

SURROGACY IN THE LIGHT OF THE QUR'ĀN AND SUNNAH**ABUBAKAR, Abdulrasheed Mubashir Arina**abubakarabdulrasheed71@gmail.com**08064283076****And****IBRAHIM, Gambo Rafindadi****08065452703****Federal University, Dutsin-Ma, Katsina State.****Department of Islamic Studies**

Abstract

As the scientific knowledge often improves in developing many phenomenal from distinctive angles, and frequently metamorphoses, several discoveries have emerged to date. The concept of surrogacy has prompted numerous argumentative discussions among scientists and religious clerics. Surrogacy was discovered in the 1980s to assist human beings as an alternative way to procreation. It was one of the several assisted reproductive technologies where a third party (surrogate mother) is involved to bear pregnancy for intended parents (childless couples) and she may be compensated at the end of the contract. It comprises distinctive rules and laws from different jurisdictions that adopted practices. However, this practice as a contemporary one has caused many contemporary jurists to make ample efforts through analogical deduction as one of sources of *Shari'ah* to oppose this practice among Muslims. This was explained in the concept of surrogacy as the development of embryo that was formed from semen of intended parents and transfigured into the womb of surrogate mother for fertilization, which is actually against the process and metamorphosis of child during reproduction as established by the Islāmic law in accordance with the Qur'ān and Sunnah. Herein, the surrogate mother will not be a mother to the child that she conceived with hardship and pain, which negates principles of the *Shari'ah*. This write up appraised the concept of surrogacy as being frankly opposed by the jurists with substantiative evidence from the Qur'ān and Hadīth.

Keywords: Scientific Knowledge. Surrogacy, Pregnancy, Qur'ān, Sunnah

Introduction

Continuous research and discoveries in science has not ceased to be bringing new concepts and dimensions in the life cycle of man. These discoveries and new concepts may be favoring some human life desires and be abhorrent with others. Most times, scientists always make humans realize modern developments in the world through their ample research and findings. For instance, in the early 1980s, the concept and issue about surrogacy was brought to limelight and well-practiced in some parts of the world like UK and other countries. Surrogacy refers to a womb of another woman to be sold to a childless couple in order to have child in their life, with different arrangements that would be made under the practice, which may involve monetary, or it may not involve. In the UK for instance, there is a constituted legislation for surrogacy practices, in which no respect was given to religious doctrines on whether it is allowed or forbidden. Furthermore, there are many articles written against the practice of surrogacy with Islāmic viewpoints, such as —*Surrogacy and Islām: Between permissibility and*

prohibition authored by Tawfique Al-Mubarak which upheld that surrogacy is generally considered impermissible in Islām. It was firstly addressed at the seventh session of the Muslim World League's Islāmic *Fiqh* Council Meeting in 1404

AH/1985 CE, in the subsequent year, the Council permitted fertilization of the zygote only among married couples which must accomplish certain conditions. The Council, however, retracted its earlier views on permitting surrogacy among co-wives of the same husband. Similarly, the *Fiqh* Council of the Organization of Islāmic Conference (OIC) in 1986 concluded that surrogacy could be permissible only between married couples and under certain conditions¹. Therefore, the concept shall be discussed in this study.

Islām is a religion of total way of life, and Qur'an is a Divine Book of Allāh. It is a compendium of knowledge that has left nothing concerning human and life affairs generally untouched. This can be found in the passage of the Qur'ān where Allāh says: *We have neglected nothing in the Book* (Q6:38). Also this Ḥadīth shall be produced for the importance of knowledge says: *It was narrated from Sahl bin Sa'd that the Prophet said: "By Allāh, if Allāh were to guide one man at your hand, it would be better for you than red camels"*².

However, all branches of knowledge be it Arts or Sciences are derived from the Qur'ān, therefore, there is no any new issue to be discovered by any scientist today in the world and could not be found in the Qur'ān except that, which might against Qur'ānic contents and its injunctions. The issue of surrogacy which is interpreted to having a child for intended parents (husband and wife) from third party (surrogate mother), and she would not be a biological mother to that child after birth, sincerely contradicts the laws of Islām in whatsoever way. This is because issues relating to marriage and child upbringing including rules and conditions have been explained in the Qur'ān and Sunnah. To understand this concept well in the western perspectives, its meaning and methods are presented as follows:

Meaning and Methods of Surrogacy

Surrogacy is an arrangement, often supported by a legal agreement, whereby a woman (the surrogate mother) agrees to bear a child for another person(s), who will become the child's parent(s) after birth. People may seek a surrogacy arrangement when pregnancy is naturally impossible, or its risks are too dangerous for the intended mother, or when a single man or a married couple wishes to have a child. Surrogacy is considered one of many assisted reproductive technologies³. However, in surrogacy arrangements, monetary compensation may or may not be involved. Receiving money for the arrangement is known as commercial surrogacy. Its legality and cost varies widely between jurisdictions. Couples seeking a surrogacy arrangement in a country where it is banned sometimes travel to where it is permitted. In some countries, surrogacy is legal only if money does not exchange hands⁴.

Types of Surrogacy: Traditional or Gestational, which are differentiated by the genetic origin of the egg. Gestational surrogacy tends to be more common than traditional surrogacy.

Traditional Surrogacy

A traditional surrogacy (also known as partial, natural, or straight surrogacy) is one where the surrogate's egg is fertilized in vivo by the intended father's or a donor's sperm. Insemination of the surrogate can be either through natural or insemination. Using the sperm of a donor results in a child who is not genetically related to the intended parent(s). If the intended father's sperm is used in the insemination, the resulting child is genetically related to both the intended father and the surrogate⁵.

Gestational Surrogacy

Gestational surrogacy (also known as host or full surrogacy) was first achieved in April 1986. It takes place when an [embryo](#) fertilized by [in vitro fertilization](#) (IVF) technology is implanted in a surrogate. [Gestational](#) surrogacy (Gestational carrier) has several forms, and in each form, the resulting child is genetically unrelated to the surrogate, they are:

1. The embryo is created in surrogacy concept by using the intended father's sperm and the intended mother's eggs;
2. The embryo is scientifically fertilized using the intended father's sperm and a donor egg;
3. The embryo is fertilized in another form using the intended mother's egg and donor sperm;
4. A donor embryo is transferred to a surrogate. Such an embryo may be available when others undergoing IVF have embryos left over, which they donate to others. The resulting child is genetically unrelated to the intended parent(s)⁶.

Pregnancy in the Light of Islām

In Arabic, pregnancy is called Ḥaml (حمو) which means: Pregnancy, Gestation, Conception, but (Ḥaml; Janīn حمو، جنين) is fetus, embryo⁷. It is the way that a woman conceives baby inside her womb for a certain period. This would only Islāmically happen through sexual intercourse between husband and wife or wives, who are legally married in line with the conditions provided by *Sharī'ah*. But in scientific discoveries, a couple can have a child through another person who is known as surrogate mother, who is not a lawful wife to the surrogate father and the person after the birth will not be a mother to the child. The dilemma of this practice is that, it is absolutely against Islām, because before a woman becomes a wife to her husband or mother to her child, dowry (*sadāq*) must be paid and settled with other remaining conditions that are attached to marriage. More importantly, any child born out of wedlock is considered as a bastard and he/she will not have right of inheritance. This can be reproduced as follows: *And Allāh has made for you mates of your own kind, and has made for you, from your mates, sons and grandsons, and has granted you good provisions. (Q16:72)*

Among Allāh's signs are mates and children. Ibn Kathīr asserts that Allāh mentions the blessing He has bestowed upon His servants by giving them mates from among themselves, mates of their own kind. If He had given them mates of another kind, there would be no harmony, love, and mercy between them. But out of His mercy He has made the children of Ādam male and female and has made the females wives or mates for the males⁸. Then Allāh mentions that from these wives He creates children and grandchildren, one's children's children. This was the opinion of Ibn ʿAbbās, ʿIkrimah, Al-Hassan, Ad-Dahhak and Ibn Zayd⁹. Thereafter, the marriage must be conducted in Islām before having a child which negates the practice of surrogacy as a way of assisted reproductive technologies, in seeking assistance from third party for a childless couple in order to have a child. The risk and danger of this practice may be the assumption of the probability of changing of mind of the surrogate mother after delivery that she wants to become a true mother of her child. That is because she eventually considered burdens, hardships and pains that she underwent through the pregnancy and delivery. Who should be in favorable position? A relevant case in this concept was upheld in a surrogate pregnancy as follows:

If the surrogate changes her mind, she is usually allowed to keep the baby, as seen in the cases of *Re P (Minors) (Wardship: Surrogacy)* and *Re T (A Child) (Surrogacy: Residence Order)* A surrogate would be deprived of the baby if she was an unfit mother however it was conceived¹⁰.

Fatherhood and Motherhood in Surrogate practice

According to UK's law, which will be quoted as follows in order to comprehend the system they adopted in their surrogacy practices, even it is dimensionally changing and it is being different with other countries:

The woman, who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and egg, and no other woman, is to be treated as the mother of the child¹¹...

The Human Fertilization Embryology (HFE) Act 2008 section 47 states that *a woman cannot be treated as the mother as a result of egg donation*. In some countries, legal and genetic motherhood is synonymous, while others may argue that the woman who raised the child is the mother. And also HFE legislation determines the definition of fatherhood under the Adoption and Children Act 2002 section 111, stating that: *the man whose name is on the child's birth certificate acquires parental responsibility*.¹² Thereupon, the dire oppression on the concept is obvious, because the real mother could not have being stated in above assertions, which were ambiguously constituted and it will be a big plight for the child in the future, where he will not be able to identify his lineage and his real mother. It is because the real mother has mentioned without doubting or cheating with undesirable right as contained in the passage of the Qur'ān:

And We have enjoined on man (to be dutiful and good) to his parents. His mother bore him in weakness and hardship upon weakness and hardship (Q31:14)

Mujāhid said in his interpretation of this Ayah: The hardship of bearing the child. Qatādah said: "Exhaustion upon exhaustion." Ata' Al-Khurasani said: "Weakness upon weakness"¹³. According to the above verse, the mother faced afflictions

encountered during the period of the pregnancy as explored by exegetes. In the surrogacy arrangement which has been formed, and its legislation also constituted without intervention of religious perspectives, show the mother in contradictory way to religious one. It must be very amazing in human imagination, how does a woman carries in her womb a baby and passes through all these distresses for a minimum period of seven months and after that she will hand the baby over to someone?. It really contradicts the concept of religion in duty of child to the parents, as mentioned in the above verse that the mother of baby is the one that carried the fetus.

The real Mother in Islām

In spite of the sufferings and hardships that a woman will encounter during her gestation. Unfortunately, in surrogacy she will not become the real mother of the child that was born out of her womb. This may concern either full surrogacy, according to Celia Burrell says: *where the intended parents (commissioning parents) donate both sperm and egg, and transfer the embryo to surrogate mother, who has no genetic link with the child as a result. Or partial one which involves the donation of sperm from intended father or donor and surrogate's egg, and she will have genetic link with the child*¹⁴. Nevertheless, before accounting for the real mother in Islām, the stages of embryo or fetus (embryology) in the mother's womb shall be explained first as Allāh metamorphoses the fetus in the womb of a mother before birth. It reads:

Then from a clot then from a little lump of flesh, if the *Nutfah* establishes itself in the woman's womb, it stays like that for forty days, then more material is added to it and it changes into a red clot, by the leave of Allah, and it remains like that for forty days. Then it changes and becomes a lump of flesh, like a piece of meat with no form or shape. Then it starts to take on a form and shape, developing a head, arms, chest, stomach, thighs, legs, feet and all its members.... (Q22:06).

It was recorded in the Two Sahīhs that Ibn Mas'ud said, the Messenger of Allah, who is the true and truly inspired one, told us: *Every one of you is collected in the womb of his mother for the first forty days,....*¹⁵.

With regard to that, the fetus will be swimming in the water and blood of the mother's womb in its transubstantiation and eating from one stage to another till the time of birth. To establish this, Allāh says in another verse of the Qur'ān: *He knows you well when He created you from the earth (Ādam), and when you were fetuses in your mother's wombs (Q53:32)*

However, this verse established the truth and also confirmed the real mother, as the one who carried the child in her womb. And the embryo metamorphoses not other than in the mother's womb. Nevertheless, in study of biology, the biological viewpoints have relevance to the above verses denote conditions of pregnancy as proved as follows:

The nine months of pregnancy can be divided into three periods of about the same length. Each period marks specific stages of development. In the first week following implantation the embryo continues to grow rapidly. Both the embryo and the uterus contribute cells to a new, shared organ called the placenta.

The placenta has blood vessels that lead from the mother's circulatory system to the embryo through a large tube called the umbilical cord. Oxygen and nutrients from the mother's body will move through the placenta and umbilical cord to the growing embryo. And the eighth weeks of pregnancy, the developing embryo is called "fetus". The fetus begins to have facial features, major organ systems, and the beginning of a skeleton. The fetus develops the sexual traits that are either male or female. In the twelfth week, the fetus continues to grow, and its bones develop further. In the last twelve weeks, the fetus and all its organs and systems develop fully¹⁶.

In the preceding of the Qur'ānic and biological quotations, it has shown the transfigure of both embryo and fetus till birth. And to know the position of who carried the pregnancy for those periods and surviving of fetus by eating, drinking and free in her womb. In this regard, whether the embryo formed from intended parents and transferred to the womb of surrogate, or it was donated from intended father and egg of surrogate mother. The real and biological mother is the one that carried the fetus as Allāh confirmed in the above verse.

Subsequently, the truth is not hidden to everyone, while the real mother is clearly the one who conceived the pregnancy, and in that case let the right be given to the owner as also revealed in Allāh's saying:

None can be their mothers except those who gave them birth. (Q58:2)

In respect of the precedent verse of the Qur'ān, Ar-Rāzī asserts that: the conception of a mother shows Allāh's favor on His servant. This was explained in two manners. First, his permanent existence, second, his firm survival. In similitude, mother's conception denotes firstly child existence, secondly, suckling of her child after birth shows his permanent life, and even it can't be compared with Allāh's right. He stresses further that, his mother conceived him and with the leave of Allāh he becomes alive, and she suckled him for two years, and also with the leave of Allāh he becomes permanent existence. As a confirmed fact, his mother caused his surviving and permanent existence, she deserves similitude of worshipping in serving and giving rights to her, it is because serving her gives picture of worshipping her¹⁷.

Unjustified Position of Child in Surrogacy

It is quite unjustified, great denial and dire humiliation to surrogate child in the society. Thus, every child has right of citizen, right to claim his mother, to claim his lineage and freedom from slavery and unjust social revolting. But it is great unfortunate in surrogate practice that child cannot be entitled to his rights. In order to establish the position and regardless in the life of surrogate child the following can be enumerated with connotative points:

1- Mere commodity in economic transaction, it is not more than that in the society because when the goods have been purchased that will between two people (buyer and seller) they will negotiate basically on the particular commodity and agreed on their options, after which the goods will later belong to the buyer and seller received the

money and will not claim it any more. This is an instance of agreement between the surrogate father and mother

2- Denial of his real mother, it will occur when surrogate child grew up and looking for the biological mother, where the intended mother stands as his real mother which will make confusion to be arose.

3- Lacking of his lineage, he could not be able to claim or identify his blood relatives like brothers or sisters with the same blood, and proudly introduce his human cycle. So, this is not right and just in the society.

4- Abandonment and abuse of child in the later occurrence, it can cause a great problem for the surrogate child when he is eventually forsaken and abandoned by intended parents either with certain abusive things or any other circumstances that lead them to leave him, and he will become shameful and displeased with his condition that time in the society¹⁸.

For better exploration of the foregoing, numerous views concerning the rights of child and related issues in the context of surrogacy shall be presented in collaborating with Islāmic viewpoints as follows:

It is argued in commercial surrogacy that, *the rights of the child are often neglected and been turned a baby to a mere commodity within an economic transaction of a good and a service*¹⁹. Such antagonists of surrogacy argue that *transferring the duties of parenthood from the birthing mother to a contracting couple denies the child any claim to its "gestational carrier" and to its biological parents if the egg or sperm is/are not that of the contracting parents*²⁰. Child welfare concerns also relate to the abandonment and abuse of children that may occur in cases where the intending parents' divorce, change their minds, or decide they want a different child. For example, the abandonment of a twin boy with Down syndrome by an Australian couple resulted in Thailand banning surrogacy²¹.

Undoubtedly, as reference to the above assertion, which are the substantive points that forbid surrogacy in Islām have been manifested. It is because Allāh enjoined upon a child to be kind, generous and respectful to his parents especially the mother, who conceived and suckled him for at least thirty months. This is contained in Q46:15: "*We have enjoined on man to be dutiful and kind to his parents. His mother bears him with hardship. And she delivers him with hardship. And (the period of) his gestation and the weaning of him is thirty months*". But with surrogate practices and its results which violate Islāmic viewpoints because how does a surrogate child practice Allāh's commandments for his mother where he cannot claim it as far as he was in doubtful and darkness situations that he found himself. This is evidence from the Prophetic tradition: It was narrated that Abū Hurairah said: "*A man came to the Messenger of Allāh and said: 'Which of the people is most deserving of my best companionship?' He said: 'Your mother.' He said: 'Then who?' He said: 'then your mother.' He said: 'Then who?' He said: 'then your mother.' He said: 'Then who?' He said:*

'Then your father.'" In the Hadīth of Qutaibah it says: "*Who is most deserving of my best companionship?*" And he did not say: "*Which of the people?*"²². Regarding these points, it is considered in Islām the position of mother in high rank which no rank can equal except Allāh's worshipping which is superior.

Surrogacy as an illegitimate pregnancy in Islām

As earlier stated surrogacy can be traditional or partial surrogacy and gestational or full surrogacy. The practice as mentioned with their goals which is to make childless couple become parents through this method. It was believed that it is one of assisted reproductive technologies from scientific efforts, introduced to the world to make human beings benefit from it. But based on Islāmic injunctions, its legitimacy is absolutely unacceptable, because Allāh has made way for His servants how they will be procreating and having offspring in their lives. It is not human's work, but it is Allāh's work and favor, which can be given to whoever He wishes and makes others barren by His just Divine ordinances. Thus, those that made other way for procreation have committed a great sin, as they have stepped beyond Allāh's limit. Qur'ān 30:30, reads "*So, set your face towards the religion as a Hanif. Allāh's Fitrah with which He has created mankind. No change let there be in Allāh's Khalq, that is the straight religion, but most men know not.*" The scholastic comments on this verse can be grasped below:

No change let there be in Allāh's *Khalq* (creation)

Ibn Kathīr said: this means, do not change the creation of Allāh, for if you do, you will divert the people away from the *Fitrah* on which He created them.' So it is instructive; just as His saying, "*And whoever enters it, he is safe*" (3:97). This is a good and correct interpretation. In this regard, Al-Qurtubī also asserts that: *Fitrah* in this verse means "creation" as reference also to Q36:22: "*And why should I not worship Him Who has created me....*" and other verses in the Qur'ān. However, concerning the meaning of "*No change let there be in Allāh's Khalq*(creation)". Al-Qurtubī then says: 'Ikrimah said: it was reported from Ibn 'Abbas and 'Umar bin al-Khattāb that, *it means there must be no change in Allāh's creation, animals should not be reformed by castrating them. It is then forbidden of eunuch in virility (masculine or male)*²³. This means that any way or method that is formed in procreation against Allāh's ordinance is prohibited. So, surrogacy practice is condemned and forbidden by many Muslim scholars.

The contemporary Scholars like Al-Azharis' jurists (*Azharites*) vehemently condemned and frowned against the practice of surrogacy, because it denies Allāh's ordinance of procreation, and they substantiate their opinions with references from the Qur'ān, Hadīth and analogical deductions. They interpret the term surrogacy as "selling of wombs" in order to have a child through the practice. They emphasize on its prohibition in Islām with a Qur'ānic verse where Allāh says "*And that you be dutiful to your parents...*", (Qur'ān 17:23) the parents in this verse refer to real father and mother, and further emphasize that the father and mother are also mentioned in this verse which reads "*So, let man see from what he is created!. He is created from water gushing forth, proceeding from between the backbone and the rib*". (Qur'ān 86:5-7) they explicitly explained the meaning of "*between the backbone and the ribs*", thus the backbone is the one of male and ribs is the female's one, therefore the real father is the owner of gushing water, (sperm) and the real mother is the owner of ovum and womb. It is because the fetus surviving in his mother's womb and blood so that it will become her child with blood and survival²⁴

In view of this, Fakhrud-Dīn, Ar-Rāzī was among scientific scholars in Islām who commented on the above verse quoted. He says there are two different opinions on this verse. The first one informs that a child is created from gushing water that produced from between the backbone of a man and the ribs of a woman, while the

second view argues that a child is created from gushing water that developed from between the backbone of a man and his ribs. Nevertheless, Ar-Rāzī further explains by producing another reference from the Qur'ān where Allāh (SWT) mentioned the combination of sperm and ovum to fertilize a new baby which denotes the genesis of human creation. This is contained in Qur'ān 76:2; *Verily, We have created man from a drop of mingled sperm*. In his comment on this verse, he says:

"Mingled sperm" (*nutfatin amshājin*) means mixed sperm and ovum as the two fertile substances of the origin of a man. Thus, the verse explains the earlier one which emphasizes the two different fluids coming out from the two different sources (backbone of a man and ribs of a woman) as the origin of the creation of a man"²⁵. In furtherance, it should be considered as a fact, the establishment of Allāh's creation which should not be changed as it was said by Him that let there be no change in His creation. In corresponding with scientific concept that explores the fertilization of human beings in the mother's conception having link with genetic information in studying of chromosomes. According to Mc Dougal Littell who states:

Two cells combine in the process of asexual reproduction. One of the cells contains genetic information from the mother. The other contains genetic information from the father. The two cells combine into a completely new cell, which becomes the offspring. Most human cells, which can be referred to as body cells, contain 46 chromosomes the full number of chromosomes that is normal of chromosome (two sets) for a species is a 2n cell, also called a diploid cell. The 2n cells for a fruit fly, for example, contain 8 chromosomes²⁶. During sexual reproduction two gametes combine to become a 2n cell that can grow into a new offspring. Fertilization is the process that takes place when a sperm and egg combine to form one new cell. In humans, an egg cell with 23 chromosomes joins a sperm cell with 23 chromosomes to form a new 2n cell with 46 chromosomes²⁷.

All these are just to know Allāh's work and power Who had perfected His work without any intervention and no knowledge or work can supersede Allāh's one. Therefore, "*No change let there be in Allāh's creation*". Practicing surrogacy negates Allāh's ordinance of creation and could mean challenging Allāh in His work that He is not perfect and capable to do so. The technology can make many discoveries in various phenomenal spheres to be useful for human beings on the earth, which could not be against Allāh's works in the practice. Ar-Rāzī also quoted one Ḥadīth in his book of exegesis that further shows Allāh's work in human fertilization as follows: Ibn ʿAbbās (may Allāh be pleased with him) says: The import of Allah's word: "from a drop of mingled sperm" is a mixture of man's sperm which is white and thick and woman's ovum which is yellow and light. When the two fluids mingled together (in the womb), a baby is created from them. All nerves, bones and muscles are formed from man's sperm while flesh and blood are formed from woman's ovum²⁸. Consequently, the evidences that have been provided in this work through religious and scientific proofs should be sufficing to vindicate that there is no need to argue about who are the real parents or is mother. Although, it may be difficult for a couple or individual to have a child due to certain reasons, such as medical cases or other conditions, nevertheless, that does not necessitate unacceptable practices in Islām.

In the view of Ahmad Karīmah one of the jurists from Azharī (Cairo) said: verily selling of womb (surrogacy) is prohibited in Islām, it establishes no lineage and right for a child with his mother who is the owner of the womb, which were to be considered as among her rights, and also it must be forsaken due to the law that is against it. The truth has been said through the above saying, because in Islāmic intents (Maqāsid) which established consciousness of the lineage as one out of its five goals, then this must not be put aside and considers any other thing that negates it. Islām is seriously concerned about family.²⁹ Subsequently, another jurist from Azharite scholars, Saād Sālih, asserts that, indeed selling of womb (surrogacy) is waging war against Islām and condemning the religion. It may obviously seem to solve a problem but secretly cause many problems as explained: Firstly, it is prohibited in Islām because it does not establish any lineage and it is not good to separate mother (the owner of womb) from her child. Secondly, the mother who owns the womb during the period of pregnancy was not legally married to the father, which is against *Sharī'ah*, in the sense that a man could not have any thing with a woman who carries other man's fetus. It will cause plights between them even it can lead to divorce. Thirdly, the fetus survives from his mother's blood the owner of womb till his creation will complete and he will be finally delivered. With these, he will become his mother's blood and meat, undoubtedly the mother will also be his real mother. Thereafter, this is quite different from foster mother because Allāh gives law for that in His saying: *Your foster mothers who suckled you, and your foster milk suckling sisters,*"(Q4:23)³⁰.

This forgoing verse was applied in reference to those that are in support of surrogate practices among scholars. These scholars held the view of supporting the practice, if there is an issue that seriously concerned medical cases, where it will be in the position of wet nurse in their ideological deduction. It is incomparable issue, as there are distinctive evidences between foster mother and surrogate mother. According to the Qur'ān 2:233 and Qur'ān 65:6, where the issue of foster mother is substantiatively discussed with legitimacies that are binding it. But it is a contested concept as there is no single verse of the Qur'ān to prove or content of Ḥadīth to support the surrogacy practices as evidence in *Sharī'ah*.

Who Has More Right To Take The Child?

It is unchallengeable fact that Allāh has given each and every one the right, and it should be duly observed and given to the owner. In the sense that it should be ascribed to whosoever in anywhere any time at a certain circumstance and justifiable manner. Besides the Prophet has explained the real mother to the child which is in line with the Qur'ānic verse and apparently saves one from darkness position as it should be known to all Muslim. It is as follows:

°Amr bin Shu'aib narrated from his father, from his grandfather that a woman said: "O Messenger of Allah! This son of mine: My womb was a protective bag for him, and my breasts were his sustenance, and my house was a protection for him. Now, his father has divorced me, and wishes to take him away from me." The Messenger of Allah said to

her: "You have more right to him, as long as you do not re-marry³¹.

Abu Dāwūd on the above mentioned Ḥadīth said: "This authentic Hadith proves that, until a mother marries again, she has the right to keep the child more than the father and, even after marriage, she has the right to keep the child with her with the consent of the father. In case he does not agree, the child will be given over to the father³².

With this Ḥadīth it can be established that the child belongs to the mother who gave birth to him/her, which means to deal with any issue in line with Allāh's directives. It is to seek for child in pure and undiluted manner not in an illegal way and to let the real mother who suffered and passed through all that have her child which fertilized in her womb with the leave of Allāh.

Conclusion

It could be observed that it is good and noble to practice what is permitted in Islām and to avoid what is prohibited. Whenever a Muslim sees what is wrong or any un-Islāmic practices that has no basis in *Sharīʿah*, such things should be corrected. This could be traced from the Ḥadīth narrated that ʿĀishah said "I heard the Messenger of Allāh (pbuh) saying: Enjoin what is good and forbid what is evil before you supplicate and you are not answered ". Also, according to a Ḥadīth, which narrated that Qais bin Abu Hazm said " Abu Bakr stood up and praised and glorified Allāh then he said 'O people, you recite this verse...' O you who believe! Take care of your own selves. If you follow the (right) guidance no hurt can come to you from those who are in error" but I heard the Messenger of Allāh (pbuh) say "If people see some evil but do not change it, soon Allāh will send His punishment upon them all".

This established that, the truth and good must be conveyed in the society in the sense that, the practice of surrogacy is unlawful in Islām, it contradicts what Allāh had laid down for human reproduction. This practice denied the lineage of the child and the real mother which is paramount in *Sharīʿah* intents (*Maqāsid ash- Sharīʿah*) 'Hifz an-Nasal' (protecting the family) as part of its five goals. Although, some scholars support the practice in Islām and compared it with foster mother based on their viewpoints, but negates Allāh's ordinance in *Sharīʿah*.

END NOTES

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