools of Thought and Islamic Law

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Abstract

Surrogacy refers to an agreement in which a woman carries the embryo of another couple in her womb for a specified period and, after birth, delivers the child to the biological parents. Due to medical and technological advancements, this phenomenon has become a topic of debate in social, legal, and religious spheres. The examination of surrogacy from the perspective of Islamic jurisprudence and the five schools of thought (Hanafi, Maliki, Shafi'i, Hanbali, and Ja'fari) is of particular importance, as issues related to lineage, inheritance, and human rights have profound implications in Islamic law. The objective of this study is to provide a jurisprudential analysis of surrogacy from the viewpoints of Islamic schools and Islamic legal frameworks. The findings indicate that, due to jurisprudential, legal, and ethical complexities, surrogacy is not accepted in most Islamic schools of thought. The objections stem from the significance of lineage, ambiguity in parental and child rights, and moral considerations. Consequently, further investigations by jurists and legal scholars are deemed essential.

Keywords: Surrogacy, Five Schools of Thought, Islamic Law, Islamic Jurisprudence

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1. Introduction

One of the emerging and contemporary issues in the field of medical science is artificial insemination and modern fertility techniques. Since ancient times, reproduction has been one of humanity's fundamental desires, and naturally, infertility and sexual dysfunctions have been persistent concerns that have influenced both the personal and social lives of individuals throughout history. In various periods, the inability to reproduce has led to the extinction of numerous family lines. Infertility is defined as a woman's failure to conceive after one year of regular marital relations without the use of contraceptive methods. Infertility represents a significant social crisis that can potentially destroy the cohesion of the family unit. Therefore, it is natural

that if a solution is found, many people will pursue it. In the formation of a child, three main components—sperm, ovum, and womb—are essential. The absence or dysfunction of any of these elements can hinder the pregnancy process.

Surrogacy refers to a process in which a woman rents her womb to another individual or couple for the purpose of pregnancy and childbirth. This issue has received growing attention, particularly in modern societies where advanced medical technologies are available. In this process, the surrogate (gestational mother) carries the pregnancy on behalf of another party and, after childbirth, delivers the baby to the biological parents. In Islamic jurisprudence, the topic of surrogacy has been examined due to its implications for lineage, parental and child rights, and religious rulings ([Hosseini, 2020](#); [Monsefi Rad, 2023](#)).

There are significant disagreements among the Islamic schools of thought and in contemporary Islamic law regarding the legitimacy and jurisprudential foundations of this matter. The primary concern in the debate on surrogacy revolves around jurisprudential and ethical conflicts, particularly concerning lineage, parental rights, and issues related to the newborn. One of the major challenges lies in determining lineage and genealogical heritage. In Islamic jurisprudence, lineage holds exceptional importance, and any disruption can lead to significant legal and social complications ([Jalali & Ramezani, 2021](#); [Moradi et al., 2016](#)).

The legal and ethical status of the surrogate mother is also a contentious issue. In many Islamic schools of thought, the financial and social rights of the surrogate mother are of serious concern. In some cases, due to ethical and religious objections, jurists and religious scholars consider surrogacy to be problematic and thus reject certain proposed legal frameworks ([Arab Ahmadi, 2021](#); [Hosseini-Hojjatabadi, 2017](#)). To conduct a jurisprudential examination of surrogacy, it is necessary to refer to the theoretical foundations of each Islamic school. These foundations can help clarify the jurisprudential and legal challenges related to surrogacy ([Lotfi, 2021](#)).

From the perspective of the five major Islamic schools of thought:

- **Hanafi** jurisprudence generally does not accept surrogacy. This school believes that such practice may result in complications regarding lineage and social relationships and could trigger jurisprudential conflicts. According to Hanafi principles, the traditional framework of lineage and marriage must be fully respected ([Moradi et al., 2016](#)).
- **Maliki** jurisprudence also opposes surrogacy due to concerns about lineage and morality. This school interprets religious and social principles in a manner that deems surrogacy inconsistent with Islamic teachings and, therefore, does not recognize it as legitimate ([Alizadeh, 2018](#)).
- **Shafi'i** jurisprudence takes a cautious stance toward surrogacy. While some jurists within this school may consider surrogacy under specific conditions, overall, the practice is fraught with problems and is rarely accepted ([Hosseini-Hojjatabadi, 2017](#)).
- **Hanbali** jurisprudence completely rejects surrogacy due to both ethical and religious considerations. This school views the practice as incompatible with Islamic legal principles ([Hosseini, 2020](#)).
- **Shi'a (Ja'fari)** jurisprudence similarly does not recognize surrogacy due to concerns surrounding lineage and religious rulings. According to Shi'a legal principles, surrogacy may result in complications regarding the child's lineage and legal rights, which leads to the general rejection of this practice ([Lotfi & Saadat, 2013](#)).

In **contemporary Islamic law**, some Islamic countries and legal communities have sought to find appropriate solutions for the issue of surrogacy. Efforts have been made to reconcile Islamic principles with modern societal needs. Nonetheless, in most contemporary Islamic legal frameworks, surrogacy is still not accepted due to jurisprudential and ethical concerns, especially those related to lineage and the legal rights of the child ([Ghaffari-Sattar, 2021](#); [Ramezani, 2021](#)).

The objective of the present study is to examine surrogacy from a jurisprudential perspective based on the viewpoints of the five major Islamic schools and Islamic law. Jalali (2021) has emphasized the importance of addressing this issue in light of increasing infertility and environmental health crises across modern societies, highlighting the growing relevance of legal frameworks in this domain ([Jalali & Ramezani, 2021](#)).

One of the core reasons for examining surrogacy jurisprudentially is the issue of lineage and familial rights. In Islamic jurisprudence, lineage is highly emphasized, and any alteration can lead to significant consequences. Surrogacy can cause

serious disputes regarding the determination of the child's lineage and the legal and biological parental rights. Therefore, a jurisprudential investigation of this issue is crucial to prevent potential legal conflicts and disruptions in family lineage systems

2. History of Surrogacy

The donation of embryos and human gametes was first conducted in California in 1983, during which a donated sperm was fertilized with an ovum in a laboratory, and the resulting embryo was implanted in the recipient's uterus. Following in-vitro fertilization and the formation of an embryo, it became possible to transfer the embryo not only into the woman's own uterus but also into a surrogate uterus—and with future scientific advances, potentially into artificial wombs or even animal wombs. In 1977, the first formal surrogacy contract was drafted by a legal professional in the United States. Based on this agreement, a couple unable to conceive naturally made a pact with a woman to carry the child. After sperm preparation, it was injected into the surrogate's uterus, and following childbirth, the infant was returned to the intended parents. The first child born via surrogacy was delivered in 1978 in the United States ([Robertson, 2016](#)).

In 1996, the California Supreme Court officially legalized surrogacy contracts in that state. Statistics indicate that between 1977 and 1988, around 600 children were born using this method, and since 1988, over 5,000 children have been born through gestational surrogacy. In Iran, the Embryo Donation Law was approved in July 2003 and communicated to fertility centers for implementation. Article 1 of this law allows qualified infertility treatment centers to transfer embryos obtained through in-vitro fertilization from legally married couples, with their written consent, into the uterus of a woman who, after marriage and medical procedures, is proven to be infertile ([Ghaffari-Sattar, 2021](#); [Jalali & Ramezani, 2021](#)).

Following the legalization of this method, terminologies such as "commissioned mother," "rented womb," "surrogate mother," "gestational carrier," and "intermediary pregnancy" have become commonly used. Surrogacy contracts are also formally registered at notary offices across the country. These contracts, concluded between the surrogate and intended parents, contain clauses regarding the rental object, duration, compensation, terms of payment, conditions, and documentation ([Dadkhah, Asgari, et al., 2020](#)).

Prominent Shiite jurists including Ayatollahs Sistani, Makarem Shirazi, Khamenei, Safi Golpayegani, Subhani, Montazeri, and Mousavi Ardebili have recognized surrogacy as a permissible treatment for infertility and have issued rulings affirming its lawfulness ([Arab Ahmadi, 2021](#); [Lotfi, 2021](#)). In Islamic countries where polygamy is permissible, and in Shiite communities where temporary marriage (*mut'ah*) is religiously sanctioned, surrogacy may also be facilitated within these frameworks. Surrogacy may be conceptualized in three ways: using the womb of another woman, employing an artificial womb, or utilizing an animal womb—the latter two remaining theoretical and under study ([Monsefi Rad, 2023](#); [Siam, 2014](#)).

3. Lineage of Children Born Through Surrogacy

3.1. *The Surrogate Mother*

A surrogate mother is a woman who acts as an intermediary, carrying the fetus to ensure its healthy development. She is contracted by prospective parents who are unable to conceive naturally due to medical reasons. Under a formal agreement, and for a defined compensation, she undergoes the legal and medical processes to carry the fetus on behalf of the genetic parents. This applies regardless of whether the ovum belongs to the intended mother or was fertilized in a lab and prepared outside her uterus ([Ramezani, 2021](#); [Sovabi Esfahani & Souri-Nejad, 2019](#)).

3.2. *Lineage (Nasab)*

The term "lineage" has been left undefined in Islamic sources, as Sharia tends to follow customary definitions. Linguistically, *nasab* refers to kinship and familial ties. In legal terminology, it signifies a biological and natural connection between a child and its parents through the union of sperm and ovum. Legally, lineage is a relationship that arises from birth or shared biological origin. In addition to biological lineage, today's legal systems also acknowledge *constructive lineage*, based on legal recognition and social agreements. With the rise of infertility treatments, new interpretations of lineage have emerged—especially in cases where infertile couples adopt a child through medical means and are recognized as the legal

guardians. In other words, the child is attributed to individuals who, via modern treatments, become the legal and nurturing parents (Haji-Azizi & Ghafghazi-Asl, 2015; Rasekh et al., 2016).

3.3. Legal Parents (*Walidān-e-Hokmi*)

Artificial insemination includes various methods, with surrogacy being one of them. In this method, a couple fertilizes their own sperm and ovum, then implants the resulting embryo in the uterus of a woman who is not the wife. Until the end of the pregnancy term, the surrogate carries the child and delivers it to the biological parents. The intended parents—who initiate the fertilization process via laboratory methods—are considered lessees, or "intended parents," and are deemed legal (though not biological) guardians of the child born via artificial insemination (Lotfi & Saadat, 2013; Moradi et al., 2016).

3.4. Surrogacy and Lineage in Iranian Law

In Iran, there are no explicit statutory laws regulating surrogacy, and the Civil and Family Codes do not clearly address the matter. In Shi'a jurisprudence, which constitutes the dominant legal school in Iran, surrogacy is generally not accepted, and juristic opinions vary. Many clerics reject surrogacy on religious and lineage-related grounds. Regarding the lineage of children born through surrogacy, in most cases, the child's lineage is attributed to the biological parents who created the embryo, not to those who merely contributed sperm or ovum. This has generated complex legal and religious questions in Iran, and there is no unified opinion among lawmakers and religious authorities. Given the lack of explicit legislative stance on the legitimacy and enforceability of surrogacy contracts, Article 167 of the Constitution and Article 3 of the Civil Procedure Code underscore the importance of jurisprudential evidence in legitimizing this institution (Ghaffari-Sattar, 2021; Hosseini-Hojatabadi, 2017).

4. Surrogacy in Jurisprudential Perspectives

4.1. Principle of Exemption (*Barā'at*) and Permissibility (*Ibāha*)

The principle of *barā'at* is a cornerstone of criminal law and human rights, asserting that individuals are presumed innocent until proven guilty. Likewise, the principle of *ibāha* in Islamic law indicates that everything is permissible unless explicitly forbidden in Sharia. Based on the legal maxim *asālat al-ḥill*, some jurists argue that surrogacy is not inherently objectionable, as no definitive prohibition has been declared. Therefore, as long as the Sharia remains silent on the ruling, permissibility is assumed (Hosseini, 2020; Monsefi Rad, 2023).

4.2. Maxim of Necessity Permits Prohibited Acts (*al-Ḍarūrāt Tubīḥ al-Maḥẓūrāt*)

In Islam, obligations are imposed only within the limits of human capability. In dire situations, even prohibitions may be relaxed. In the context of infertility treatments, using donor sperm may be justified under the maxim *al-ḍarūrāt tubīḥ al-maḥẓūrāt*—necessities permit prohibitions. However, this maxim is bounded by conditions: the necessity must be actual and imminent (not hypothetical); the harm must be otherwise unavoidable; and the extent of necessity must be minimized (*al-ḍarūrāt tuqaddar bi-qadrihā*) (Mahdavi et al., 2013; Ramezani, 2021).

4.3. Principle of No Hardship (*Nafy 'Usr wa Ḥaraj*)

This principle holds that no religious ruling should impose undue hardship on individuals. It aims to adapt Islamic rulings to real-life conditions and remove unnecessary burdens. In the case of surrogacy, if this method causes unbearable hardship for the couple or the surrogate mother, the principle of *nafy 'usr wa ḥaraj* may be invoked to ease such difficulties. Nonetheless, some jurists maintain that these methods may themselves cause major complications, especially in matters of lineage and family ties, which might not align with the goals of this principle (Mahdavi Kani et al., 2013; Sovabi Esfahani & Sourī-Nejad, 2019).

5. The Lineage of a Child Born Through Surrogacy in Islamic Jurisprudential Views

5.1. *Birth as the Criterion for Maternal Lineage*

Proponents of this view argue that childbirth alone determines the maternal relationship. These jurists assert that, at the time of the Qur'anic revelations and Prophetic traditions, people lacked the modern scientific understanding of conception and believed that the womb merely nurtured the fetus. Consequently, the woman who gave birth was regarded as the child's mother. This indicates that social convention at the time equated motherhood with the act of childbirth, and Islamic law acknowledged this customary understanding under certain conditions. In other words, where no specific instruction exists in Sharia, the understanding defaults to prevailing social norms. Since there is no explicit statement in Islamic texts that designates the ovum donor as the mother, the verse "Their mothers are none but those who gave birth to them" (Qur'an 58:2) has been interpreted to mean that the entire basis for motherhood lies in gestation.

Supporters of this position, in addition to citing linguistic definitions of "mother," also refer to Qur'anic verses such as, "Those who pronounce *zihār* against their wives—they are not their mothers; their mothers are only those who gave birth to them." From this, they conclude that the surrogate who gives birth is the legal mother—not the ovum donor (Arab Ahmadi, 2021; Siam, 2014).

5.2. *Genetic Relationship and the Ovum as the Criterion*

The dominant view among many jurists is that the maternal link is determined by the genetic relationship and ovum ownership. This group asserts that motherhood, like fatherhood, arises from genetic origin, with the ovum forming the foundational biological contribution to the fetus. The womb, they argue, merely functions as an incubator. Thus, hereditary traits are exclusively transmitted through the ovum, and no lineage can be established with the gestational mother.

In response to the argument that the Qur'anic term *waladnahum* (gave birth) confirms the gestational mother's maternal status, these jurists note that this term is also used in the Qur'an to refer to fathers—as in Surah al-Balad: "By the father and what he begets" (Qur'an 90:3). When the Qur'an speaks of childbirth, it uses the term *wada'a* (to deliver). They further emphasize that mere birth does not confer a legitimate lineage without genetic linkage (Chaffari-Sattar, 2021; Ramezani, 2021).

5.3. *Combined View: Both Birth and Genetic Relationship Establish Maternal Lineage*

A third perspective held by some jurists and legal scholars posits that both gestation and genetics contribute to maternal attribution. According to this approach, a child born through surrogacy may be naturally related to two women—the ovum donor and the gestational mother—each of whom can be considered a natural and legal mother. Supporters of this view suggest that dual maternity does not contradict Sharia but merely departs from convention.

They argue that although the embryo originates from the sperm and ovum, it is the gestational mother who contributes significantly to fetal development—especially in shaping its organs and physiological identity. Furthermore, the gestational mother provides nourishment through her blood, and after birth, her breastmilk is often the most suitable source of sustenance. Her emotional bond with the child, developed during pregnancy, is also vital. Consequently, they suggest that such a woman should not be denied the legal rights of motherhood—especially in matters of visitation, inheritance, or marital prohibitions.

Although two mothers may seem unconventional, new biological findings make this view plausible. For example, science shows that an ovum consists of a nucleus and a cytoplasmic envelope. It is now possible to extract the nucleus from one woman's ovum and insert it into another's. Thus, two women may biologically share in the ovum's creation. In this scenario, assigning maternal status to both women becomes logical.

From this perspective, the ovum donor and the gestational mother are both regarded as the child's "real mothers." Nonetheless, practical legal and caregiving roles such as inheritance, custody, and upbringing are best assigned to the woman who intended to have the child. Among contemporary Shi'a scholars, Ayatollah Mousavi Ardebili supports the dual maternity view. He argues that lineage is a construct derived from natural events—the child's biological emergence—and not a divinely prescribed legal reality. Therefore, custom defines lineage, and religion affirms it (Lotfi, 2021; Mahdavi Kani et al., 2013).

Among these three prominent views, the second one (genetic relationship as the criterion) presents the strongest medical and jurisprudential basis. The embryo, representing the initial stage of life, results from the ovum and sperm of the intended parents. The mere fact that the fetus was nurtured in another woman's womb does not establish maternal lineage ([Haji-Azizi & Ghafghazi-Asl, 2015](#); [Rasekh et al., 2016](#)).

6. Jurisprudential Analysis of Surrogacy in the Five Islamic Schools of Thought

Surrogacy, also known as gestational rental, refers to the use of a woman's womb for the purpose of pregnancy and childbirth. This issue raises complex jurisprudential and legal questions, and diverse interpretations have been proposed in the five major Islamic schools of thought—particularly in Shi'a and Sunni jurisprudence.

6.1. Twelver Shi'a Jurisprudence

In Twelver Shi'a jurisprudence, surrogacy is generally not accepted and faces serious religious objections. Based on the Qur'an, Prophetic traditions, and teachings of the Imams, this school of thought places great importance on the preservation of lineage and familial relationships. One of the primary concerns in Shi'a law is the accurate determination of lineage, which is considered essential to Islamic legal identity.

Surrogacy, in this context, is seen as problematic because the gestational mother is not one of the biological parents. This leads to uncertainty in assigning lineage, inheritance, and legal parental responsibilities. Many leading Shi'a jurists prohibit surrogacy on these grounds. They argue that such arrangements could result in religious and social confusion that contradicts foundational legal principles ([Alizadeh, 2018](#); [Hosseini-Hojjatabadi, 2017](#)).

Shi'a scholars frequently reject surrogacy because of concerns related to genealogical integrity, inheritance, and the child's legal rights. These concerns have prompted numerous fatwas declaring the practice impermissible. The rulings are based on the need to protect religious identity, uphold familial clarity, and prevent legal ambiguities. Shi'a jurisprudence aims to preserve the transparency and validity of lineage, and it approaches any potential changes to these principles with caution. As a result, surrogacy is generally considered impermissible and un-Islamic in Twelver Shi'a law ([Lotfi, 2021](#); [Moradi et al., 2016](#)).

6.2. Hanafi Jurisprudence

Hanafi jurisprudence, one of the four major Islamic schools of law, has developed principles and legal rules addressing various aspects of individual and social life. Among its complex and contentious issues is the matter of surrogacy. Due to its distinctive legal framework regarding family and marital matters, Hanafi jurisprudence holds specific views on surrogacy. This school places great emphasis on lineage and genealogy, and any modification in these areas is examined with particular caution and precision.

Lineage (*nasab*) and genealogical ties are of critical importance in Hanafi thought. Surrogacy can disrupt these connections and pose significant challenges in determining a child's lineage. According to Hanafi principles, any alteration to lineage must be executed with careful adherence to Sharia guidelines. Consequently, surrogacy is generally not accepted due to the ambiguities it introduces in lineage determination ([Hosseini, 2020](#); [Moradi et al., 2016](#)).

In Hanafi jurisprudence, both the biological parents' rights and the child's legal status are closely scrutinized. Surrogacy can generate uncertainties in defining these legal and biological rights, thereby posing a serious challenge in this school. As such, due to the lack of clarity regarding parental and child rights, surrogacy is generally rejected.

Key objections include its conflict with Sharia principles. In Hanafi jurisprudence, surrogacy is seen as conflicting with legal and religious norms. Foundational elements such as marital contracts, lineage, and family rights must be thoroughly respected. Surrogacy, which potentially disrupts these pillars, is therefore not recognized. Many Hanafi scholars consider surrogacy to be inconsistent with Islamic norms due to its impact on genealogy and lineage and thus reject it as impermissible ([Ghaffari-Sattar, 2021](#); [Ramezani, 2021](#)).

Existing fatwas indicate that Hanafi jurisprudence, due to these legal and religious concerns, adopts a generally negative stance toward surrogacy. The most serious consequence, according to this school, lies in the confusion it causes in lineage.

Family relations must be unambiguous, and any ambiguity in lineage can lead to both religious and social complications. Surrogacy introduces such ambiguity and therefore creates serious concerns in this regard.

Child and parental rights are also rigorously examined in Hanafi law. Any adjustments to these rights must conform strictly to Islamic legal principles. Surrogacy can disturb these rights, and thus it is fundamentally rejected in Hanafi jurisprudence (Hosseini-Hojjatabadi, 2017).

6.3. *Maliki Jurisprudence*

The Maliki school of law, one of the four principal Sunni schools, was founded by Imam Malik ibn Anas (711–795 CE). This school, recognized for its distinct jurisprudential orientation and adherence to Islamic principles, is widely followed in North and West Africa, including Morocco, Algeria, Tunisia, and parts of sub-Saharan Africa. Owing to its legal methodology, Maliki jurisprudence has examined complex issues such as surrogacy.

Maliki jurisprudence, like the Hanafi school, does not recognize surrogacy. The rationale is similar: preservation of lineage and ensuring accurate genealogical identification. Surrogacy can introduce ambiguity in determining a child's lineage and familial relationships, which contradicts core Maliki principles. As such, surrogacy is not accepted as a legitimate practice.

Legal rulings within this school are founded on robust jurisprudential principles, and surrogacy—especially due to the legal and religious complications associated with lineage—is not deemed permissible (Alizadeh, 2018; Moradi et al., 2016).

6.4. *Shafi'i Jurisprudence*

Shafi'i jurisprudence, founded by Imam Muhammad ibn Idris al-Shafi'i (767–820 CE), is one of the four major Sunni schools. It is renowned for its methodological precision in interpreting religious texts and legal doctrines. Surrogacy, as a contemporary issue, has been addressed cautiously within this tradition.

In general, Shafi'i jurisprudence, like other Sunni schools, does not recognize surrogacy as a valid legal arrangement. Its analysis primarily centers on the importance of preserving lineage. The Shafi'i school emphasizes the clear and accurate establishment of *nasab*. Since surrogacy may result in confusion regarding a child's lineage, it is considered impermissible.

Shafi'i legal texts do not endorse surrogacy as a legitimate practice. Due to its potential to create religious and social complications, particularly in the determination of lineage, the practice is generally prohibited (Hosseini, 2020; Ramezani, 2021).

6.5. *Hanbali Jurisprudence*

The Hanbali school, established by Imam Ahmad ibn Hanbal (780–855 CE), is known for its strict adherence to Qur'anic texts and Prophetic traditions. This school takes a cautious approach toward accepting new legal interpretations. As in the other Sunni schools, surrogacy is not accepted within Hanbali jurisprudence.

Hanbali jurisprudence consistently follows divine law as conveyed in the Qur'an and Sunnah. Surrogacy is not recognized as a permissible act within this legal framework. As with the other schools, Hanbali jurisprudence emphasizes the sanctity of lineage and its accurate determination. Because surrogacy can lead to ambiguity in this area, it is rejected.

Surrogacy remains a controversial and problematic issue across all five schools of Islamic jurisprudence. The core reasons for its rejection include concerns about lineage, legal and social challenges, and incompatibility with Sharia and traditional norms. Each of the five schools upholds lineage preservation as a foundational legal principle, and surrogacy threatens that structure (Gorji et al., 2023; Lotfi, 2021).

7. Surrogacy from the Perspective of Islamic Law

Surrogacy—also referred to as gestational rental—has become a complex and debated topic in Islamic law, especially in light of modern medical and technological advancements. Surrogacy refers to a contractual arrangement in which a woman (the surrogate) carries and delivers a child for another couple. After childbirth, the child is handed over to the intended biological parents.

Due to the emphasis on lineage (*nasab*) and inheritance in Islamic law, surrogacy raises significant concerns. One of the primary issues is its impact on lineage and inheritance rights. Islamic teachings underscore the importance of knowing one's lineage and ensuring that all legal rights are based on accurate familial ties. Surrogacy can complicate the establishment of a child's true lineage, as the gestational carrier is not genetically related to the child. Some jurists argue that surrogacy disrupts the Islamic lineage system and contradicts legal norms ([Haji-Azizi & Ghafghazi-Asl, 2015](#); [Mahdavi et al., 2013](#)).

Ethical and legal issues are also central to Islamic jurisprudence. In Islamic law, preserving human dignity and rights is fundamental. Surrogacy may be seen as exploitative, potentially violating women's rights. Certain scholars argue that surrogacy could be interpreted as commodifying or renting out a fetus, which is ethically and religiously problematic. The financial arrangements and contractual conditions associated with surrogacy can also raise concerns, especially if the surrogate's rights are not adequately protected.

From an Islamic standpoint, economic and social contexts must be considered. In Muslim societies, social justice and protection against the exploitation of vulnerable populations are key principles. Surrogacy may facilitate the exploitation of economically disadvantaged women. Islamic law requires that any action benefiting one group at the expense of another be carefully evaluated for fairness and compatibility with divine law ([Dadkhah, Asgari Khanqah, et al., 2020](#); [Sovabi Esfahani & Souri-Nejad, 2019](#)).

8. Contemporary Views and Exceptions

While many traditional jurists oppose surrogacy, some contemporary Islamic scholars have attempted to provide solutions aligned with Islamic principles in light of emerging medical and social needs. These scholars offer nuanced perspectives and recognize certain exceptions, which may be summarized as follows:

8.1. *Clearly Defined Contracts and Protection of Rights:*

Some contemporary jurists argue that, with precise and transparent contractual arrangements and full protection of the rights of all involved parties, the ethical and legal challenges of surrogacy can be minimized. According to this view, contracts should be formulated in a way that guarantees the legal, ethical, and medical rights of the surrogate, the biological parents, and the child, while preventing any form of exploitation ([Ghaffari-Sattar, 2021](#); [Ramezani, 2021](#)).

8.2. *Resolving Lineage and Inheritance Issues:*

Other scholars have sought to address concerns surrounding lineage and inheritance in surrogacy through the development of new jurisprudential methods. They believe that by crafting detailed religious-legal principles and frameworks, it is possible to respect the spirit of Islamic law while adapting to the realities of contemporary reproductive practices. In general, these scholars assert that surrogacy requires more careful investigation, and it should be approached with caution. Such examination may contribute to the development of legal rules that both address modern needs and uphold Islamic values ([Lotfi, 2021](#); [Sovabi Esfahani & Souri-Nejad, 2019](#)).

As a highly complex issue in Islamic law, surrogacy demands comprehensive analysis of its jurisprudential, ethical, and social dimensions. Islamic jurisprudence prioritizes issues such as lineage, inheritance, human rights, and human dignity. While many traditional scholars oppose surrogacy, some modern jurists strive to develop frameworks that remain faithful to Islamic principles while addressing current societal and medical realities. Ultimately, a well-informed decision on surrogacy requires rigorous examination of all legal and jurisprudential dimensions, with the involvement of qualified scholars. These deliberations can help establish policies that are both religiously sound and socially responsible ([Arab Ahmadi, 2021](#); [Monsefi Rad, 2023](#)).

9. Conclusion

Surrogacy—also known as gestational surrogacy—represents one of the most complex and contemporary issues in Islamic jurisprudence, increasingly drawing attention in recent years due to advancements in medical science and changing social

norms. Within the framework of the five major Islamic schools (Hanafi, Maliki, Shafi'i, Hanbali, and Ja'fari), surrogacy poses serious jurisprudential challenges and has elicited diverse legal analyses.

The Hanafi school, grounded in Qur'anic texts, Sunnah, and analogical reasoning (*qiyās*), generally approaches surrogacy with great caution. Hanafis argue that surrogacy may lead to confusion in matters of lineage and inheritance, which are considered foundational elements of Islamic family law. Any measure that compromises these elements must be scrutinized with the utmost care. In addition, Hanafi scholars raise ethical and legal concerns, including the possible exploitation of women and violations of their rights (Hosseini, 2020; Moradi et al., 2016).

The Maliki school tends to adopt a conservative legal stance. It emphasizes the preservation of human dignity and the prevention of practices that could lead to abuse or exploitation. From the Maliki perspective, surrogacy is problematic due to its implications for lineage and legal rights, and it is rejected primarily on these grounds (Alizadeh, 2018; Mahdavi et al., 2013).

The Shafi'i school, known for its meticulous legal reasoning and adherence to foundational principles, takes a similarly cautious view. Shafi'i jurists maintain that surrogacy may result in complex issues regarding lineage and inheritance and must be evaluated in light of specific legal rules. The school also stresses the importance of protecting human dignity and preventing exploitation of surrogate women (Hosseini-Hojatabadi, 2017; Ramezani, 2021).

The Hanbali school, which places heavy emphasis on textual fidelity and Prophetic tradition, also maintains a conservative approach toward surrogacy. Due to concerns regarding genealogy, inheritance, and ethical implications, Hanbali jurists generally do not recognize surrogacy as a lawful practice. All relevant religious and legal factors must be thoroughly examined to avoid contravention of Islamic principles (Ghaffari-Sattar, 2021; Robertson, 2016).

The Ja'fari (Shi'a) school exhibits a strong emphasis on legal and theological precision. Issues of lineage and inheritance are of utmost importance, and surrogacy is seen as potentially disrupting these fundamental concepts. Shi'a scholars are also concerned with ethical and legal dimensions, such as the dignity of the surrogate and the potential for economic exploitation. As a result, many jurists in this tradition reject surrogacy as incompatible with the preservation of Islamic moral and legal values (Haji-Azizi & Ghafghazi-Asl, 2015; Lotfi, 2021).

In Islamic law, the issue of surrogacy must be approached with a multidimensional analysis—jurisprudential, ethical, and social. The overarching principles of Islamic law emphasize the protection of human dignity, prevention of exploitation, and safeguarding of individual rights. Given the complex challenges related to lineage, inheritance, and ethics, surrogacy is often met with resistance in traditional Islamic legal discourse.

Many Islamic jurists and legal scholars, recognizing the complexity of the matter, advocate for a cautious and principles-based analysis of surrogacy. It is essential to ensure that the rights of all parties are respected and that no one is exploited based on socioeconomic vulnerabilities.

In summary, a jurisprudential analysis of surrogacy from the perspective of the five Islamic schools and Islamic law highlights that the issue remains fraught with theological and ethical complexities. Islamic legal traditions generally adopt a cautious and conservative stance due to concerns regarding lineage, inheritance, and human rights. However, in modern contexts, and with continued advances in reproductive technology, some contemporary scholars are striving to reconcile Islamic principles with emerging social and medical needs. Ultimately, appropriate policy decisions on surrogacy must be grounded in rigorous examination of all legal, ethical, and religious dimensions, with active consultation from qualified Islamic jurists. Such deliberation can contribute to the development of coherent and principled legal frameworks that are both theologically sound and socially responsive.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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