

**CONTEMPORARY DISCOURSE OF ASSISTED REPRODUCTIVE TECHNOLOGIES
(ART) UNDER SHARI'A: A COMPARATIVE ANALYSIS OF ITS LEGALITY AND
INHERITANCE IMPLICATIONS ACROSS DIFFERENT JURISDICTIONS**

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ABSTRACT

This paper examines the Islamic legal perspectives on surrogacy and artificial insemination, focusing on the implications for lineage and inheritance. Drawing upon classical jurisprudence and contemporary fatwas, the paper comparatively analyzed the conditions under which assisted reproductive technologies (ART) may be deemed permissible or prohibited in Islamic law. The paper adopts doctrinal research methodology of research to achieve its objectives. The paper finds that while artificial insemination using a husband's sperm (AIH) is generally permissible under strict conditions, the use of third-party donors and surrogacy remains widely prohibited due to concerns over lineage (nasab) which sanctify of the marital bond. The paper further evaluates the inheritance rights of children born through such methods, revealing diverging scholarly opinions.

Keywords: *Surrogacy, Artificial Insemination, Islamic Law, Nasab, Inheritance.*

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1.0 Introduction

In recent years, advances in assisted reproductive technologies (ART) such as Gamete intra fallopian transfer (GIFT), Zygote intra fallopian transfer (ZIFT), Artificial Insemination (AI), in vitro fertilization (IVF), and surrogacy have become increasingly accessible and widely used in both Muslim-majority and minority societies.¹ This trend has ignited complex legal and ethical debates, especially within Islamic jurisprudence, where Islamic teachings place a high value on marriage and family as foundations of a harmonious and stable society. ART present new challenges to these traditional structures, especially regarding the determination of lineage (nasab) and inheritance (wiratha).

As more Muslim couples turn to ART to address infertility, jurists and policymakers are faced with this phenomenon. Several scholars have addressed the topic of reproductive technologies in Islamic law.² This article builds upon and adds to this literature by focusing specifically on the doctrinal implications of lineage and inheritance. This article explores these challenges through a doctrinal and comparative analysis of classical juristic sources and contemporary fatwas. It addresses the following questions: What is the Islamic legal status of children born through artificial insemination and surrogacy? Can these children inherit from their biological or social parents? What are the views of classical and contemporary Muslim jurists on the use of donor gametes and surrogate mothers? This article seeks to engage these questions within the broader discourse of Islamic bioethics and contemporary legal reform.

This paper is divided into six parts. The first part is the introduction. The second part discussed global overview of surrogacy. Part three examined surrogacy in Islamic jurisprudence. The fourth part appraised Comparative Case Studies in other selected Jurisdictions. The fifth part analyzed ethical and policy implications. The sixth and final part is the conclusion and recommendations.

¹ Abdul-Razzaq Abdul-Majeed Alaro, "Assisted Reproductive Tecchnology (ART): the Islamic Law Perspective" in: Berna Arda & Vardit Rispler-Chaim (eds.), *Islam and Bioethics*, (Ankara University: Turkey, 2012) pp. 85-97.

² NH Patel and YD Jadeja and HK Bhadarka and MN Patel and NH Patel and NR Sodagar, "Insight into Different Aspects of Surrogacy Practices" [2018] 11(3) *J Hum Reprod Sci*. 212.

1.1 Global Overview of Surrogacy

Surrogacy is a derivative from the *Latin* word “subrogate” which literally means “substitution” or “replacement”.³ It means a person appointed to act in the place of another. Technically, it refers to an arrangement, often, supported by a legal agreement whereby a woman agrees to become pregnant to carry the pregnancy and give to a child in return for payment or for free.⁴ Surrogacy became a phenomenon in both the secular and Islamic societies in the last few decades as a radical change to the traditional process of child bearing. It spans across centuries, with historical accounts suggesting its occurrence even in the time of Prophet Ibrahim (ASW) with his wife and slave girl.⁵ In that era, it was a common practice for couples faced with fertility challenges resorting to traditional surrogacy where another woman conceived and bore a child for them.

Scientists introduced the system of assisted reproductive technology such as in vitro fertilization (IVF), Embryo transfer (ET), and intrauterine insemination (IUI) which replaced the natural or sexual reproductive procedures.⁶ Thus, basic pattern of surrogacy may either be genetic or gestational. In genetic surrogacy, the surrogate mother’s ovum is clinically fertilized with intended father or a donor’s sperm through the physical process of body contact or home artificial insemination using fresh or frozen sperms or by intrauterine insemination (IUI).⁷ In gestational surrogacy, the ovum of a woman is fertilized by the sperm of a man in vitro fertilization (IVF) technology and the resulting embryo is implanted in the uterus of the surrogate mother.⁸ Here, the eggs and sperm are collected from donor, fertilized in the laboratory and then transferred to a surrogate mother other than the couple.

³ Normadiyah Daud, Khairina Gustia, “The Concept of Surrogate Mother and its Practice in Some Selected Countries” [2023] 13 (6) *International journal of academic research in business and social sciences* 2342

⁴ K Horsey, “The future of surrogacy: A Review of Current Global Trends and National Landscapes, Reproductive” [2024] 48 (6) *BioMedicine Online*, 103764 <<https://www.sciencedirect.com/science/article/pii/S1472648323008635>> accessed 27 February 2025

⁵ Hassan Taiwo and Adeniji Khadijat, “Surrogacy Within Islamic Succession Law: Unraveling the Inheritance Rights of Involved Parties” [2024] *SSRN* <<https://ssrn.com/abstract=4707007>> accessed 15 June 2025.

⁶ Ibid.

⁷ Umar Abubakar Dubagari and Abdulhalim Umar, “Assisted Reproductive Technologies (ART): Legal Framework for Surrogate Parenting under Islamic Law” [2025] 2 (1) *Journal of Customary and Religious Law*, 126.

⁸ Dakota E. McCoy and David Haig and Jennifer Kotler, “Egg donation and gestational surrogacy: Pregnancy is riskier with an unrelated embryo” [2024] 196 *Early Human Development*, 106072, <<https://doi.org/10.1016/j.earlhumdev.2024.106072>> accessed 8 May 2025.

The early development of IVF involved experimentation on non-human mammals.⁹ The first successful artificial insemination was performed by William Pancoast in 1884, leading to the first recorded birth in the subsequent year.¹⁰ Legal frameworks for modern surrogacy began to take shape in 1976, with the first drafted agreement designed for traditional surrogacy, where the surrogate mother was not compensated for her services. Precisely on 25th July 1978 Louise Brown, born at Oldham General Hospital, made history and became the first test tube baby given birth through IVF process.

In 1980, surrogacy underwent a transformative phase with the first compensated agreement, marking a shift in how surrogate mothers were acknowledged. The 1984 Baby M case¹¹ further shaped surrogacy's history, prompting a move towards gestational surrogacy. Subsequently breakthrough was recorded in 1993, Dr. Jerry Halls and his team of researchers' successfully cloned human embryo to aid millions of couples who were unable to have their own children overcome infertility.¹² In 1997, Pat Anthony, a 48-years-old grandmother of Tzameen, South Africa triggered a passionate debate within medical, legal, and church circles about the complex ethical, moral and legal nature of surrogacy. Anthony bears the triplets of her own biological daughter, Karen Ferreira-Jorge, a 25-year-old gymnastic instructor, who could not conceive children anymore.¹³ In 1998, there was the birth of the first test-tube baby by Nigerian doctors at Nisa Premier Hospital, Abuja. This was considered a revolution in Nigeria's medical practice.¹⁴

⁹ Biggers, John D, "IVF and embryo transfer: historical origin and development. Reproductive" [2012] 25 (2) *BioMedicine Online*, 118 – 127 <[https://www.rbmojournal.com/article/S1472-6483\(12\)00292-1/fulltext](https://www.rbmojournal.com/article/S1472-6483(12)00292-1/fulltext)> accessed 2 June 2025

¹⁰ P Ventura-Juncá and I Irrarázaval and AJ Rolle and GI Gutierrez and RD Moreno and MJ Santos, "In vitro fertilization (IVF) in mammals: epigenetic and developmental alterations. Scientific and bioethical implications for IVF in humans" [2015] 48 *Biol Res* 68 <<https://doi.org/10.1186/s40659-015-0059-y>> accessed 27 May 2025.

¹¹ Pamela Laufer-Ukeles, "Mothering for Mone Mothering for Money: Regulating Commercial Intimacy, Surrogacy, Adoption [2013] 88 (4) *Indiana Law Journal*, Art 6, 1223 <<https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=11079&context=ilj>> accessed 2 June 2025.

¹² A Vass. "US scientists clone first human embryo" [2001] 323(7324):1267 *PMC* 1121740. <<https://pmc.ncbi.nlm.nih.gov/articles/PMC1121740/>> accessed 22 June 2025.

¹³ C Nicholson and A Bauling, "Surrogate motherhood agreements and their confirmation: A new challenge for practitioners?" [2013] *DEJURE* 28

¹⁴ Osato F. Giwa-Osagie, "Infertility and Assisted Reproductive Technologies in the Developing World: ART in Developing Countries With particular Reference to Sub-Sahara Africa" in Effy Fayena and Patrick J Rowe and P. David Griffin (eds), *Current Practices and Controversies in Assisted Reproduction: Report of a meeting on "Medical, Ethical and Social Aspects of Assisted Reproduction* held at WHO Headquarters in Geneva, Switzerland 17-21 September 2001, pg. 24

Subsequent years saw the development of specialized assisted reproduction programs, such as SPAR in 1999, allowing HIV-positive men to become biological fathers without transmitting the disease.¹⁵ Patrick Steptoe, Jean Purdy, and Bob Edwards, received the 2010 Nobel Prize in Physiology and Medicine for the initiative undertaken in IVF that birth to the field of human embryonic stem cell biology leading to major advances in reproductive biology.¹⁶

Surrogacy's global landscape evolved, with varying legal stances across countries. The complex and varied legal responses globally underscore the sensitive nature of surrogacy, shaping its acceptance and regulation in different societies.

1.2 Surrogacy in Islamic Jurisprudence

The primary purposes of marriage are procreation and sexual enjoyment.¹⁷ Prophet Muhammad (SAW) regarded marriage as half of the faith.¹⁸ Thus, it is considered a sunnah and becomes obligatory where there is a risk of unlawful sexual relations. Islam acknowledges married couples' innate desire to bear children. Accordingly, children are a wonderful and fortunate gift from Allah in Islam:

"Wealth and children are an ornament of life of the world."¹⁹

The Islamic law's position on ART is informed by its perception of the cause of the usage itself. Undoubtedly, having a child is the greatest source of satisfaction for a couple after marriage. Infertility, which is a major issue for Muslim couples as well, stands in the way of this happiness.²⁰ Thus, if the cause for using any assisted reproductive technique is to cure the couple's infertility, the act is utterly permissible, provided that no other law of Islam is contravened in so doing.²¹

¹⁵ Chris O. Agboghroma and Osato. F. Giwa-Osagie, "Management of Infertility in HIV infected couples: A Review" [2012] 16 (4) *African Journal Reproductive Health* 13 <<https://www.ajrh.info/index.php/ajrh/article/view/1191>> accessed 22 June 2025.

¹⁶ Umar Abubakar Dubagari and Abdulhalim Umar, Assisted Reproductive Technologies (ART): Legal Framework for Surrogate Parenting Under Islamic Law' (2025) 2 (1) *Journal of Customary and Religious Law*, 127.

¹⁷ Maggie Gallagher, "What is Marriage For? The Public Purposes of Marriage Law" [2002] 62 (3) *Louisiana Law Review* 774 <<https://digitalcommons.law.lsu.edu/lalrev/vol62/iss3/3>> accessed 23 June 2025

¹⁸ Maryam Umar Ladan and Hadiza Muazu Bello, "Marriage, Its Criteria in Islam and Choice of Husbands by the Hausa People of Sokoto" The Faces of Islam International Conference of Bkmt and As-Syafiiyah Islamic University Jakarta 20th February 2023, 187.

¹⁹ Qur'an 18: 46

²⁰ AK Kuug and S James and JB Sihaam "Exploring the cultural perspectives and implications of infertility among couples in the Talensi and Nabdam Districts of the upper east region of Ghana." [2023] 8 (1) *Contracept Reprod Med*, 28.

²¹ Alaro (n 1), 95.

Islamic law is based on the Qur'an, Sunnah, Ijma '(consensus), and Qiyās (analogical reasoning). Legal opinions (fatwas) are issued by jurists applying these sources.²² The preservation of lineage (Hifz al-nasab) is one of the key objectives (Maqāṣid) of Islamic law within the realms of family law.²³ The Noble Qur'an attests to the curability of infertility when it states,

*And (remember) Zakariya, when he cried to his Lord: "O my Lord! leave me not without offspring, though You are the best of inheritors. So, we answered his call, and We granted him Yahya (his son). We cured his wife's (infertility) for him."*²⁴

Furthermore, Muslims are allowed and even encouraged to seek lawful cure of any form of illness or disorder they may have. The hadith narrated on the authority of Usamah bin Shuraik succinctly put it as follows, "The Prophet (SAW) said, "Seek remedy (of your illnesses), for Allah has never created an illness unless He has also created a cure for it, save the (illness of) old age"²⁵.

Accordingly, provided they are not predicated on frivolous medical reasons, Assisted Reproductive Techniques in principle constitute one form of medical intervention or another to cure a barren woman of her infertility.²⁶ Thus, self-imposed single motherhood or fatherhood, as with lesbians or gays longing for children, is a sharp negation of Islamic law provisions, as contained in many statutory authorities. In two separate authentic hadiths, the Prophet (SAW) declared that refusal to enter into a union through a valid marriage contract, despite ability to do so, is defiance of a divine order and a show of contempt for the Prophetic Sunnah. The hadiths have been narrated on the authority of Ibn mas'ud and Anas bin Malik respectively.²⁷

However, in keeping with the Shari'a norms, ART methods that interfere with clear lineage are heavily scrutinized or prohibited.

²² Hafiz Falak Shair Faizia and Hafiz Sfarish Ali, "The Core Principles of Islamic Jurisprudence within Legal Theory: A Comprehensive Analysis" [2024] 11 (2) Online Journal of Research in Islamic Studies, 57.

²³ Siti Asishah Hassanl and Rusnadewi Abdul Rashid and Zeti Zuryani Mohd Zakuan, "The Preservation of Property in Maqasid Alsyariah: With Special Reference to the Appointment and Duties of Wasi in Estate Administration" [2022] 7 (29) *International Journal of Law, Government and Communication (IJLGC)*, 318.

²⁴ Qur'an 21: 89-90

²⁵ Narrated by Tirmidhi vol. iv p. 383; Abu Dawud vol. ii p. 396; and Ibn Mājah vol. ii p. 1137.

²⁶ Alaro (n 1) 98.

²⁷ Sunan Abu Dawud, [Beirut, Dar al-Fikr Publishers] vol. i p. 624; Sahih al-Bukhari, [Beirut, Dar Ibn Kathir, 3rd edition, 1987] vol. v, p. 1949.

1.3 Classical Juristic Views

Surrogacy is classified into different types, primarily distinguished by whether the surrogate contributes only her uterus or both the uterus and ovum. When a surrogate carries a fertilized ovum from the intended couple, she is the birth but not the biological mother.²⁸ In contrast, if the surrogate is inseminated with the husband's sperm, she may be both the birth and biological mother.²⁹ After birth, the surrogate woman is then expected to hand the child over to the couple.³⁰ The resulting child will then have a biological rearing father, a biological rearing mother, and a surrogate birth mother in the first case, and a biological rearing father, rearing mother, and a biological surrogate birth mother in the second. A third possibility with two sub-categories may occur where the sperm is donated by a fourth donor, resulting in a child with a rearing father, a rearing biological mother, surrogate birth mother, plus a donor biological father in one case, and a rearing father, a rearing mother, surrogate biological and birth mother, plus a donor biological father in the second. In both these cases, four different adults are involved in the creation of the child.

Classical Islamic jurists held diverse views on surrogacy, with a consensus against genetic surrogacy where the surrogate mother is also the egg donor.³¹ Most scholars, particularly within Sunni's, consider this absolutely forbidden due to concerns about lineage and potentials for zina. Gestational surrogacy where the embryo is created from the intended parents' gametes is more nuanced, with some scholars allowing it under specific conditions, while others maintain a prohibition.³² On this basis, some classical jurists make one possible exception to the blanket prohibition in the case of a polygamous marriage where a co-wife agrees to be the surrogate and forgoes conjugal relations with the husband while the conception is in progress to ensure that lineage is preserved.³³ This exemption is endorsed by some Muslim jurists on the analogies to wet-

²⁸Alaro (n 1).

²⁹ Ibid

³⁰ D. Witanto, *Hukum Keluarga: Hak dan Kedudukan Anak Luar Kawin Pasca Keluarga Putusan MK tentang Uji Materiil UU Perkawunan*. Jakarta: Prestasi Pustaka, (2012).

³¹ Nazari Tavakkoli S, "The Status of 'Mother' in Gestational Surrogacy: The Shi'i Jurisprudential Perspective" *Nazari* [2022] 14(4) *Asian Bioeth Rev.* 337

³² Ibid

³³ T. M. H. Ash-Shiddieqy, *Koleksi-Hadits-Hadits Hukum 3*. Semarang: PT Pustaka Rizki Putra, (2011)

nursing.³⁴ However, the Muslim World League's Islamic Fiqh Council retracted its earlier position of permitting surrogacy among co-wives of the same husband³⁵

Arguments comparing surrogacy to wet-nursing have been rejected claiming wet-nursing establishes a different kind of legal relationship that does not compromise lineage.³⁶ In Islamic law, the woman who gives birth is often considered the mother, even if she did not contribute genetically. The Qur'an states:

“None can be their mothers except those who gave them birth”³⁷

This verse is often cited to argue that gestational surrogacy compromises *nasab*. Thus, the fact that third-party involvement creates confusion in lineage with emotional and legal complications, such as disputes over custody, further support the majority view against surrogacy.³⁸ It has been argued that the claims that surrogacy can be considered permissible on the analogy of wet-nursing should be dismissed because wet-nursing establishes a special relationship among breastfed children and the lactating mother and her family according to the Shari'a.³⁹ The argument found support in the statement that Prophet Muhammad (SAW) prohibited marriage between the milk-relatives of the same wet-nurse.⁴⁰

This view is reinforced by Quranic references emphasizing the hardship of pregnancy and childbirth.⁴¹ The right of the child to a biological mother and father is also compounded by the introduction of a surrogate birth mother and possible donor biological father or mother. The surrogate and donor(s) may lay claim to the child, potentially causing him/her emotional and psychological trauma where legal custody disputes ensue, and surrogacy contracts are challenged.⁴² Cases exist where surrogate birth mothers refuse to hand over the child after birth due mainly to the emotional attachment formed with the child over the period of the pregnancy.⁴³

³⁴ A. Z. Muhdlor, *Memahami Hukum Pernikahan (Nikah, Talak, Cerai, dan Rujuk)*. Bandung: AlBayan, (1994).

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ Qur'an 58:2.

³⁸ M. Sudirman, *Hukum Kewarisan : Teori dan Praktik*. Makassar: CV. Bangun Bumitama, (2019).

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Quran 46:15

⁴² A Patel and P Kumar and PSVN Sharma, "The Miracle Mothers and Marvelous Babies": Psychosocial Aspects of Surrogacy - A Narrative Review" [20202] 13 (2) *J Hum Reprod Sci.* 89.

⁴³ *Ibid.*

The question also occurs about whether a husband of the surrogate birth mother, if one exists, could legally claim custody of the child. This could introduce another level of complexity and anger for everyone involved.

Where surrogacy occurs despite the prohibition, Muslim jurists agree that the surrogate birth mother is the “real” mother.⁴⁴ This is based on the Quranic verse referred to previously (Quran 58:2) which provide:

Those who pronounce thihar among you [to separate] from their wives - they are not consequently their mothers. Their mothers are none but those who gave birth to them. And indeed, they are saying an objectionable statement and a falsehood. But indeed, Allah is Pardoning and Forgiving.⁴⁵

Many jurists give legal preference to the uterine (pregnancy and birth) mother over the egg (biological) mother.⁴⁶ This position by Muslim jurists seems to be more tenable when considered with the Quranic verse which provide:

And We have enjoined upon man, to his parents, good treatment. His mother carried him with hardship and gave birth to him with hardship, and his gestation and weaning period is thirty months. He grows until, when he reaches maturity and reaches [the age of forty years, he says, “My Lord, enable me to be grateful for Your favor which You have bestowed upon me and upon my parents and to work righteousness of which You will approve and make righteous for me my offspring. Indeed, I have repented to You, and indeed, I am of the Muslims.” and “... when you were foetuses in the wombs of your mothers ...”⁴⁷

Also, the based their Ruling on (Quran 53:32):

“On those who avoid grave sins and shameful deeds, even if they may sometimes stumble into lesser offences. Surely your Lord is abounding in His Forgiveness. Very well is He aware of you since He produced you from the earth, and while you were still in your mothers' wombs and not yet born. So do not boastfully claim yourselves to be purified. He fully knows those that are truly Godfearing.”

⁴⁴ Alaro (n 1) 94.

⁴⁵ Quran 58:2

⁴⁶ Fadel Muhammad, “Islam and The New Genetics” [2001] 13 St. Thomas Law Review, 903.

⁴⁷ Quran 46:15

However, Alaro argues that the issue of legal preference when surrogacy occurs despite the prohibition is not settled and requires further scholarly review by Muslim jurists.⁴⁸

1.4 Global Fatwas and Legal Views on Surrogacy in Islam

In Islamic Law (shari'a) if the Sunnah of the Prophet (saw) leaves some questions open for interpretation, Muslims must look for guidance from Learned Islamic jurists (ulama) in the form of consensus (ijma). This would be in the form of fatwa (ruling), through which the issue is being resolved.⁴⁹ A fatwa is defined as a formal legal opinion issued by a jurist in response to a question submitted to him by a private individual or judges.⁵⁰ It is a non-binding, but authoritative religious proclamation issued by an esteemed religious scholar. Islamic rulings on surrogacy vary widely across countries.

In recent years, many fatwas are being issued on reproductive health matters in Egypt and other Muslim countries.⁵¹ On the issue of artificial insemination, the Grand Sheikh of Egypt from al Azhar University issued the first fatwa in 1980. This initial fatwa is distributed after the birth of first Test Tube baby in England. There are different conditions for the reproduction of child in artificial insemination. The main point of fatwa on artificial insemination is categorized in different conditions. First, artificial insemination with husband's sperm is allowed, and the resulting child is the legal offspring of the couple.⁵² Second, if an egg from a wife and the sperm of her husband are taken and being transferred to the uterus of the wife, the action is also allowed, on condition that it is conducted for medical reason and carried out by the expert physician. Third, if the sperm is taken from third party, the action is forbidden. A marriage is a contract between husband and wife as marital function of sex and reproduction is allowed only between the partners. The use of third party is tantamount to adultery.⁵³ Fourth, the adoption of a child from an illegitimate process of medically assisted way is not allowed. The child born through this way will be considered laqith, that is, an illegitimate child.⁵⁴ Fifth, if the marriage contract has come to an end because of divorce

⁴⁸ Alaro (n 1) 108

⁴⁹ M Mehmood, "Fatwa in Islamic Law, Institutional Comparison of Fatwa in Malaysia and Pakistan: The Relevance of Malaysian Fatwa Model for Legal System of Pakistan," [2015] 6 (3) *Arts and Social Science Journal*, 1-3.

⁵⁰ Ibid

⁵¹ M Inhorn, "Islam, IVF and Everyday Life in the Middle East: The Making of Sunni Verses Shi'ite Test-Tube Babies" [2006] 1 (1) *Anthropology of the Middle East*, 43.

⁵² Ibid

⁵³ Ibid

⁵⁴ Ibid

or death of the husband or wife, medically process of insemination is forbidden.⁵⁵ Yousaf Al-Qaradawi, a prominent Islamic scholar opined that:

“Islam safeguard lineage by prohibiting adultery and fornication (zina) and legal adoption, thus keeping the family line unambiguously defined without any foreign element entering into it. It likewise prohibits what is known artificial insemination if the donor of the semen is other than the husband.”⁵⁶

He clearly stated that the process of artificial insemination through donor’s sperm is not allowed and constitutes as adultery.

Islamic seminary Darul Uloom Deoband in India also issued a fatwa on artificial insemination and declared it illegal.⁵⁷ The Islamic Jurists from the said institution interpreted the matter of artificial insemination differently and pronounced the matter debatable. The fatwa states:

“It is not right to masturbate to get children by artificial insemination. Muslim couples should avoid it”.

Jalaludin Umri a renowned Islamic scholar from India said that, the fatwa is correct from Islamic perspective but there should be changes in different laws according to the needs and situation of society.⁵⁸ Muslim scholars should sit to discuss this matter and issued their opinion according to the situation. Another Muslim organization, Jamiat Ulema-e-Hind, issued another fatwa against the said institution and presented that there is no need for the seminary to issue strict guidelines on the prescribed issue and it should be legalized if couples are not left with any other choice.⁵⁹

Muhammad Ibn Saalih al-uthaymeen, a renounced Islamic scholar from Saudi Arabia, delivered a fatwa on the matter of Artificial Insemination.⁶⁰ He said the process is not permissible if the reproduction of a child can be done through natural process.⁶¹ In case there is a necessity and the

⁵⁵ Ibid

⁵⁶ Yousaf al-Qaradawi, (1982), The lawful and prohibited in Islam, ElHelbawy k, Siddiqui MM, Shukry S (Translaters), Indianapolis, IN: American Trust Publications. Pp. 11-19

⁵⁷ M Mehmood, “Artificial Insemination in Shari’ah: A Case of Test-Tube Baby in Shari’ah and Its Legal Status in Pakistan” [2017] Pakistan Annual Research Journal <<https://ssrn.com/abstract=3126694>> accessed 2 June 2025

⁵⁸ Furqan Ahmad, “The Principles of Fiqh and Issues in Advanced Medical Science — An Explanation from An Indian Perspective” [2019] 61 (1) *Journal of the Indian Law Institute*, 29.

⁵⁹ Mehmood (n 57).

⁶⁰ Ibid.

⁶¹ Ibid.

reproduction cannot be done by natural way, Artificial Insemination is allowed, under three conditions;

- (1) "Fertilization needs to be done with the husband's sperm. It is not permissible to use the sperm of anyone but the husband for this fertilization.
- (2) Collection of sperm from the man should be done in a permissible manner, such as by the husband being intimate with his wife, and ejaculating between her thighs or in her hands, so that the semen may be emitted, then the egg may be fertilized with it.
- (3) After fertilization, the egg should be placed in the wife's uterus.

It is not permissible to place it in the uterus of any other woman under any circumstances whatsoever, because that involves inserting the sperm of the man into the uterus of a woman who is not permissible for him."⁶²

The Shia school of thought allows surrogacy through the use of *ijtihad*.⁶³ In 1999, the Supreme Leader of Islamic Republic of Iran, Ayatollah Khomeini, issued a fatwa (a religious ruling) allowing the use of donor technologies, especially in case of surrogacy, in which the egg and sperm is obtained from a legally wedded couple.⁶⁴ The act of surrogacy was distinguished from Zina where the latter involved the performance of sexual intercourse, while the former lacked this physical act.⁶⁵ The birth of a surrogate child was also considered legitimate. Ayatollah Khomeini's position concerning medical ethics has been strikingly liberal and progressive. As a result, donor gametes are now being purchased by the infertile couples in Shia majority Iran.

The religious scholars have played a significant role in legitimising ARTs for overcoming the peril of infertility. They refer to early Islamic texts to provide nuanced conception of the formation of kinship and family relations in Islam. For example, they use the concept of *maslaha*⁶⁶ (meaning 'public interest') to develop a better understanding of ethical issues surrounding medically assisted conception in Islamic jurisprudence. To strike a balance between Islamic values and rights of all

⁶² Abu 'Abd Allah M. ibn Saalih ibn Muhammad ibn alUthaymeen, *Majmoo' Fataawa al-Shaykh al- 'Uthaymeen* pp. 27-28

⁶³ Inhorn (n 51).

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Morgan Clarke, *Islam and New Kinship Reproductive Technology and the Shariah in Lebanon* <<https://doi.org/10.3167/9781845454326>> accessed 30 June 2025.

the parties involved in a surrogacy treatment; they have permitted surrogacy in case of absolute necessity.

1.5 Inheritance Implications

Under Islamic law (Shari'a), inheritance is governed by strict rules based on *nasab* (lineage) and confined to clearly defined family relationships.⁶⁷ Therefore, inheritance in Islamic law depends on the legitimacy of lineage.⁶⁸ Children born through AID or surrogacy often face questions of *nasab*.⁶⁹ Some jurists label these children as laqit (foundlings), thereby excluding them from inheritance rights.⁷⁰

However, if a surrogate is married, the child may be attributed to her husband under the hadith:

*“The child belongs to the [marriage] bed.”*⁷¹

If she is unmarried, she is considered the legal mother, with corresponding rights and obligations.⁷²

1.6 Inheritance and Legal Status of Offspring

If the child is not biologically or legally linked to the commissioning father and mother in a Shari'a-recognized manner, the child may be denied inheritance from either parent. In the case of donor sperm or egg, Islamic law considers the child to be born of zinā (illegitimate relationship), and such a child cannot inherit from the commissioning parents but only inherits from the biological mother (if identified and acknowledged), not the commissioning father.

Resultantly, the child's *nasab* may be disputed, and if *nasab* is uncertain or illegitimate, the child may be excluded from inheritance under Islamic law. Ibn Qudamah emphasizes that lineage is attributed to the lawful bed, and not to external parties, stating: *“Al-walad lil-firāsh wa lil-'āhir al-ḥajar”* (The child is for the [lawful] bed and for the adulterer is the stone).⁷³

Ayatullah Ali Hussein Khamenei, Islamic scholar and the successor to Iran, belongs to Shia sect issued a fatwa effectively in permitting the donor child to inherit only from the sperm or egg of

⁶⁷ Musa Othman Angulu, “Appraisal of the Impediments to Inheritance Under Islamic Law” (A Thesis Submitted To The Postgraduate School, Ahmadu Bello University, Zaria, In Partial Fulfillment For The Award Of The Degree Of Master Of Laws (LLM), 2011), 50 < <https://kubanni-backend.abu.edu.ng/server/api/core/bitstreams/09e7ba9d-64e5-47d6-adeb-7d4c2b7249c7/content>> accessed 28 June 2025.

⁶⁸ Inhorn (n 51)

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Muh. Sudirman and Mustaring and Manan Sailan and Ahmad Fauzi Sudirman, “Children Resulting from Insemination Through the Surrogate Mother Process (Substitute Mother) and Their Instruction Rights Islamic Law Perspective” [2022] 149 *SHS Web of Conferences*, 02008.

⁷² Ibid.

⁷³ Ibn Qudamah, *Al-Mughni*, vol. 9 (Beirut: Dar al-Fikr, 1985) 125.

donor, as the infertile parents are adoptive parents. He issued another fatwa in permitting donor technologies that can be used. He added that, both the donor and the infertile parents must abide by the religious codes regarding parenting.⁷⁴

1.6 Surrogate Mother's Legal Status

If the surrogate provides only gestational services, Islamic law may still view her as having an unclear maternal link.⁷⁵ If she provides the egg, she is considered the biological mother, and this affects the child's ability to inherit from her and the legitimacy of any inheritance from the commissioning parents.⁷⁶ This raises conflicts in determining the rightful heirs and may invalidate the child's claim to inheritance under Islamic succession rules. Wahbah al-Zuhayli refers to surrogacy (*al-ummah al-badīlah*) as prohibited due to its interference with *nasab*.⁷⁷

1.7 Adoption and Wasiyyah (Bequest)

Islam does not recognize legal adoption in the Western sense. Even if commissioning parents raise the child, the child; cannot automatically inherit as a biological heir, he can only receive up to one-third of the estate through a will (*wasiyyah*), if explicitly included.

2.0 Comparative Case Studies in other Selected Jurisdictions

The legal and ethical dilemmas posed by surrogacy and AID are not unique to Nigeria or to Islamic jurisprudence.⁷⁸ Other jurisdictions, both Islamic and secular, grapple with similar concerns regarding *nasab*, legal parenthood, and the regulation of reproductive technologies.

2.1 Nigeria

Nigeria is secular country with a predominant Muslim population. Nigeria does not currently have a comprehensive legal framework specifically regulating surrogacy.⁷⁹ The arrangement is mostly governed by informal contracts, which are often not enforceable under Nigerian law. Surrogacy agreements are typically facilitated by private fertility clinics and legal practitioners, especially in urban centers like Lagos and Abuja. This legal vacuum creates significant ethical, legal, and human

⁷⁴ Ibid.

⁷⁵ Muh. Sudirman (n 71).

⁷⁶ Ibid.

⁷⁷ Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu*, vol. 10 (Damascus: Dar al-Fikr, 2002) 7410–7413.

⁷⁸ Oluwatosin O. Ogwezy, “Legal Perspective of Child Adoption Under the Nigerian Law” [2018] 2 *AGORA International Journal of Juridical Sciences*, 57.

⁷⁹ Ibid.

rights concerns, particularly around the exploitation of economically disadvantaged women, the legal status of the surrogate child and parental rights.

The practice is increasingly gaining attention due to rising infertility rates and greater awareness of assisted reproductive technologies (ART). Despite its growing popularity, surrogacy in Nigeria remains controversial, especially in religious and cultural contexts.⁸⁰ It also raises significant issues regarding inheritance, child custody, and the legal recognition of parenthood, which Nigerian courts have had to navigate without statutory guidance.

Within Muslim families in Nigeria, the practice of surrogacy is generally not accepted, largely due to the religious and ethical principles of Islamic law (Shari'a), which guides the personal and family lives of Muslims in Nigeria, particularly in the northern states where Shari'a is formally applied.⁸¹ Muslim families in Nigeria, especially those adhering strictly to Shari'a, are therefore reluctant or outright opposed to surrogacy. In regions like Kano, Sokoto, Zamfara, and others where Islamic law is enforced, surrogacy is virtually non-existent among devout Muslim populations.⁸² Where Muslim individuals or couples choose to pursue assisted reproductive technologies, they are generally limited to IVF using the couple's own gametes, and Implantation into the wife, not a third-party surrogate.

2.2 Pakistan

In Pakistan, Because of worries about lineage, adultery (zina), and the exploitation of surrogate mothers, surrogacy is essentially forbidden by Islamic law in Pakistan, according to fatwas and court rulings.⁸³ Third-party involvement, including using donor eggs or sperm, is typically seen as haram (forbidden), while some academics may find some limited situations involving a couple's own gametes and a wife's surrogacy acceptable. Pakistan currently lacks specific legislation regulating surrogacy, but the Federal Shari'at Court has issued decisions that effectively prohibit many forms of surrogacy. The Federal Shari'at Court has invalidated surrogacy contracts, declaring them un-Islamic. In *Farooq Siddiqui v Farzana Naheed* (2017),⁸⁴ the court ruled that

⁸⁰ Ibid.

⁸¹ Ibid

⁸² Ibid.

⁸³ Maria Waheed and Zahish Farid Khan and Shazia Perveen and Nadia Khadam, "Artificial Reproductive Technology in Pakistan: Implications of Surrogacy in the light of Supreme Court Judgment" [2023] 19 (8) *Journal of Xi'an Shiyou University, Natural Science Edition*, 482.

⁸⁴ Anwar Rana and Muhammad Waqas Gujjar and Bakhtawar Manzoor and Hassan Akram and Muhammad Ahmad, "Examining the Legality of Surrogacy in Pakistan: An Analytical Perspective of Islam" [2024] 3 (2) *Law and Policy Review (LPR)*, 45.

surrogacy disrupts the integrity of the family unit and creates uncertainty over lineage and inheritance, thus contravening fundamental Islamic principles. While IVF using the gametes of a legally married couple was upheld, third-party reproductive contributions were declared impermissible.

2.3 Malaysia

Malaysia is an Islamic country located with many ethnicities and religious beliefs. Although there is no standard ART law in Malaysia, the government policy on fertility is according on Sunni Muslim laws. The Fatwa Committee of the National Council for Islamic Religious Affairs in 2016 ruled unanimously against all forms of surrogacy, including those involving gametes from a married couple, due to the risk of lineage confusion.⁸⁵ These fatwas often reference a global consensus among jurists, including Egypt's Dar al-Ifta and the OIC's Islamic Fiqh Academy, that surrogacy should be categorically prohibited under shari 'a.⁸⁶

2.4 Indonesia

Indonesia is the fourth most populated country in the world with Muslim majority population and most of whom are Sunni Muslims.⁸⁷ Although Indonesia is a secular country, its laws and social norms regarding ART are roughly in line with Islamic beliefs.⁸⁸ Article 127 of the Indonesian Health Law No. 36/2009 implicitly prohibited surrogacy which requires that fertilized embryos from the gamete transfer of a married couple must be implanted into the original donor's uterus.⁸⁹ Article 7d of the Indonesian Code of Ethics 2002 also prohibits surrogacy. The MUI has similarly prohibited this practice because it leads to complicated problems related to inheritance.⁹⁰ Surrogacy in Indonesia is illegal due to the violation of Article 1320 of the Criminal Code. In addition, in terms of criminal law, it is contrary to Article 284 of the Indonesian Civil Code.⁹¹ It has even been declared that accepting a surrogate mother is not in accordance with the norms of decency in Indonesia.⁹²

⁸⁵ A Ebrahimi and F Ghodrati F, "Comparative Investigation of Surrogacy Laws in Asian Islamic Countries: A Narrative Review" [2025] 13 (1) *Journal of Midwifery and Reproductive Health*, 4523.

⁸⁶ Ibid.

⁸⁷ TE Purvis, "Assisted Reproduction in Indonesia: Policy Reform in an Islamic Culture and Developing Nation. Reproductive" [2015] 31(5) *Biomedicine online*, 697.

⁸⁸ Ebrahimi (n 86).

⁸⁹ ibid

⁹⁰ ibid

⁹¹ ibid

⁹² DE Puspitasari, "The Legal Status of Surrogate Mothers in Indonesia [2022] 3 (1) *Batulis Civil Law Review* 19-28.

2.5 United Kingdom

In the **United Kingdom context as a case study**, the UK prohibits commercial surrogacy but permits altruistic surrogacy, with legal parenthood granted post-birth through a court-ordered **parental order**.⁹³ The current UK framework is flexible but inconsistent.⁹⁴ Courts often override statutory limits (e.g., time limits for parental order applications, domicile requirements) based on child welfare. Law reform is underway, proposing a new **“regulated pathway to parenthood”** that would grant intended parents legal parenthood at birth under strict conditions via Regulated Surrogacy Organizations (RSOs).⁹⁵ In England, the High Court in *Re G (Children) (Residence: Same-Sex Partner)* (2007) acknowledged the complexities of surrogacy but permitted legal parentage to be reassigned via a parental order in certain altruistic surrogacy cases.⁹⁶ In Ireland, the Supreme Court in *MR and DR v An t-Ard-Chláraitheoir* (2014)⁹⁷ affirmed the legal doctrine *mater semper certa est* (the mother is always certain), ruling that a birth mother cannot be legally displaced by a genetic or intending mother without legislative reform.

2.6 United States

Surrogacy in the United States is complex and varies significantly by state, as there is no federal law directly regulating surrogacy.⁹⁸ Instead, each state adopts its own laws, policies, and attitudes toward surrogacy. California is a leading pro-surrogacy state. It allows surrogacy for all types of parents (including LGBTQ+), and pre-birth orders are commonly granted.⁹⁹ Illinois has the Illinois Gestational Surrogacy Act, one of the most comprehensive pro-surrogacy laws.¹⁰⁰ Nevada,

⁹³ Susanna Marinelli and Francesca Negro and Maria Cristina Varone and Lina De Paola and Gabriele Napoletano and Alessandra Lopez and Simona Zaami and Giuseppe Basile, “The legally charged issue of cross-border surrogacy: Current regulatory challenges and future prospects” [2024] 300 *European Journal of Obstetrics & Gynecology and Reproductive Biology*, 41.

⁹⁴ *Ibid*

⁹⁵ R Marsh, “Non-Traditional Families and the Tenacity of Motherhood: *Re C (Surrogacy: Consent)* and *Re Z (Surrogacy: Step-Parent Adoption)*” [2025] 88 *Mod Law Rev.*, 598.

⁹⁶ Emma Walmsley, “Reforming UK Surrogacy Law: Bridging the Gap Between Regulation and Practice” (Thesis submitted in accordance with the requirements of the University of Liverpool for the degree of Doctor of Philosophy (Ph.D.), 2018), 46 <https://livrepository.liverpool.ac.uk/3047798/1/200719660_Oct2018.pdf> accessed 30 June 2025.

⁹⁷ Brian Tobin, “Surrogacy and Consent under Irish Law: A Problematic Copy and Paste from the UK” [2025] 6 (2) *Amicus Curiae*, Series 2, 260.

⁹⁸ José Ángel Martínez-López and Pilar Munuera-Gómez, “Surrogacy in the United States: analysis of Sociodemographic Profiles and Motivations of Surrogates, [2024] 49 (4) *Reproductive BioMedicine Online*, 104302,

⁹⁹ *Ibid*.

¹⁰⁰ Chelsea VanWormer, “Outdated and Ineffective: An Analysis of Michigan’s Gestational Surrogacy Law and the Need for Validation of Surrogate Pregnancy Contracts” [2012] 61 (3) *DePaul Law Review*, Art 9, 911.

Connecticut, New Hampshire, and Delaware all permit and regulate surrogacy clearly.¹⁰¹ New York previously banned paid surrogacy, but the law changed in 2021 through the Child-Parent Security Act, now legalizing and regulating gestational surrogacy.¹⁰² Texas and Florida allow surrogacy but with specific procedural requirements, including that the intended parents must be legally married (in Texas).¹⁰³ In Michigan, paid surrogacy is illegal, and contracts are unenforceable. It is even a criminal offense to compensate a surrogate. Louisiana only allows gestational surrogacy for heterosexual married couples, and contracts must meet stringent requirements.¹⁰⁴ In the United States, *In re Baby M* (1988)¹⁰⁵ invalidated a surrogacy contract, holding that the surrogate mother retained parental rights regardless of prior agreements.

3.0 Ethical and Policy Implications

As technological advancements unfolded, the ethical complexities of artificial insemination emerged. Modern Muslim societies are increasingly confronted with ART-related cases.¹⁰⁶ **Islam is not monolithic** in its treatment of surrogacy.¹⁰⁷ While ethical concerns focus on preserving lineage and marital exclusivity, there are other practical concerns. Islamic contract law rejects agreements involving *gharar (excessive uncertainty)*, and on this basis void surrogacy contracts if they introduce unpredictability.¹⁰⁸ Psychological and relational conflicts may arise regarding the identity of the child, emotional attachment of the surrogate, and post-birth custody.¹⁰⁹ There's concern about commodification and "renting of the womb," which is ethically problematic without strong justification. The lack of international consensus or regulation complicates cross-border cases, especially regarding legal parenthood, birth registration, and citizenship.

¹⁰¹ Claudia Flores, "Accounting for the Selfish State: Human Rights, Reproductive Equality, and Global Regulation of Gestational Surrogacy" [2023] 23 (2) *Chicago Journal of International Law*, Art 3, 399.

¹⁰² Natalie Burke, "Surrogacy Law Reformed: Bringing New York Into the Twenty-First Century" [2022] 42 (2) *Pace Law Review*, Art 7, 485.

¹⁰³ Krista Thompson, "Boss Mom: Why Texas Should Revise Its Legislation to Allow Gestational Surrogacy Contract Enforcement for Social Surrogacies" [2022] 75 (4) *SMU Law Review*, Art 9, 975.

¹⁰⁴ Taylor Paige Mutavdzic, "Legal Challenges Across State Lines: A Look into Surrogacy Law in the United States" [2024] 16 (1) *Journal of Civil Law Studies*, Art 12, 267.

¹⁰⁵ 109 N.J. 396, 537 A.2d. 1227

¹⁰⁶ Alaro (n 1).

¹⁰⁷ Inhorn (n 51)

¹⁰⁸ Abdul-Rahim Al-Saati, "The Permissible Gharar (Risk) in Classical Islamic Jurisprudence" [2003] 16 (2) *J.KAU: Islamic Econ.*, 3.

¹⁰⁹ A Patel (n 42).

The global surrogacy industry is a multibillion-dollar industry (\$17.9B in 2023, projected to grow to \$139B by 2032).¹¹⁰ Demand is driven by increasing infertility, LGBTQ+ family-building, medical needs, and declining adoption rates. Unregulated or under-regulated markets are prone to unethical practices, such as coercion, lack of informed consent, and poor medical care. The **Push and Pull Factors in Cross-Border Surrogacy include** long domestic wait times, cost, restrictive laws and affordable services abroad, less regulation, commercial options.¹¹¹ This results in **"reprohubs"** or **"surrohubs"**, such as Ukraine, Colombia, and Mexico, which cater to foreign intended parents.¹¹² Tied to this, there is a need for harmonized legislation guided by the maqāṣid al-shari‘a to navigate these dilemmas particularly due to the peculiarity of Islamic faith in the global space. These cases reveal shared global concerns about the legal and ethical status of children born through non-traditional reproductive means. Whether grounded in Islamic jurisprudence or secular common law, courts and scholars alike prioritize child welfare, the clarity of lineage, and the regulation of reproductive arrangements. This reinforces the importance of developing coherent legal frameworks that reflect both doctrinal integrity and social realities. Some countries like UK, New Zealand, Ireland, and Netherlands are reforming laws to better reflect realities and protect all parties.¹¹³ Others like Italy, Russia and Georgia are restricting or closing off access to foreign intended parents. However, the EU and global bodies have yet to establish unified standards.¹¹⁴

4.0 Conclusion

The emergence of the surrogacy and its legal consequences is one of the most complicated legal procedures in the institution of family law. One critical insight that emerges from this paper is the underexplored tension between doctrinal fidelity and the lived realities of Muslim families facing infertility. Islamic jurisprudence imposes clear restrictions on ART to preserve lineage and the sanctity of marriage. Also, the legal status and inheritance rights of children born through such methods remain contentious. While juristic prohibitions are grounded in sound theological principles, the application of the prohibition risks alienating Muslim communities that must

¹¹⁰ Kirsty Horsey, “The Future of Surrogacy: A Review of Current Global Trends and National Landscapes, Reproductive” [2024] 48 (5) *BioMedicine Online*, 103764.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

contend with the moral and emotional hardships of childlessness. This paper has opened the possibility of nuanced ijihad to address evolving medical realities. Policymakers in Muslim-majority countries must develop bioethical laws that uphold shari'a principles while addressing the complex needs of modern families.