

Comparative Investigation of Surrogacy Laws in Asian Islamic Countries: A Narrative Review

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ARTICLE INFO	ABSTRACT
<p><i>Article type:</i> Original article</p>	<p>Background & aim: The surrogacy is a desirable reproductive technology for family formation, which faces disagreements in the ethics community, and Islamic jurists. This study aimed to compare surrogacy laws in Asian Islamic countries.</p>
<p><i>Article History:</i> Received: 11-Feb-2023 Accepted: 22-Aug-2023</p>	<p>Methods: This narrative review employed the method described by Cronin (2008). Persian and English articles indexed in databases of Scopus, Cochrane, PubMed, Science Direct, Medline, and Google search engine, as well as Iranian data bases of Magiran, SID, Iranmedex related were searched between 1987 and 2022. Related legal cases in 13 Asian Muslim countries, and Islamic scholars' fatwa were also searched. The keywords included "surrogacy, surrogate uterus, surrogate mother, assisted reproductive techniques, third party reproduction, infertility, law, jurisprudence, ethics and Islam".</p>
<p><i>Key words:</i> Surrogate Mother Assisted Reproduction Techniques Infertility Islamic Scholar's Fatwa</p>	<p>Results: Out of 63 articles, 28 studies included in the review. The results showed that there are three groups of countries including 1) Countries where performing any surrogacy procedures is illegal and haram including Indonesia, Malaysia, Pakistan, and Turkey 2) countries in which surrogacy is legal according to the regulations of the country like Iran, Afghanistan, Bangladesh, Tajikistan and Kyrgyzstan) and 3) countries that have no specific laws i e. surrogacy is not explicitly allowed, but it is not prohibited either such as Uzbekistan, Azerbaijan, Brunei and Turkmenistan.</p> <p>Conclusion: Various surrogacy laws in different countries require comprehensive guidelines for infertile couples and donors, including jurisprudential and advisory legal aspects. Drafting contracts, and reviewing and resolving legal ambiguities in this field helps to create a better culture and more efficiency of surrogacy.</p>

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Introduction

Infertility often manifests as suffering and trouble in life. Not having a child is one of the social crises that can destroy the heart of the family (1). Infertility in many societies, including Islamic countries, has social and cultural dimensions. In many families, infertility may cause stressful experiences and serious psychological problems (2). Islam also acknowledges that infertility is an important problem. Attempts to treat infertility are not only permissible but encouraged by Islam (3). In the Holy Qur'an (Muslim's holy book), there are

various verses on fertility issues and some jurisprudential doctrines regarding pregnancy and childbirth, as well as the sufferings that mothers bear during pregnancy, childbirth, and breastfeeding, resulting in mothers having rights over their children (4). In the Qur'an and jurisprudential sources, marriage, family and reproduction are very important. The Holy Qur'an talks about having children in Surah al-Nisa in versus 1 and other surahs of the Qur'an. In hadith sources, (The speech of the infallible Muslim imams) having children is one of the most important results and motivations of

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marriage, especially permanent marriage (5), so that if husband or wife suffer from some diseases that prevent them from having children, Islam has allowed the dissolution of the marriage contract. Islam recommends the treatment of every disease, as the Prophet of Islam (PBUH: Peace Be upon Him (Muslims say or write the phrase to get Allah's blessings for the prophet) said, "Allah has created a cure for every disease. Some cures are known, others are not." As a result, a family can try to overcome not having children without opposition to Shia jurisprudences laws, among which is the use of assisted reproduction techniques (ARTs) by a married couple (6).

Today, using the technique of in vitro fertilization (IVF), which has been the starting point for overcoming the problem of infertility, millions of people have been born all over the world, and this trend is still increasing (7). Therefore, in recent decades, many successful efforts have been made to treat infertility using ARTs (8).

Surrogacy is one of the reproductive technologies for family formation (9). In the method of surrogacy or "gestational surrogacy", a uterus other than the owner of the gamete is used, observing certain conditions during pregnancy and childbirth (10). The surrogate uterus can have different forms. In the traditional form, the surrogate mother and the legal father are the genetic parents of the child, and the IVF method is used to culture the embryo. In the complete surrogate method, the surrogate mother has no genetic connection with the embryo and only nurtures the embryo of another couple (11).

Some believe that the conditions of using a surrogacy should be facilitated and there should be no legal or religious prohibition; because it is beneficial to all parties and that banning it limits the autonomy of infertile couples. Others believe that its risks outweigh its benefits. However, some problems prevent women from becoming pregnant or continuing their pregnancy, where the only solution can be the use of surrogacy (8-14).

Asurrogate uterus might be used in cases of congenital agenesis of the uterus, common congenital uterus abnormalities, hysterectomy performed for various reasons, or an acquired

disease that cause dysfunction of the uterus with failure of attempts to treat infertility (18).

Patients with serious medical diseases, such as heart or kidney patients, prohibited from becoming pregnant and repeated implantation failure in assisted fertilization (15-18). Some women cannot bear the burden of pregnancy, childbirth and breastfeeding, as well as disability due to old age and the fear of passing on debilitating genes (19-20). Many legal and jurisprudential issues related to surrogacy are not clearly stated, and there are disagreements between the medical ethics community, the courts, and the general public. Decisions about surrogacy in legal authorities depend on factors such as; the interests of the child, the rights of the pregnant mother, the genetic link between the child and the genetic parents, and the goals of the couple who signed the surrogacy contract. There is no consensus in the international legal or ethical communities as to which of these factors should be prioritized. Therefore, efforts are made to provide common legal solutions for those who travel abroad to have children through surrogacy (21).

Most Muslims, both Shia and Sunni schools of thought, share similar views on the importance of pregnancy and having children and recommend infertility treatments (1). However, there are differences in opinions regarding the process of surrogacy in Shia and Sunni Muslim communities. Most famous contemporary Shia jurists have considered the use of surrogacy as permissible under certain conditions, while according to Sunni jurists, surrogacy is not allowed because it is against moral and religious standards (22). Sunni Muslims consider it permissible provided that the sperm, egg and uterus used in this process are of a legal couple during their legal marriage. However, any type of surrogate uterus is prohibited, and a third-party (out of marriage) donor is not allowed, whether they provide sperm, egg, embryo or uterus. Some traditional scholars believe that surrogacy is allowed only in cases where the blastocyst is implanted in the uterus of another wife (second wife of the husband) (23).

Most Shia Muslims of the world (90%), who live in Iran and parts of Bahrain, Lebanon, Iraq, Afghanistan, India and Pakistan, have a liberal view on modern ARTs and a certain flexibility

and pragmatism to third-party egg, sperm, embryo and uterus donation. In Iran, Supreme Leader Ayatollah Khamenei issued a jurisprudence in the late 1990s to allow infertility treatment technologies, including surrogacy (24). Whereas, in Indonesia, which has the largest population of Sunni Muslims in the world, the use of surrogacy is strictly prohibited by law, and is only allowed in private centers for non-Muslims (25). For this reason, about two to three million infertile couples and the legality of ART in Iran have created a unique position for Iranian women in the Islamic world (26). In a study, it was reported that 61 infertility clinics in Tehran and some big cities

such as Isfahan, Shiraz, Tabriz, Mashhad and Yazd operate in the field of infertility treatment methods (27). In this regard, the authors outline the evolution of judicial approaches and special regulations regarding surrogacy in Asian Islamic countries (both Shia and Sunni), which may reduce the risk of harm to children and families due to the current ambiguity in the countries. This study therefore aimed to compare surrogacy laws in Asian Islamic countries.

Materials and Methods

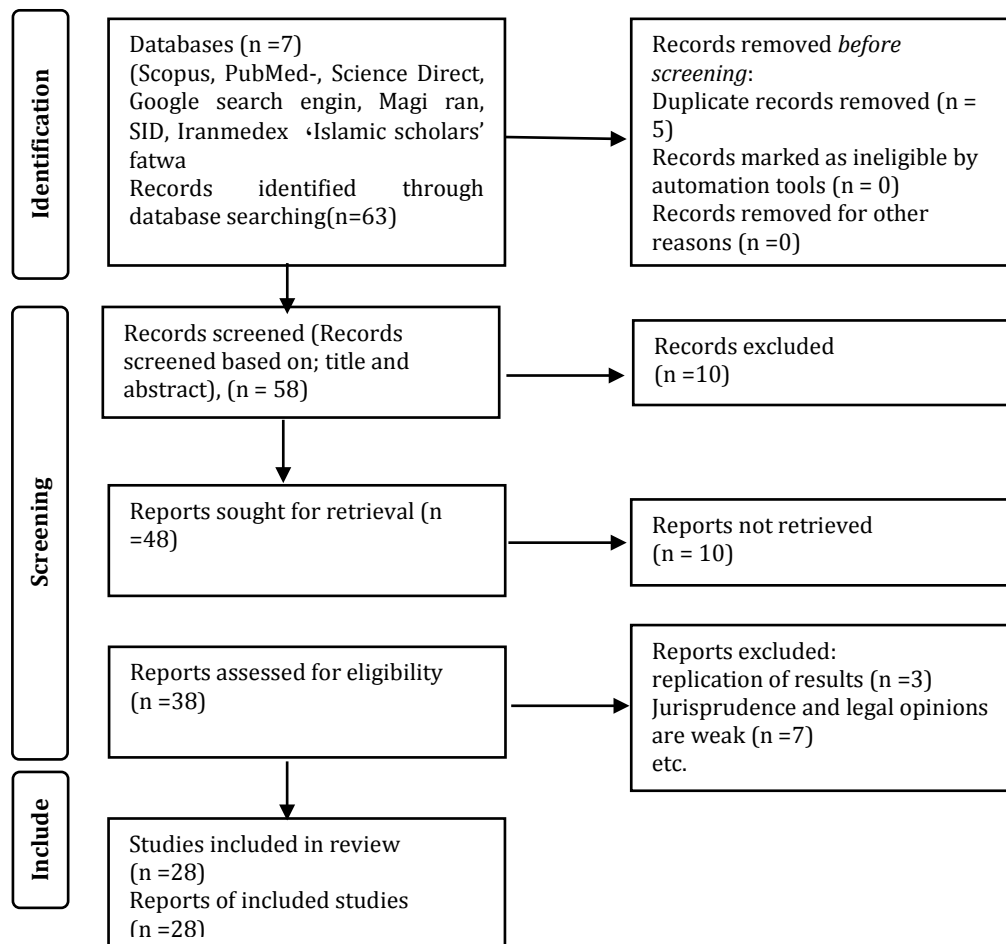


Figure1. The process of study selection for surrogacy laws in Asian Islamic countries

This narrative review employed the method described by Cronin et al. (2008) This process

includes five steps including selecting the topic, Searching the literature to review the

background of the topic, collecting and analyzing the literature, writing the review, and finally setting the references used (28).

Articles published from 1987 to 2022 were reviewed regarding the comparative law of surrogacy in 13 Asian Islamic countries (Azerbaijan, Afghanistan, Indonesia, Iran, Brunei, Bangladesh, Pakistan, Tajikistan, Turkmenistan, Kyrgyzstan, Turkey, Malaysia and Uzbekistan). The information sources in this review included related articles from international scientific databases of Scopus, Cochrane, PubMed, Science Direct, Medline via well as Google Scholar search engine, and Islamic scholars' fatwa that were searched using the keywords of "surrogacy, surrogate uterus, surrogate mother, assisted reproductive techniques, reproduction, third party reproduction, infertility, law, jurisprudence, ethics and Islam". In this review, 28 articles of the extracted 63 articles about surrogacy in Iran and other Asian Muslim countries were examined (Figure 1).

First, the relevant articles were selected, and then based on the inclusion criteria, the abstracts of the articles were reviewed. If there were duplicate reports of a study, the most complete one was considered. Then irrelevant articles were excluded and articles related to the study were identified to obtain their full text. Exclusion criteria included content outside the study scope and repetition of the subject. Finally, 28 studies were eligible.

In order to data extraction, the researcher first read the different parts of the article and noted his impressions. The re-examination was done

with the help of the second researcher. The selected points were recorded in a table and in case of disagreement, the findings were completed by re-examining the articles during a joint meeting. In the initial evaluation, the titles and abstracts of the articles were extracted and analyzed by the researchers.

The quality of the articles was measured based on the Strengthening the Reporting of Observational studies in Epidemiology (STROBE) checklist. Initially, 63 of the articles were in accordance with the objectives of the study and were fully studied, finally 29 articles were included in the study and analyzed. The selected points were recorded in a table and in case of disagreement, the findings were completed by re-examining the articles during a joint meeting.

Results

Based on the search strategy, in the first stage 5 of 63 articles were excluded due to being repeated and 30 due to lacking inclusion criteria, resulting in 28 eligible articles. Based on the findings of these articles, comparative legal frameworks of surrogacy in 13 Asian Islamic countries are as follows (Figure2). According to the results there are three groups of countries including 1) Countries where performing any surrogacy procedures is illegal and haram 2) countries in which surrogacy is legal according to the regulations of the country and 3) countries that have no specific laws i.e. surrogacy is not explicitly allowed, but it is not prohibited either (Figure 2).



Figure 2. Legal status of surrogacy in 13 Asian Islamic countries

The first group: Countries where performing any surrogacy procedures is illegal and haram.

It includes countries such as Indonesia, Malaysia, Pakistan, and Turkey.

Indonesia

Indonesia is not significantly active in internationally research on infertility treatment. This gap in the literature is significant considering Indonesia's position as the fourth most populated country in the world and the country with the Most of its population is Muslim (205-225 million people), the majority of whom are Sunni Muslims (25, 29). Purvis et al. argue that although Indonesia is a secular country, its laws and social norms regarding ART are roughly in line with to main path Islamic beliefs, and the pervasiveness of Islam is So that Islamic beliefs effectively prohibits the practice of some ARTs. Infertility among poor people and low medical insurance in Indonesia has caused infertility treatments and the use of ART to be limited to rich people residing in large cities in Indonesia (29). Issued through fatwas or legal opinions by the Indonesian Ulema Council, the national coalition of all major Muslim groups in Indonesia, and the selection of Islamic political parties, has a profound influence on Indonesian laws. In Indonesia, according to Article 127 of the Health Law No. 36/2009, surrogacy is implicitly prohibited, which requires that fertilized embryos from the gamete transfer of a married couple must be implanted into the original donor's uterus. 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 (29). 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. It has even been declared that accepting a surrogate mother is not in accordance with the norms of decency in Indonesia (30).

Malaysia

Malaysia is an Islamic country located in Asia with many ethnicities and religious beliefs. In this country government policy on fertility are according on Sunni Muslim laws. Donated gametes for fertilization and the use of a surrogacy are prohibited. On the other hand, it is possible to use these methods in private centers for non-Muslim couples. Because there is no standard ART law in Malaysia in these cases (25).

Surrogacy is currently prohibited by the fatwa of the National Council of Islamic Religious Affairs in 2008. Mat Jais Kamos from the Islamic affairs department in Malaysia's biggest state, Selangor said "If another woman enters this surrogate pregnancy situation, it means that the real mother of the child can be questioned. This creates confusion in Islamic law, especially when it comes to inheritance, as it would be difficult to determine one's bloodline and thus one's rights to any inheritance" (31).

Pakistan

Judges of the Supreme Council in Federal Shariat Court of Pakistan (FSC), Based on the opinions of Sunni religious scholars It has prohibited the use of surrogacy womb (32).

Chief Justice, Riaz Ahmad Khan, the main judge and the Chief Justice in FSC as a non-sectarian judicial body, states that "surrogacy involves social and moral dilemmas for poor women who endure the physical and mental pains of pregnancy. Such surrogate mothers get emotional attachment with a baby in the uterus they raise". He noted "The child needs the natural love and affection of the family, which may not be possible through paying the cost of the child's birth to a surrogate mother" (33). Pakistan's Penal Code should also be amended to include imprisonment and fines in the law for those who perform surrogacy, including the couple who arranges a surrogate mother, along with the doctor who performs the surrogacy procedure (39). Sunni Muslim scholars support uterus transplantation, but they are strongly opposed to surrogate pregnancy, and believe that the child born from a surrogate does not belong to the real biological mother in any of these cases (34).

Turkey

In November 2018, all types of ART involving third parties, including surrogacy, were banned in Turkey. On the other hand, IVF methods for married heterosexual couples, despite the fact of many people seeking surrogate mothers abroad, has been greatly expanded by the legal-official framework (35-36).

New laws in Turkey emphasize that women do not have the right to receive any other person's cells. It is forbidden to use a donor in any way. This law was announced after many women in

Turkey traveled to other countries and chose a surrogate mother due to the prohibition of surrogacy in their country. Turkish law has stated that if any center performs surgery to donate sperm, eggs, or embryos, or surrogacy, the center will definitely be closed and all employees in that center will be fired (37).

The second group

Surrogacy is legal according to the regulations of the country. It includes the countries of Iran, Afghanistan, Bangladesh, Tajikistan and Kyrgyzstan.

Iran

Iran is one of the few Shia Islamic countries in which all types of donations, including eggs, sperm, embryos, as well as surrogacy, are permitted and carried out (both commercial and for charity). Since the legislator has not established a specific law in this regard, to review the rulings on surrogacy according to Article 167 of the Constitution, one should refer to valid fatwas and the opinions of jurists. In 2013, a law regarding embryo donation was approved in the Islamic Council and the Guardian Council also approved it in 2013, which can also be used in the matter of surrogacy (24, 38-39).

On the other hand, there is no explicit legal text regarding surrogacy contracts in Iran, but it seems that such contracts are valid and enforceable based on Article 10 of the Civil Code of Iran (40). On the other hand, a comprehensive law related to the treatment of infertility using a surrogacy has not yet been approved in Iran (41). In terms of the legal rules mentioned in the study by Zandi et al. (2012) Civil registration laws in Iran issue the child's birth certificate in the name of the surrogate, so a birth certificate will not be issued under the name of the child's genetic parents (42). These laws have caused the use of surrogacy to be restricted despite its permission (40).

Afghanistan

Surrogacy is allowed and done with payment to the donor. The process of surrogacy is physically and psychologically very complicated for all three people (infertile couple and surrogate mother) involved in it. Before starting this process, it is necessary to acquire sufficient knowledge about its various stages and all

parties must agree on the process of doing it. However, the intervention of a third party is limited to the reproduction process and does not extend to the stages after the birth of the child (43-44).

Bangladesh

In countries like Bangladesh, where society is actively pro-pregnancy, infertility is often considered a curse. Here, children are not only associated with love and attachment, but are valued as socio-economic security for aging parents. In addition, religious people believe that raising children, motherhood and parenting are among the most important duties of social life. The psychosocial consequences of infertility in Bangladesh include family disruption, extramarital affairs, stress, suicide attempts, vulnerable socioeconomic status, etc. Usually, women suffer the most, as traditionally and in patriarchal practice, women are blamed for everything. Although urbanization and globalization have raised the age of motherhood (mostly in urban settings), it is still a normative behavior in Bangladesh. Therefore, abnormalities of the reproductive system worry not only the woman, but also her family. However, it is the infertile women who are the most vulnerable in this situation, but they do not act as passive victims of the situation (45). Ethical analysis of the online content of assisted reproductive technology centers in Bangladesh by Farid (2024) showed that these centers have limited and ambiguous reports of success rates, creating challenges for informed decision-making. Exploitative practices and obvious commercialization raise concerns in this regard. This study emphasizes the need for regulatory frameworks, transparency in reporting, adherence to ethical advocacy, and increased cultural sensitivity to promote the ethical standards of ART providers in Bangladesh (46).

Tajikistan

In the Republic of Tajikistan, the use of assisted reproductive technologies has started relatively recently. Surrogacy programs have been successfully conducted overseas for decades. Family and legal responsibility for non-implementation or insufficient implementation of the surrogate mother contract is related not

only to the will of the parties but also to the place of implementation of the contract (47).

Kyrgyzstan

Kyrgyzstan has considered the right to freely choose fertility, support reproductive health and abortion health services, receive information about the use of surrogate and artificial mother methods (48). Evko analyzed the legal regulations of surrogacy program in post-Soviet countries. There are no specific legal norms resulting from the application of this program in each state of the selected region. In the Republic of Kazakhstan, Kyrgyzstan, and the Republic of Armenia, the application of medical surrogacy program is subject to special laws. In all the countries studied, surrogacy relationships between certain individuals are established based on a contract that must be notarized (49).

The third group

Lack of any specific laws (surrogacy is not explicitly allowed, but it is not prohibited either). It includes the countries of the Republic of Uzbekistan, the Republic of Azerbaijan, Brunei and Turkmenistan.

Republic of Uzbekistan

In 1995, the "Surrogate Mothers" program was launched in the Commonwealth of Independent States (CIS) countries (48). According to Article 207 of the Family Law of the Republic of Uzbekistan, if a child is born as a result of using ART or surrogacy to a married couple with written consent, they are registered in the birth registry as the child's parents. The consent of the "Surrogate Mothers" (blood mother) is also considered for the registration of the genetic parents as the child's parents (49). Russian law determines a different way of determining parental rights about a child born to a Surrogate Mothers. The Rules of Procedure of the Russian Federation Family Use of the use of artificial inoculation or fetal implantation, with the consent of the woman who gives birth to the child (paragraph 4, Article 51). Only recorded as a child's parents. With this article, the legislator seeks to protect the interests of the Surrogate Mothers (48).

In the CIS countries, a written agreement on embryo transfer and other reproductive services will be signed in the Russian Federation. If a child is born with a physical or

mental disability and this pathology is caused by the fault of the surrogate mother, or if the surrogate mother is rejected by the biological parents, the law guarantees the rights of the child and the mother (48).

Azerbaijan

There is no law on surrogacy in Azerbaijan. Nowadays, few married couples in Azerbaijan can use surrogate mother services. The reason for that is the absence of the concept of "surrogate mother" in Azerbaijani law. Surrogacy is not legal in Azerbaijan, that's why many infertile couples have to go to other countries where surrogacy is legal (50). The national law does not provide a precise definition of the term "surrogate mother". According to Article 1 of the Law of the Republic of Azerbaijan, citizenship is legal if 1- a person is born in the territory of the Republic of Azerbaijan, 2- a person is a resident of the Republic of Azerbaijan (may not even be born there). A person whose one parent is a citizen of the Republic of Azerbaijan is also eligible for citizenship. Birth registration in the Republic of Azerbaijan according to Article 166.1 of the Family Law is done at the place of birth of the child or at the place of registration of the parents or one of them (51).

Brunei

Brunei is bordered by Malaysia from the south and connects to the South China Sea from the north. This country gained independence from Britain in 1984. Brunei people are mostly Muslims and Sunnis. Decreased overall fertility in Brunei by the government and the media has been regarded as "worrying trends". The subject of attitude and fertility behavior, especially among the majority of Muslims, has not attracted the attention of universities.

But one of the reforms of family law in Southeast Muslim countries is Polygamy. Indonesia and Malaysia have strengthened Polygamy performance based on their spouse's status with the inability to fulfill their obligations. Polygamy is more flexible in Brunei because they do not specifically discuss this issue in their national law. But there was no adequate article on the Mother Surrogacy (52). Azerbaijan, Belarus, Russian Federation, Turkmenistan, Ukraine: There is no specific law

on ART in these countries. Assisted reproduction is to some extent regulated by various laws including the Family Law, the Health Law and Ministry of Health guidelines, and some “grey” areas still remain. For example, in Turkmenistan, the donation of eggs/sperm/embryos, as well as the storage of genetic materials, are not covered by the law (48).

Discussion

Among the countries under investigation, Indonesia, Malaysia, Pakistan, and Turkey have the most restrictive laws, and carrying out surrogacy procedures is forbidden by Sharia or law. Islamic scholars have different and controversial opinions about the use of third-party reproduction such as sperm or egg donation and the use of “surrogate uterus”. In general, if someone uses genetic assistance and/or pregnancy outside of marriage, it can be considered an act of adultery according to Sunni Islamic law. This is the collective view of Sunnis (44).

On the other hand, the emergence of the surrogacy and its legal consequences is one of the most complicated legal procedures in the institution of family law. Despite its global popularity, surrogacy raises serious human rights issues and there are many unresolved issues. Laws vary widely from one jurisdiction to another. Of the countries that allow surrogacy, many have residency or citizenship requirements for the intended parent(s) and/or surrogate. Countries that do not have such requirements often attract people from abroad who are fertility tourism destinations, and at the same time, there is no single agreement (48, 53). Mainly due to the limitation of gamete donation and surrogacy (GD/S), an adoption system is carried out in China, Malaysia and the Philippines for infertile families. Of course, GD/S is allowed in Thailand, Singapore and India (25). Adoption is also the last resort in Indonesia if infertility treatment fails. However, no formal adoption system has been established in Indonesia (54-55).

In the case of Pakistan, another opinion has been raised against the opinion of FSC: it has been stated that the personal rights of Muslims are based on different interpretations of the Qur’an and Sunnah (Ahl al-Sunnah is one of the

two major religions of Islam, which includes the majority of the Muslim population. Ahl al-Sunni are also known as Sunni and Ahl al-Tasan. Sunnis believe that the appointment of the Muslim caliph and imam is the responsibility of the Muslims and their choice) by the jurists of each sect. FSC is a non-sectarian judicial institution that does not rely on a specific sectarian interpretation of the Qur’an and Sunnah, therefore, the emphasis on punishing the parties involved in surrogacy is inappropriate. The surrogate law should focus on protecting the rights of the vulnerable parties, the surrogate mother and the surrogate child. The surrogate mother must be protected from financial and emotional exploitation, and the surrogate child must have all the rights related to legitimacy. The absolute criminalization of surrogacy, as proposed by the FSC, harms the rights and interests of both parties (56). According to Turkish law, centers that recommend foreign doctors to patients or offer surrogate mothers to Turkish couples will also be closed for three months. Even the amendment law has been declared that the case of the centers that recommended this practice and they either do or send the patients to centers abroad, they are introduced to the public prosecutor together with the donor and recipient women (57). In a study by Baykal et al. (2008) on infertile women in Turkey, it was shown that there are patients who are willing to use these assisted reproductive treatments. They agreed with gamete donation (23.3% for egg donation and 3.4% for sperm donation) and surrogate pregnancy (15.1 percent). The legal conditions should be such that each of these infertile patients should have the right to try any of the assisted reproductive methods (58).

Regarding the second group, which is a free and lawful surrogacy, there are two opinions among Shia jurists in Iran: some like Ayatollah (Ayatollah (from Arabic: Ayatollah, meaning “sign of God”) is a high-ranking Shia cleric of the Twelve Imams. Those who take this title must be men, and experts in Islamic sciences such as jurisprudence and principles, which are often taught in seminaries. The next lower rank among these clerics is Hojjat al-Islam) Sheikh Javad Tabrizi, Ayatollah Fazel Lankarani, Ayatollah Bahjat, Ayatollah Montazeri and

Ayatollah Nouri Hamadani has opposed the use of surrogacy. But some others, including Ayatollah Khamenei, Ayatollah Nasser Makarem Shirazi, Ayatollah Sistani, Ayatollah Sanei, Ayatollah Mousavi Ardabili, Ayatollah Safi Golpayegani and Ayatollah Bojnarudi have agreed to it. Regarding the regulation of surrogate contracts, in practice, it is regulated based on Articles 10 and 512 of the Civil Code of Iran. All surrogacy arrangements (both commercial and altruistic) are legal and popular. Many Middle Eastern couples resort to surrogacy due to legal ease in Iran (59-60). Inhorn (2006) has stated that Shia scholars in Iran and other Muslim countries do not agree with the permissive attitudes of Iran and Lebanon towards third-party donation and surrogacy. In the early 1980s, authoritative fatwas issued by Egypt's renowned Al-Azhar University suggested that IVF and similar technologies were permitted as long as no third-party donation (sperm, egg, embryo, or uterus) was involved (61).

The newly independent states that emerged after the collapse of the Soviet Union show significant differences in their approach to the legal regulation of ARTs (62). Uncertain legal status, differences in legal regulation of ART lead to cross-border reproductive travel. Infertile parents move from countries where surrogacy is not regulated (e.g., Moldova, Uzbekistan) or illegal (Turkmenistan) to countries where surrogacy is legal and legally adopt the child, they have given birth to (Armenia, Belarus, Kazakhstan, Kyrgyzstan, Ukraine) (62). In general, the various aspects that exist around this issue have caused gaps in the legal, ethical, and jurisprudential fields for the couples involved in the treatment. There are ambiguities in this method of treatment even in countries where it is legally accepted due to the lack of a specific contract, the lack of a specific law regarding surrogacy and the legal issues of the couples involved in the treatment (63).

Zandi et al. (2012) investigating the experiences of mothers and surrogate mothers in facing legal issues in Iran stated that surrogacy clients suffer a lot of stress due to the lack of laws and regulations, especially regarding surrogate mothers. To escape from legal obstacles and get a birth certificate under

the name of their genetic mother, patients resort to illegal actions, which brings additional financial, mental and psychological pressure on them (42). The experiences of the participants showed the common theme of "overcoming legal constraints", which included three aspects: "ineffectiveness of current laws", "receiving insufficient educational support services" and "stress and frustration" (64).

The review of published articles shows that ethics committees of infertility treatment centers should pay more attention to the ethical issues of this treatment method. Possible abuses and exploitation, concern about the lack of consent of the surrogate woman's husband, non-disclosure of the truth and lack of future follow-up, non-acceptance of a child with a physical defect by the recipient couple, or neglecting the health of the fetus during pregnancy are some of the major issues that must be addressed (74).

One of the positive strength of this study is providing the necessary information to prepare a draft of a comprehensive counseling guide for couples who will somehow face surrogacy. Mentioning the legal and religious challenges that can be pursued in Iran and other Asian Muslim countries is also one of the strengths of this study. The existence of few studies in the field of the laws of Asian Muslim countries and the legality or illegality of surrogacy is one of the limitations of this study. Because due to the limitation of assisted reproductive laws, the lack of published articles in Islamic countries and the clear differences between Shia and Sunni scholars, it takes away the possibility of a wide analysis from the authors. It is recommended that, in addition to medical and psychological consultations, civil laws and jurisprudential issues, including the disagreements of scholars, should be explained to couples in surrogacy consultations, so that a person can accept or reject this treatment method based on their beliefs and full knowledge (65).

It is suggested that the social and cultural challenges of the use of assisted reproductive methods, including surrogacy, should be investigated in Muslim countries in future researches. Also, in another review, the rights of surrogacy in Asian and Arab Islamic countries could be compared.

Conclusion

A conclusion that can be drawn from this study is that in countries such as Indonesia, Malaysia, Pakistan, and Turkey, any surrogacy measures are illegal and violate Sharia law. In contrast, surrogacy procedures are legal in Iran, Afghanistan, Bangladesh, Tajikistan, and Kyrgyzstan, though they may be subject to specific conditions in each country. In other Asian Muslim countries, there is no special law (surrogacy is not explicitly allowed, but it is not prohibited either). Different aspects of surrogacy are not clear in Iranian law. Surrogacy is not accepted by most Sunni scholars, while Shia scholars disagree on this matter. Since infertility treatment using the surrogacy requires comprehensive and specialized consulting services, it is recommended that the use of a surrogacy be considered a high-risk psychological experience. Both parties including donors and recipients should be closely monitored before, during, and after pregnancy, including counseling on the long-term implications of having a child through surrogacy. In addition to the medical and psychological assessments, it is also necessary to inform infertile couples and donors about religious and legal issues of surrogacy to prevent potential religious, legal, and psychological problems. Formulating a comprehensive guideline including jurisprudential and advisory legal dimensions, drafting contracts, and screening and resolving legal ambiguities in this field will help to create a better culture and higher efficiency of this method.

Declarations

Acknowledgments

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Conflicts of interest

The authors declared no conflicts of interest.

Ethical considerations

The data utilized in our calculations is sourced from the statistical yearbooks of the

Civil Registration Organization and has been used without any alterations

Ethical approval

Not applicable.

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Authors' contribution

FG and AE designed the study and conducted literature search. AE were involved in data analysis. FG and AE were involved in writing the manuscript. Authors have read and approved the final version of the manuscript and agreed to be responsible for all aspects of the study.

References

1. Saniei M, Kargar M. Modern assisted reproductive technologies and bioethics in the Islamic context. *Theology and Science*. 2021; 19(2): 146-154.
2. Mitchell A, Fantasia HC. Understanding the effect of obesity on fertility among reproductive-age women. *Nursing for Women's Health*. 2016; 20(4): 368-376.
3. Chamsi-Pasha H, Albar MA. Assisted reproductive technology: Islamic Sunni perspective. *Human Fertility*. 2015; 18(2): 107-112.
4. The holy Qur'an. Surah An- Rad' 13:8, 19:22, 22:2, 31:14, 35:11, 41:47, 46:15, 65:4.
5. Rahnema N, Omidifard A. Jurisprudence commitment to childbearing, Islamic Jurisprudence Research. 2016; 11(3): 649-670.
6. Burma DP, Chakravorty M, editors. *From physiology and chemistry to biochemistry*. Pearson Education India; 2011.
7. Toschi P, Czernik M, Zacchini F, Fidanza A, Loi P, Ptak GE. Evidence of placental autophagy during early pregnancy after transfer of in vitro produced (IVP) sheep embryos. *PLoS One*. 2016; 11(6): e0157594.
8. Piersanti V, Consalvo F, Signore F, Del Rio A, Zaami S. Surrogacy and "Procreative Tourism". What Does the Future Hold from the Ethical and Legal Perspectives? *Medicina*. 2021; 57(1): 47.
9. Nisha Z. Negotiating 'Surrogate Mothering' and Women's Freedom. *Asian Bioethics Review*. 2022; 14(3): 271-285.
10. Lee J-Y. Surrogacy: beyond the commercial/altruistic distinction. *Journal of Medical Ethics*. 2023; 49(3): 196-169.

11. Srivastava A. The surrogacy regulation (2019) bill of India: a critique. *Journal of International Women's Studies*. 2021; 22(1): 140-151.
12. Bruno B, Arora KS. Focus: Sex & Reproduction: Ethical Implications of Donor Type for Uterus Transplantation: Why We Should Remain Wary of Using Living Donors. *The Yale Journal of Biology and Medicine*. 2020; 93(4): 587-592.
13. Jones B, Saso S, Bracewell-Milnes T, Thum MY, Nicopoullos J, Diaz-Garcia C, et al. Human uterine transplantation: a review of outcomes from the first 45 cases. *An International Journal of Obstetrics & Gynaecology*. 2019; 126(11): 1310-1319.
14. Zaami S, Di Luca A, Marinelli E. Advancements in uterus transplant: New scenarios and future implications. *European Review for Medical and Pharmacological Sciences*. 2019; 23(2): 892-902.
15. Brännström M, Kähler PD, Greite R, Mölne J, Díaz-García C, Tullius SG. Uterus transplantation: a rapidly expanding field. *Transplantation*. 2018; 102(4): 569-577.
16. Rana S, Lemoine E, Granger JP, Karumanchi SA. Preeclampsia: Pathophysiology, Challenges, and Perspectives. *Circulation Research*. 2019; 124(7): 1094-1112.
17. Aflatoonian N, Eftekhari M, Aflatoonian B, Rahmani E, Aflatoonian A. Surrogacy as a good option for treatment of repeated implantation failure: a case series. *Iranian Journal of Reproductive Medicine*. 2013; 11(1): 77-80.
18. Patel NH, Jadeja YD, Bhadarka HK, Patel MN, Patel NH, Sodagar NR. Insight into different aspects of surrogacy practices. *Journal of Human Reproductive Sciences*. 2018; 11(3): 212-218.
19. Nadeem MT, Ayub F, Chishti I. Exploring The Status of Surrogacy: An Islamic Juridical Review. *Acta-Islamica*. 2022; 10(1): 1-18.
20. Islam S, Nordin RB, Bin Shamsuddin AR, Mohd Nor HB, Al-Mahmood AK. Ethics of surrogacy: a comparative study of Western secular and Islamic bioethics. *Journal of the Islamic Medical Association of North America*. 2012; 44-1-5920.
21. Igareda González N. Legal and ethical issues in cross-border gestational surrogacy. *Fertility and Sterility*. 2020; 113(5): 916-919.
22. Lotfi H. Surrogacy from the point of view of Ahl al-Bayt and Sunni jurisprudence. *Essays in Medical Jurisprudence*. 2021; 1400(1): 149-178.
23. Serour GI. Islamic perspectives in human reproduction. *Reprod Biomed Online*. 2008; (17 Suppl 3): 34-38.
24. Nosrati SF, Amirian M, Irani M. Legal and religious Counseling aspects of gamete donation in Iran: Review study. *The Iranian Journal of Obstetrics, Gynecology and Infertility*. 2019; 22(6): 85-96.
25. Shiraishi E, Takae S, Faizal AM, Sugimoto K, Okamoto A, Suzuki N. The Scenario of Adoption and Foster Care in Relation to the Reproductive Medicine Practice in Asia. *International Journal of Environmental Research and Public Health*. 2021; 18(7): 3466.
26. Abbasi-Shavazi MJ, Inhorn MC, Razeghi-Nasrabad HB, Toloo G. Infertility, Assisted Reproductive Technology, and Third-Party Donation in the Islamic Republic of Iran. *Journal of Middle East Women's Studies*. 2008; 4(2): 1-28.
27. Tremayne S, Akhondi MM. Conceiving IVF in Iran. *Reproductive Biomedicine & Society Online*. 2016; 2(1): 62-70.
28. Cronin P, Ryan F, Coughlan M. Undertaking a literature review: a step-by-step approach. *British Journal of Nursing* (Mark Allen Publishing). 2008; 17(1): 38-43.
29. Purvis TE. Assisted reproduction in Indonesia: policy reform in an Islamic culture and developing nation. *Reproductive biomedicine online*. 2015; 31(5): 697-705.
30. Puspitasari DE. The Legal Status of Surrogate Mothers in Indonesia. *Batulis Civil Law Review*. 2022; 3(1): 19-28.
31. Kamos MJ. Surrogacy banned under Malaysian fatwa. 2011. Available from: <https://tribune.com.pk/story/125708/surrogacy-banned-under-malaysian-fatwa> [Date accessed: 26may. 2024.]
32. Akhtar A. Surrogacy in Pakistan: Call for Positive Legislation. *Lahore University of Management Sciences*. 2020; 7(1): 127.
33. Zubair Abbasi Blawgs M. Federal Shariat Court of Pakistan on Surrogacy: From Judicial Islamization of Laws to Judicial Legislation. Available from: <https://courtingthelaw.com/2017/08/23/commentary/federal-shariat-court-of-pakistan-on-surrogacy-from-judicial-islamization-of-laws-to-judicial-legislation/> • Commentary: August 23, 2017 September 13, 2017 [Date accessed: 26may. 2024]
34. Nadeem MT, Ayub F, Chishti I. Exploring The Status of Surrogacy: An Islamic Juridical Review. *Acta-Islamica*. 2022; 10(1): 1-8.
35. KIBRIS EŞ, ATABAY SŞ. Multiple Perspectives on Surrogacy and In-Vitro Fertilization in

- Turkey. *Türkiye Biyoetik Dergisi*. 2022; 9(1): 13-20.
36. Poroy MA. Cross-border surrogacy under turkish law and the jurisprudence of the European court of human rights. *Loyola University Chicago International Law Review*. 2018; 13(1): 27-51.
 37. Ishaque S. Islamic principles on adoption: examining the impact of illegitimacy and inheritance related concerns in context of a child's right to an identity. *International Journal of Law, Policy and the Family*. 2008; 22(3): 393-420.
 38. Ghorbani F, Rezaee E. Jurisprudential approach to criterion of reproductive legitimacy of the wife by foreign gametes. *Medical Law Journal*. 2017; 11(42): 41-64.
 39. Hariri M, Sanjabi N, Shakarbaigi A. Examining Surrogacy Process in Iranian Law and Imami Jurisprudence with Look at in International Law. *Quran and Medicine*. 2022; 7(3): 100-108.
 40. Ghodrati F. A comparative study of surrogacy rights in Iran and European countries, a review article. *Ethics, Medicine and Public Health*. 2023; 27: 100880-100880.
 41. Asemami O, Emami M. Comparing the Iranian surrogacy law and the gestational surrogacy act of illinois. *Journal of Reproduction & Infertility*. 2010; 11(4): 305-318.
 42. Zandi M, Vanaki Z, Shiva M, Mohammadi E. Experiences of commissioning mothers in selection of surrogate mother. *Evidence Based Care*. 2012; 2(3): 7-21.
 43. Gilman L. The 'Selfish Element': How Sperm and Egg Donors Construct Plausibly Moral Accounts of the Decision to Donate. *Sociology*. 2022; 56(2): 227-243.
 44. Harrison, Cathy. "Who is Your Mother? Who is Your Father? Assisted Reproductive Technologies in the Light of Sunni and Shi'a Law." *Journal of Shi'a Islamic Studies*. 2014; 7(1): 23- 36.
 45. Habib S. Beliefs and Attitudes towards Infertility and Assisted Reproductive Technologies in Bangladesh: An Anthropological Study. Presented for the PhD, Bangladesh. University of Bangladesh. 2021. Available from: <http://repository.library.du.ac.bd:8080/handle/123456789/1696> 2021. [Date accessed: 26may. 2024]
 46. Farid MS. An Ethical Analysis of the Online Content of Assisted Reproductive Technology Centers in Bangladesh. *Asian Bioethics Review*. 2024; 16(4): 739-756.
 47. Tagayeva S, Aminova F. Legal problems of a contract for surrogate motherhood in the republic of Tajikistan. *The Social Sciences (Pakistan)*. 2016; 11(8): 1466-1469.
 48. Abdurakhmonova K. Surrogate Motherhood: In the Legislative Analysis of Foreign Countries. *International Journal of Discoveries and Innovations in Applied Sciences*. 2021; 1(4): 60-62.
 49. Babajanova D. Surrogacy: Problems Of Definition And Contractual Regulation. *Eurasian Research Bulletin*. 2023; 3(2 Part 3): 93-99.
 50. Legal aspects in European countries, A Global View of Surrogacy Law. Available from: <https://biotexcom.com/legal-aspects-in-european-countries/> 2013/02/21. [Date accessed: 26may. 2024]
 51. Office of the united nations high commissioner for human rights GENEVA. Status of Surrogacy in Azerbaijan, January 13 2023. Available from: 2023, <https://www.ohchr.org/sites/default/files/Documents/Issues/Children/SR/Surrogacy/States/Azerbaijan.pdf>. [Date accessed: 26may. 2024]
 52. Noviana L. The phenomenon of polygamy in Southeast Asia (A comparative study of marriage law in Indonesia, Malaysia, and Brunei Darussalam). In *Proceeding Of International Conference On Islamic Law* 2022; 1(1): 37-52.
 53. Vettorel A. Surrogacy Contracts and International Human Rights Law. *DEP*. 2021; (47): 61-69.
 54. Bennett L, Pangestu M. Regional reproductive quests: Cross-border reproductive travel among infertile Indonesian couples. *Asia Pacific Viewpoint*. 2017; 58(2): 162-174.
 55. Bennett LR. Infertility, adoption, and family formation in Indonesia. *Medical Anthropology*. 2018; 37(2): 101-116.
 56. Cheema SA. Mulla's Principles of Mahomedan Law in Pakistani Courts: Undoing/Unraveling the Colonial Enterprise. *LUMS Law Journal*. 2018; 4(1): 56-75.
 57. Beyramie Farfar N, Razm Khah N. The Parentage of Born Children from Surrogate Womb; Comparative Study in Iran and Turkey Laws. *Journal of Legal Research*. 2020; 19(41): 283-298.
 58. Baykal B, Korkmaz C, Ceyhan ST, Goktolga U, Baser I. Opinions of infertile Turkish women on gamete donation and gestational surrogacy. *Fertility and Sterility*. 2008; 89(4): 817-822.
 59. Aramesh K. Iran's experience with surrogate motherhood: an Islamic view and ethical

- concerns. *Journal of Medical Ethics*. 2009; 35(5): 320-322.
60. Khaleghi N. Infertile Couples in Iran Find New Hope in Surrogacy. 2017. <https://financialtribune.com/articles/people/63071/infertile-couples-in-iran-find-new-hope-in-surrogacy> [Date accessed: 26may. 2024]
61. Inhorn MC. Making muslim babies: Ivf and gamete donation in sunni versus shi'a islam. *Culture, Medicine and Psychiatry*. 2006; 30(4): 427-450.
62. Svitnev K. Legal regulation of medically assisted reproduction treatment in the CIS (former USSR) countries and cross-border reproductive care. In *Human Reproduction* 2011; 26: I149-I149).
63. Jahani Shourab N, Latifnejad Roudsari R. A review of human rights, legal, ethical and religious aspects of Surrogacy in Iran with an emphasis on its counseling issues. *The Iranian Journal of Obstetrics, Gynecology and Infertility*. 2017; 19(40): 33-44.
64. Yousefi H, Ghahari S. Perspectives and challenges of surrogacy in Iran. *Journal of Reproduction & Infertility*. 2008; 9(2): 137-143.
65. Roudsari RL, Allan HT. Women's experiences and preferences in relation to infertility counselling: a multifaith dialogue. *International Journal of Fertility & Sterility*. 2011; 5(3): 158-167.