The Nature and Validity Conditions of Surrogacy Contracts

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Abstract

This contract is considered one of the types of agreements governed by Article 10 of the Iranian Civil Code. The conditions, status, and effects of non-specified contracts are determined based on the general principles of contracts and the principle of freedom of will. A surrogacy contract is an agreement under which a healthy woman undertakes to carry and nurture a fertilized ovum—originating from a third party's sperm combined with either her own or another woman's ovum—within her womb until full development. This contract for the use of a third woman's uterus is concluded with a legitimate purpose, namely, to medically assist infertile couples. Upon the birth of the child, the surrogate delivers the baby to the contracting parties, either in exchange for compensation covering necessary expenses and a reward or gratuitously. The general conditions governing the validity of contracts must also be observed in surrogacy agreements. Infertile couples seeking to have children, after receiving medical, psychological, and ethical counseling under the supervision of infertility treatment centers and with the full consent of the surrogate mother, enter into a specific contractual arrangement with her. In such contracts, the infertile couple usually lacks the ability to conceive naturally. The process of fertilization is carried out in a laboratory environment. If the wife cannot become pregnant, the embryo created through artificial insemination is transferred into the uterus of a third woman. Regarding the permissibility of artificial insemination, most contemporary jurists, due to the necessity of the matter and the absence of any explicit prohibition, consider it permissible based on the principle of exemption from prohibition (*asl al-bara'a*). However, some scholars have objected, arguing that lawful conception occurs through natural intercourse, whereas artificial insemination lacks this characteristic. Nevertheless, such contracts do not conflict with public order or good morals, since they are intended to protect the formed embryo and prevent its death, and thus do not contradict public policy or ethical principles.

Keywords: Gamete, Embryo, Infertile Couple, Surrogate Uterus, Surrogacy Contract, Embryo Transfer

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1. Introduction

The contract involving the use of another woman's womb is classified among *innominate contracts*, which are not expressly mentioned in the Civil Code but are recognized under Article 10 of the Iranian Civil Code (Katouzian, 2017; Shahidi, 2017).

In the *Law on the Donation of Embryos to Infertile Couples* enacted in 2003, the legislator used the term "donation." Various designations have been applied to artificial insemination and surrogacy contracts, such as "substitute womb," "rental womb," "host substitute," "commissioned mother," "surrogate mother," and "surrogacy contract." The title *"surrogacy in pregnancy"* can refer to both the therapeutic method and the contractual arrangement, as it encompasses all parties involved (Yadollahi Baghloei et al., 2015).

For couples providing gametes, different terminologies have been used; however, the terms *genetic parents* and *intended parents* are most common. A woman who agrees, through a contract—either gratuitous or for compensation—to carry an implanted embryo in her womb is referred to as a *surrogate mother*. The expressions *surrogate mother* and *substitute mother* are often used to describe the woman carrying the pregnancy. Some scholars criticize the term "substitute womb," arguing that motherhood cannot be substituted and the term should be abandoned. Others maintain that since the woman carrying the pregnancy contributes physiologically and emotionally to childbirth, she deserves to be called a mother, albeit the *second mother* of the child (Aramesnk).

From a genetic perspective, the surrogate mother functions as the physiological replacement of the egg donor and thus qualifies for the title "mother." Jurists generally hold that the egg donor is considered the mother (Khoei, 1999; Mousavi Khomeini). However, although the egg donor is legally and genetically regarded as the mother, the surrogate carries the child through the critical stages of growth. Medically, the child is nourished by the blood and body of the surrogate for approximately 38 weeks and therefore develops physical—and even psychological—dependence on her. It is evident that the woman nurturing the child through gestation should be recognized as a mother. It may be said that both women—the egg donor and the surrogate—jointly contribute to the child's creation, both materially and spiritually. Furthermore, the stage of *ensoulment* occurs within the womb of the surrogate, strengthening the argument that the child is attached to her in every sense. Consequently, denying her the status of mother appears implausible.

This relationship can be compared to that of a *wet nurse* in Islamic jurisprudence, where a woman who breastfeeds a child under the age of two for a full day and night or fifteen consecutive sessions becomes the child's *nursing mother (murdi'a)*, and the child is recognized as her *milk child (walad riḍā'ī)*. Children nourished from the same woman's milk—whether biological or milk-related—are considered siblings, and their offspring are deemed her grandchildren (Najafi, 1991). Therefore, the child's connection to the surrogate, in terms of duration and biological interaction, surpasses that of a nursing relationship. It is thus evident and necessary to regard the surrogate as a mother (Hamdollahi & Roshan, 2009).

2. Definition of the Surrogacy Contract

Legal scholars have proposed various definitions of the surrogacy contract. One definition states that "a surrogacy agreement is a contract between intended parents and a surrogate mother, whereby the latter agrees to receive and carry the sperm, ovum, or fertilized ovum of the intended parents, or that of another couple, within her womb, and to deliver the child to the intended parents after birth" (Jafarzadeh, 2006).

Another definition holds that "a surrogacy contract is an agreement under which a woman consents to become pregnant using assisted reproductive technologies, with the fertilized gametes of the intended parents or third parties, and after gestation and childbirth, undertakes to deliver the newborn to the contracting couple. In return, the intended parents agree—depending on the nature of the contract—to cover expenses and remuneration in a *onerous contract*, or to fulfill related obligations in a *gratuitous contract*" (Jalalian, 2016).

Some jurists have criticized these definitions, arguing that they encompass various scenarios of embryo formation—including embryos resulting from donor gametes—whereas *surrogacy in pregnancy* specifically refers to cases where the surrogate carries an embryo belonging to the infertile couple themselves. Furthermore, they argue that the expression "using assisted reproductive methods" is redundant, since the very act of surrogacy inherently requires such methods (Yadollahi Baghloei et al., 2015).

A more precise definition may be stated as follows: a surrogacy contract is an agreement whereby a healthy woman undertakes to carry and nurture an embryo—fertilized from a third party's sperm and her own or another woman's ovum—

until full development in her womb, and after childbirth, to deliver the child to the contracting parties, either gratuitously or in exchange for compensation (Emami, 2003; Safaei, 2003).

The essential point is that the child may have a genetic connection with one of the intended parents. The surrogate may be inseminated with the intended father's sperm, or the child may be born through the contribution of at least one intended parent in a laboratory-assisted conception process (Bat'haei Golpayegani, 2003).

3. Obligations of the Surrogate Mother

The surrogate woman consents to provide her womb, either gratuitously or for agreed compensation, to the contracting couple for the transfer of an embryo under medical supervision. She undergoes pregnancy under the monitoring of specialists, complying with contractual and customary medical procedures for the proper growth of the fetus. She must refrain from harmful activities that may endanger the embryo, such as the use of narcotics, alcohol, or substances detrimental to pregnancy, and must take prescribed medication and nutritional supplements to ensure fetal health and a safe delivery. Upon the agreed time and in accordance with the contract, she delivers the child to the intended parents.

Egg or embryo recipients undergo comprehensive counseling to address potential stressors during pregnancy and to manage them effectively. Such counseling requirements are typically included as conditions in the contract. To avoid implementation disputes, parties often stipulate specific legal guarantees within the contract, recognizing that once the embryo is implanted, the contract cannot be rescinded by mutual consent, except in extraordinary circumstances determined by medical authorities and approved by the Forensic Medicine Organization, a situation known as *therapeutic abortion* (Rajaei et al., 2011).

The *Single Article Law of June 15, 2005* authorizes therapeutic abortion under certain conditions: if the fetus is diagnosed as severely malformed or causes maternal distress, or if the mother's life is endangered due to illness, abortion is permissible before ensoulment (four months) with the woman's consent. The performing physician bears no criminal or legal responsibility. Violators are punishable under the *Islamic Penal Code*. The purpose of this enactment is to prevent the birth of malformed or disabled infants and to reduce maternal mortality resulting from unsafe abortions. The standard of *hardship* (*'usr wa ḥaraj*) is subjective, meaning that what constitutes undue hardship varies from person to person and cannot be determined by a universal rule. For instance, pregnancy resulting from rape may be deemed a case of undue hardship (Mohaghegh Damad, 2010).

4. Essential Validity Conditions of the Surrogacy Contract

According to Article 190 of the Iranian Civil Code, the fundamental conditions for the validity of contracts apply universally to all agreements, including surrogacy contracts under Article 10 (Safaei & Ghasemzadeh, 2021; Shahidi, 2017). The four essential elements are: (1) the intent and mutual consent of the parties; (2) the legal capacity of the parties; (3) a definite subject matter; and (4) the legitimacy of the purpose. Article 191 emphasizes that the creation of a contract arises from *intent to establish* (qaṣd al-inshā'). Article 194 further stipulates mutual agreement as a requirement for validity, and Article 195 renders a contract void if intent is absent. Therefore, *intent* is a condition of validity, while *consent* determines enforceability.

These essential conditions also extend to private contracts under Article 10, since the general principles of validity apply equally to *unnamed contracts*. Thus, surrogacy contracts must meet these general legal and ethical requirements to be recognized as valid (Sa'edi, 2007; Taqipour, 2017).

Intent and Consent of the Parties in a Surrogacy Contract: In this type of contract, the infertile couple—seeking to have a child—undergoes tailored medical, psychological, and ethical counseling under the supervision of specialists at infertility centers and, with full preparedness, approaches the surrogate mother; with her fully informed consent, they conclude a surrogacy contract. The surrogate mother likewise receives counseling and, upon accepting specific conditions for the gestational period, declares her readiness. Therefore, considering each party's circumstances and the waiting period necessary to obtain medical and scientific approvals, an error in declaring intent (the animus contrahendi) that would vitiate the will is highly unlikely (Safaei & Ghasemzadeh, 2021). Even before the transfer of sperm, ovum, or embryo, infertility centers require written consent from the infertile couple for the medical procedures and from the surrogate for the surgical intervention. Given the multiplicity of counseling sessions and the information provided to the parties, ignorance of the subject matter or governing rules is practically precluded. Of course, the conditions for concluding the contract may vary (Shahidi, 2017).

Method One: The most common approach is that the sperm and ovum are taken from the intended parents by medical techniques, fertilized in a laboratory environment, and then—after a period and through surgical procedures—transferred to the surrogate's uterus. The surrogate then carries the embryo to full term. In this method, the surrogate has no genetic connection with the child (Bat'haei Golpayegani, 2003; Emami, 2003).

Method Two: In some cases, due to ovarian insufficiency or a defect in ovum production, the intended mother is merely the *intended* (legal) mother. In such a case, the intended father's sperm is fertilized with the surrogate's ovum in the laboratory, the resulting embryo is transferred to the surrogate's uterus, and—after completing gestation—the child is delivered to the intended parents. Here, the surrogate has a genetic link with the child (Emami, 2003).

Method Three: An ovum may be donated by a third woman and fertilized with the intended father's sperm in the laboratory; the embryo is then transferred to the surrogate's uterus. After gestation, the child is delivered to the intended parents. In this method, the surrogate and the intended father are genetically related to the child, while the intended mother has no genetic link (Reza-Nia Mo'allem, 2007; Safaei, 2003).

Method Four: Both sperm and ovum are donated by third parties, fertilized in the laboratory, and the embryo is transferred to the surrogate's uterus; after gestation, the child is delivered to the intended parents. In this method, the child has no genetic connection with either the intended parents or the surrogate (Gavahi, 2007).

Accordingly, once the parties choose any one of these methods, the legal nature of the arrangement is formed by their will. Because infertility is established by repeated tests during the treatment course, each intended parent is fully aware of their own condition. The surrogate, by accepting the conditions and undergoing examination and surgery, enters the contract with adequate knowledge; mutual ignorance concerning the subject or governing rules is not reasonably conceivable. In other words, the expression of will indicating the parties' intent to create legal effects in each method is evident (Shahidi, 2017).

Capacity of the Parties to Conclude a Surrogacy Contract: *Capacity* (ahlīyat) literally denotes *eligibility*. In legal terminology, capacity is the human aptitude to hold or to exercise rights and duties. Thus, *capacity to have rights* (ahlīyat-e temattu') is the state of holding rights and duties, while *capacity to exercise rights* (ahlīyat-e estīfā') is the ability to exercise them. Every human being, upon live birth, possesses the capacity to have rights, though some may lack the capacity to exercise them; for example, a non-discerning minor cannot exercise rights, even though they may own property, unless authorized by a legal representative (Safaei & Ghasemzadeh, 2021). Under Articles 956 and 957 of the Iranian Civil Code, the capacity to have rights begins at conception, provided the child is born alive, and continues until death; a live birth—however brief—is sufficient for inheritance rights, and continuous survival after birth is not required (Shahidi, 2017).

In French civil law on inheritance, the (former) Article 725 provided that it is not enough for the fetus to be born alive; it must also, as a rule, have the capacity for postnatal survival. In comparative perspective, this reflects a stricter threshold for inheritable capacity than the Iranian rule (Emami, 2013).

Article 959 of the Iranian Civil Code stipulates: "No one may, in general, deprive themselves of the capacity to have rights or to exercise all or part of their civil rights." Article 960 adds: "No one may divest themselves of their liberty, nor, within limits contrary to the law or good morals, renounce its exercise." Thus, any contract or unilateral act that generally strips a person of liberty is void and without legal effect. Where a *right* is granted by law, intertwined with a duty, or attached to personality and public order, it cannot be waived—for example, custody and guardianship, the right to bring criminal complaints, and the rights arising from marriage (Katouzian, 2017). A surrogacy contract does not conflict with rights of personality: pregnancy and childbirth are, by social custom, natural states for women; such a contract directly benefits the parties and, indirectly, the public interest. Moreover, given advances in obstetric medicine and clinical techniques, most childbirth risks are practically minimized, and the surrogate's contemporaneous consent is recorded at contract formation. Therefore, although the surrogacy contract engages the surrogate's bodily integrity, it remains legally permissible; her disposition over personality-related rights is not per se prohibited and, within reasonable limits, is lawful (Nayebzadeh, 2001).

The Human Relationship with One's Bodily Members: The Qur'ān states, "Strive with your wealth and your selves in the way of God" (Q 9:41), and "Indeed, God has purchased from the believers their selves and their wealth" (Q 9:111). From these and similar verses, scholars infer a relationship between the person and their bodily members—a genitive relation

indicating a special nexus between the possessor and the possessed. In jurisprudence and law, this nexus underlies analyses of bodily disposition and responsibility (Rajaei et al., 2011).

Ownership of Bodily Members: The question arises whether a person *owns* their bodily parts. Some jurists and legal scholars argue that the relationship between a person and their body is a form of *innate ownership* (milk-e zātī): by the very nature of the human body—without the need for an external cause or legal fiction—sovereignty and the right to dispose over one's body arise, enabling the person, within legal limits, to exercise exclusive control and draw all possible benefits from it. Conscience and the practice of rational people corroborate this sovereignty; the Sharī'a and the legislator have also recognized it. Legal doctrines that protect bodily personality and integrity, and the criminalization of assault, battery, and bodily harm, reflect this recognition and impose duties on others to respect such rights, with civil and criminal liability for violations (Rajaei et al., 2011; Safaei & Ghasemzadeh, 2021).

Mohaghegh Damad characterizes a person's authority over their bodily members as a *permanent sovereignty or right* established by law: by virtue of this right, the person may, within legal bounds, exercise control over their members and benefit from all possible uses, and no one may prevent them from such lawful dispositions (Mohaghegh Damad, 2010; Rajaei et al., 2011).

Grand Ayatollah Khoei maintains that the relationship between persons and their acts, selves, and liabilities is an intrinsic, natural relationality: an original, inherent ownership that grounds one's sovereignty to dispose over oneself and one's affairs; conscience and rational practice affirm that a person has mastery over their acts, self, and liabilities, and the Sharī'a has endorsed this sovereignty and has not prohibited self-regarding dispositions (Khoei, 1976, 1999).

From a legal standpoint, the relationship between a person and their bodily members is best understood as *innate ownership*, arising from the body's natural constitution and carrying the essential attributes of ownership—*absoluteness, exclusivity, and permanence*—subject only to narrow exceptions, such as limitations on transfer to third parties in circumscribed cases (Mohaghegh Damad, 2010).

5. Transferability of Ownership of Human Body Parts

If a person transfers one of their body parts—whether essential or non-essential—to another, resulting in total harm (such as suicide) or partial harm (such as injury or dismemberment), the question arises whether this act is legally and theologically permissible. The *Islamic Penal Code* does not prescribe a punishment for transferring one's bodily organ to another person; however, according to Islamic jurisprudence, such an act is considered prohibited (*haram*) (Mohaghegh Damad, 2010).

In jurisprudence, the rule of *self-harm (iḍrār bi al-nafs)* differs from civil law: in fiqh, it carries a **prohibitive ruling** (*ḥukm taklīfī al-ḥurmah*), except in certain exceptional cases. If a legally accountable person commits such an act, they bear criminal responsibility in this world or in the hereafter (Khoei, 1999). Most jurists, relying on religious evidence, consider any form of self-harm—suicide, mutilation, or bodily injury—absolutely forbidden. Some have restricted this prohibition to cases that involve *deliberate self-destruction* or *cutting off limbs whose destruction is inherently abhorrent in Sharīʿah* (Najafi, 1991).

Thus, a conflict arises between the permissibility of *transferring ownership rights over one's bodily organs* and the prohibition of *self-harm*. The latter takes precedence; consequently, a person may not remove and transfer their organs to another, whether through sale, barter, or donation (Rajaei et al., 2011).

Other scholars argue that even individuals possessing full legal and moral capacity over their own body and soul may not, even with complete consent, engage in actions that cause self-harm—even for the purpose of saving another life. Such actions require justification by necessity or prevention of greater harm before they can be deemed permissible (Mousavi Khomeini; Safaei & Ghasemzadeh, 2021).

A further question arises: may a surrogate mother, by contract, make her womb available to an infertile couple?

First, granting the use of the surrogate's womb to infertile couples does not constitute bodily harm or loss of a vital organ; it only involves temporary deprivation of the womb's use. Rationally, such harm is negligible.

Second, the harm suffered by infertile couples—stemming from their inability to conceive—is greater than the surrogate's temporary deprivation of reproductive utility. Therefore, eliminating the greater harm is permissible (*rafʿ al-ḍarar al-aʿẓam*) (Nayebzadeh, 2001).

Third, since the relationship between a person and their body is permanent and recognized by law, the surrogate has the right to exercise control over her organs, and no one may prevent her from doing so (Rajaei et al., 2011).

Fourth, classical jurisprudence recognizes that the *benefits of the breast* of a nursing woman—whose milk sustains an infant—may be transferred to another. By analogy (*qiyās al-awlā*), the transfer of the *benefits of the womb* in surrogacy should likewise be permissible (Yazdi, 2003).

Fifth, transferring body parts that cause lesser harm is deemed permissible in cases of necessity; therefore, the transfer of the *use* of the womb—an act involving no permanent harm—is likewise lawful. Pregnancy does not, in itself, constitute injury nor does it carry any religious prohibition. Given that surrogacy fulfills a major social need by assisting infertile couples, it is generally regarded as a legitimate and permissible act under both law and custom (Gavahi, 2007).

In conclusion, such contracts—formed to address infertility and medical necessity—are valid and lawful, unless they inflict serious bodily harm upon the surrogate or others.

6. The Concept of the Property Value (*Māliyat*) of Human Organs in Statutory Law

Article 8 of the *Law on Medical, Pharmaceutical, Edible and Drinkable Substances* (June 19, 1955, as amended) stipulates that:

"Laboratory operators are prohibited from buying or selling blood or producing and selling products whose primary elements derive from microbes, serums, or blood, except with special authorization from the Ministry of Health."

Accordingly, this article recognizes, under ministerial authorization, the *sale of blood*—a bodily product—as legally permissible. Similarly, Article 75 of the *Charter of Citizens' Rights* states that:

"Personal ownership rights of citizens are inviolable. No person or authority may deprive another of ownership, confiscate, seize, or restrict their property or financial rights except under law."

Etymologically, the word *māl* (property) denotes assets and possessions. In legal terminology, it refers to anything that possesses *exchangeable value* and can be traded. Jurists have held that *customary benefit* (*manfaʿat ʿurfīyah*) is a necessary condition for property to have value (*māliyat*), often expressed through *public desire or utility*. Accordingly, the desirability of an item among people establishes its property value (Safaei, 2003).

By analogy, blood—as a bodily product—possesses such value, and its exchange is permitted under Article 75 of the Charter. Therefore, since every human organ has an *inherent economic value* recognized by law (as shown by the existence of fixed compensations, or *diyyah*, for their destruction) and since limited trade is permitted under regulated conditions, it follows that—legally, customarily, and religiously—each human organ constitutes a valuable form of property. Consequently, all legal effects and rulings of *property* apply equally to human body parts, unless a statutory provision explicitly excludes them (Mohaghegh Damad, 2010; Safaei & Ghasemzadeh, 2021).

7. The Legal Status of Contracts for the Sale of Human Organs from Living Persons

In the contemporary world, with the advancement of medical science and the application of new scientific and technical methods, organ transplantation—such as the transplantation of corneas, kidneys, hearts, and other organs—has become widespread and common practice (Mohaghegh Damad, 2010). To analyze the legality of such transactions, several hypotheses can be examined.

First Hypothesis: If, according to medical necessity and professional judgment, the removal of an organ such as a kidney, an extra finger, or an additional tooth from a living person does not endanger the donor's overall health, then there is no legal or religious obstacle to entering into such a contract—whether for consideration or gratuitously. This is because the act satisfies the legal conditions for contract formation: the organ possesses property value (*māliyat*), the individual owns their own organs, and the act serves an intelligible and legitimate purpose, namely, saving another human life or improving their health. It is therefore recognized as both legally and religiously valid (Katouzian, 2017; Safaei & Ghasemzadeh, 2021).

The late Dr. Mahdi Shahidi wrote: "The religious prohibition of selling blood or other human-derived substances due to their impurity pertains only to cases where such substances are purchased for unlawful purposes and lack legitimate and rational uses such as medical applications" (Shahidi, 2017).

Second Hypothesis: If, based on expert medical opinion, the removal of an organ causes impairment or harm to the donor's bodily integrity, it is considered prohibited (*haram*) under Islamic jurisprudence. Many jurists, invoking the principle of *no harm* (*lā ḍarar wa lā ḍirār*), have ruled against self-harm. The Qur'an states:

"And spend in the way of God, but do not cast yourselves into destruction with your own hands; and do good—indeed, God loves the doers of good."

(Qur'an, *al-Baqarah*, 2:195).

Hence, if the removal of an organ leads to significant harm or bodily dysfunction, it is religiously forbidden, and contracts concluded for such purposes are invalid. The subject matter of the contract, under both law and Sharīʿah, is *impossible to deliver*, and therefore the contract is void under the rule that "what is prohibited by Sharīʿah is as though it were impossible by reason" (*al-mamnūʿ sharʿan ka al-mamnūʿ ʿaqlan*). For instance, the sale of a living person's pancreas is invalid because its removal is not practically feasible. However, once a body part has already been detached, its transaction may be valid (Mohaghegh Damad, 2010; Rajaei et al., 2011).

Third Hypothesis: Materials naturally produced by the living body—such as blood, breast milk, hair, fingernails, ova, and spermatozoa—may be subject to sale or donation, as their extraction does not inflict bodily harm or cause deficiency. These materials meet the legal requirements for a valid contract, including property value, rational benefit, and legitimacy, and there is no statutory prohibition against their transfer. Islamic law historically recognized the validity of transactions involving certain bodily products, such as breast milk. Some jurists who denied the validity of contracts for items like hair or nail clippings did so not because of the inherent nature of those substances but because they lacked *rational benefit* at the time. In modern medicine, however, such bodily materials are used to meet therapeutic and reproductive needs—especially in infertility treatment—and are now considered lawful and reasonable objects of transaction (Najafi, 1991; Safaei, 2003).

In French civil law, one condition for contractual validity is the *transferability of the subject matter*. Therefore, items deemed *outside commerce* (*hors du commerce*)—such as public commons or human body parts—cannot be the object of a contract (former Articles 1128, 1598, and 2226 of the *Code Civil*). Nonetheless, specific laws have provided exceptions, recognizing certain bodily transfers as lawful, such as the *gift of a cornea* under the law of July 7, 1949, and the *donation of blood* under the law of July 21, 1952, which permitted unpaid blood transfusion (Emami, 2013).

8. Subject Matter in Artificial Insemination Contracts

Under Clause 3 of Article 190 of the *Iranian Civil Code*, one essential condition for contract validity is that the *subject matter* must be specified. Articles 214–216 further outline general conditions for contractual objects, and Articles 342 and 348 provide additional requirements for *named contracts*. In French law, the subject of a contract (*objet du contrat*) and the subject of an obligation (*objet de l'obligation*) are distinct; Iranian law, however, makes no such distinction (Shahidi, 2017).

In surrogacy contracts, using advanced medical techniques, the sperm and ovum of the infertile couple are fertilized in a laboratory, and the resulting embryo is transferred to a woman's womb. In some cases, both the husband and wife can produce viable gametes but cannot achieve natural fertilization due to physiological issues, so in vitro fertilization (IVF) is employed. If the lawful wife can conceive, the embryo is implanted in her uterus. Otherwise, it is transferred to a third woman (the surrogate).

Regarding the permissibility of artificial insemination, classical jurists did not address this issue, as it is a modern phenomenon. Contemporary scholars, however, have expressed various opinions:

Ayatollah Bahjat stated: "It is contrary to precaution, though the stronger opinion holds permissibility; inherently, it is not prohibited, provided illicit looking or touching is avoided." Ayatollah Sistani ruled: "If the insemination involves the husband's sperm and the wife's womb, it is in itself permissible, but since it usually requires illicit touching or viewing, it is allowed only when necessary and no alternative exists." Grand Ayatollah Khoei (Khoei, 1976) and Imam Khomeini (Mousavi Khomeini) also considered it permissible.

Conversely, Ayatollah Borujerdi found the matter questionable and problematic. Some jurists argue that for fertilization to be religiously legitimate, natural intercourse must occur between the man and woman, and since artificial insemination lacks this feature, they deem it impermissible (Sa'edi, 2007; Yadollahi Baghloei & Eslaminejad).

In conclusion, the legality of selling human organs depends on *necessity* and *absence of harm*. Contracts involving organs whose removal causes no significant bodily detriment, as well as those concerning bodily products that regenerate naturally, are valid. However, contracts involving organs whose removal endangers life or health are void, as they contravene both Sharīʿah and public policy (Mohaghegh Damad, 2010; Safaei & Ghasemzadeh, 2021).

9. Transfer of a Fertilized Embryo to a Surrogate's Uterus

If a husband's sperm and wife's ovum are fertilized in a laboratory, may the resulting embryo be transferred to the womb of a surrogate (a woman unrelated to either spouse)? On this issue, jurists are divided into two main groups.

First Group – Jurists Supporting Permissibility: Some jurists, such as Ayatollah Mohammad Momen, hold that there is no evidence prohibiting the carrying of such an embryo. They argue that the religious ban on "implanting a sperm into a woman's womb" applies only where the sexual act itself is unlawful. In this case, however, the sperm and ovum are both *halal* and belong to a married couple, and the surrogate's womb merely serves as a vessel for gestation without involvement in fertilization. Thus, existing religious narrations do not apply to this scenario because the surrogate's womb plays no role in the genetic formation of the embryo but only in its growth and nourishment. Accordingly, the prohibition cannot be extended to such cases (Jafarzadeh, 2006).

Likewise, scholars such as Bat'haei Golpayegani contend that artificial insemination and embryo transfer into a womb, where the sperm is not from the woman's husband, do not constitute adultery (*zinā*), since adultery in Islamic law requires the physical penetration of a man's genital organ into a woman's vagina without a lawful marriage (Bat'haei Golpayegani, 2003). In the absence of any explicit religious prohibition on embryo transfer, the principle of *barā'ah* (presumption of permissibility in cases of legal doubt) should apply, not the principle of *iḥtiyāṭ* (precaution) (Hamdollahi & Roshan, 2009).

Second Group – Jurists Opposing Permissibility: Other scholars prohibit the transfer of a fertilized embryo into a foreign womb, emphasizing that the female reproductive organs are sacred and reserved exclusively for legitimate marital relations. They argue that neglecting this sanctity may lead to *mixing of lineages* (*ikhtilāṭ al-ansāb*), an outcome strictly condemned in Islamic law. Therefore, any doubt about the permissibility of using a foreign womb requires abstention out of precaution, as women's reproductive organs are only made lawful through express divine sanction (Yazdi, 2003).

10. Legal Validity of the Contract's Subject Matter

Turning to the views of legal scholars concerning the status of surrogacy contracts under Iranian law, two opposing schools of thought emerge.

(A) Scholars Supporting the Validity of Surrogacy Contracts: Some legal theorists argue that in the absence of a clear prohibition, the principle of *presumption of validity* (*aṣālat al-ṣiḥḥah*) applies. Since such contracts do not entail complete deprivation of personal liberty nor contradict the principle of human dignity, they are valid under Article 10 of the *Iranian Civil Code*, which allows for private contracts not contrary to law, public order, or morality (Emami, 2003).

Others reject claims that surrogacy contracts violate public order or good morals or exploit surrogate mothers. They note that these contracts serve to protect the fetus and prevent its death—objectives consistent with both morality and public welfare. Additionally, the surrogate is not obligated to act without compensation and may legitimately receive remuneration or equivalent payment for her effort (Safaei & Ghasemzadeh, 2021).

Some scholars, such as Gavahi, have further argued that surrogacy constitutes a necessary medical solution for infertility and that, given its humanitarian objectives, it is consistent with the principles of justice and public ethics (Gavahi, 2007).

(B) Scholars Opposing the Validity of Surrogacy Contracts: Opponents argue that surrogacy involves an impermissible manipulation of a person's physical and personal status—essentially a transaction concerning custody and childbearing, which

contravenes public order and good morals. Thus, such contracts create no binding obligations and are void ab initio (Jafarzadeh, 2006).

Another objection holds that surrogacy deprives the surrogate (and her husband) of the right to benefit from her womb, thereby partially restricting her personal freedom. The surrogate endangers her own health and life for financial gain, which makes the practice ethically objectionable and contrary to good morals (Jafarzadeh, 2006).

Since there is currently no specific statutory prohibition or binding judicial precedent in Iran restricting surrogacy contracts, and partial limitations on personal liberty are not generally forbidden, such contracts remain legally valid. The husband's written consent, certified by official authorities, further supports the enforceability of the agreement. The lineage (*nasab*) of the resulting child is legitimate, akin to the lineage recognized in cases of *shubha* (legal doubt). Therefore, the subject matter of the surrogacy contract does not conflict with *public order* or *good morals* under Iranian law (Hamdollahi & Roshan, 2009; Katouzian, 2017; Safaei & Ghasemzadeh, 2021).

11. Legitimacy of the Purpose (Cause) of the Contract

In linguistic terms, the word *jihah* means *direction, side, motive, reason,* or *cause* (Amid, 1963). In civil law terminology, it denotes the *cause* or *motive* underlying a transaction. The *purpose (cause)* of a contract is the indirect and internal motivation that leads a party to enter into a contractual relationship. It represents the psychological and economic aim sought by each party, which varies depending on their personal and social circumstances (Shahidi, 2017).

Clause 4 of Article 190 of the *Iranian Civil Code* identifies the *legitimacy of the purpose (cause)* as one of the essential conditions for the validity of a contract. Moreover, Article 217 provides: "It is not necessary for the purpose (cause) to be expressed in the contract; however, if it is expressed, it must be lawful, otherwise the contract shall be void."

In a surrogacy contract, each party enters the agreement with a distinct motive. The infertile couple's motivation is the desire to have a child and to overcome infertility. They incur medical expenses and undertake to pay compensation to the surrogate mother. Therefore, the surrogacy contract is concluded for a *legitimate and therapeutic purpose*—namely, the medical treatment of infertility—and thus the cause of the contract is considered *lawful and valid* (Safaei & Ghasemzadeh, 2021; Taqipour, 2017).

With respect to the surrogate mother's motive, if she acts out of *emotional or humanitarian intentions*—to help an infertile couple conceive—her purpose is likewise legitimate and ethically justified. However, if her motivation is *commercial profit or financial gain*, some jurists argue that "the direction and tendency of the transaction, given its purpose, conflict with moral and social principles customary in society, potentially disturbing the ethical and economic order; hence, in such a case, the cause of the contract would be unlawful" (Nayebzadeh, 2001).

Others, however, draw an analogy between receiving payment for surrogacy and receiving compensation for breastfeeding, arguing that just as a woman may lawfully rent her breast (the source of nourishment) for nursing, she may similarly lease her womb for gestation (Shahidi, 2017). Furthermore, since the cost of preserving and ensuring the fetus's health is, from a rational standpoint, the responsibility of the genetic parents, the payment of compensation and reward to the surrogate for pregnancy and childbirth is both reasonable and customary in society (Safaei & Ghasemzadeh, 2021).

There is no fixed rule governing the amount of payment to a surrogate mother; it is determined by mutual agreement or, in the absence of an explicit contract, according to prevailing custom and expert opinion (Emami, 2003).

Comparative Perspective – French Civil Law: Article 1128 of the *French Civil Code (post-2016)* stipulates three essential conditions for a valid contract:

1. The consent of the parties;
2. Their legal capacity to contract;
3. A lawful and definite content (*contenu licite et certain*).

The third clause, referring broadly to a "lawful and definite content," appears to encompass what earlier law termed the *cause* or *purpose* of the contract. Prior to the 2016 reform, Article 1108 explicitly referred to the "cause" (*cause du contrat*), but the newer legislation replaced the term with a more general phrase.

Article 1129 further provides that "for a person to enter into a valid contract, they must be of sound mind," in line with Article 440-1, which extends the definition to include all forms of mental impairment—whether due to illness, addiction, or old age. The determination of mental incapacity, however, lies with the judge.

Finally, Article 1131 declares that "defects of consent render the contract voidable," and such *relative nullity* may be invoked only by those whom the law intends to protect, such as legally incapacitated persons (Emami, 2013).

In summary, under both Iranian and French civil law, the *legitimacy of the purpose* serves as a moral and legal safeguard ensuring that contracts are not concluded for aims contrary to public order, good morals, or human dignity. Therefore, in the context of surrogacy, since the intent of both parties—treatment of infertility and assistance in procreation—serves a lawful, humane, and medically recognized goal, the *cause* of the surrogacy contract is legally *legitimate and valid* (Katouzian, 2017; Nayebzadeh, 2001; Safaei & Ghasemzadeh, 2021).

12. Conclusion

The contract for the use of a third woman's womb is concluded with a lawful and legitimate purpose—to provide medical treatment for infertile couples. The conditions, effects, and legal status of such *innominate contracts* are determined in accordance with the general principles of contract law and the doctrine of freedom of will.

In the case of surrogacy, although the woman who provides the ovum is, from both a jurisprudential and genetic perspective, considered the biological mother, the main developmental period of the child occurs within the surrogate's body. Medically, the child is nourished by the surrogate's blood and bodily systems throughout the thirty-eight weeks of gestation, achieving full physiological development within her. Consequently, both physically and psychologically, the child forms its primary attachment to the woman who carries and nurtures it. Naturally, the woman responsible for the entire gestational growth process deserves recognition as a mother. Moreover, the stage of *ensoulment* occurs within the surrogate's womb, further confirming the child's deep dependence on her.

Similarly, in the case of a *wet nurse*, if an infant under two years of age suckles from another woman—who has given birth and produces milk—for a full day and night or fifteen consecutive feedings, that woman is regarded as the child's *nursing mother*, and the infant becomes her *milk child*. Other children who have nursed from the same woman, whether by blood or by nursing relation, are considered siblings. This analogy demonstrates that the surrogate's bond with the child is even stronger and more enduring.

As to whether a surrogate mother may legally enter into a contract to make her womb available to infertile couples, several considerations apply. First, the surrogate's act of allowing the use of her womb does not constitute harm to her life or bodily integrity; it merely involves the temporary relinquishment of the organ's benefit, which is not deemed significant harm. Second, the harm suffered by infertile couples due to their inability to conceive is far greater than the temporary inconvenience experienced by the surrogate. Therefore, eliminating the greater harm takes precedence. Third, the relationship between a person and their bodily organs is permanent and legally recognized; thus, a surrogate has the right to make lawful use of her body, and no one may prevent her from doing so. Fourth, by analogy to Islamic jurisprudence, just as the benefits of a nursing woman's breast—which produces nourishment for a child—are transferable, so too are the benefits of a surrogate's womb. Fifth, the transfer of bodily functions that entail lesser harm is permissible in necessary cases, and therefore, the use of a surrogate's womb is also permissible. Pregnancy itself does not inherently cause harm, nor is it religiously forbidden. On the contrary, because it fulfills an important social and medical need by helping many infertile couples, surrogacy is regarded as an acceptable and lawful practice.

In conclusion, contracts entered into for the purpose of resolving infertility-related medical challenges are legally and morally valid and permissible, provided they do not cause serious harm to the surrogate's life or body, nor inflict injury upon any other individual.

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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