



SURROGACY REGULATIONS UNDER COMMON LAW: AN ISLAMIC LEGAL PERSPECTIVE

By

Kamaldeen Sofiyullahi Kamaldeen*

Onikosi Ahmeed Adedeji PhD**

&

Abdulqadir Zubair***

Abstract

Surrogacy has emerged as one of the most controversial aspects of assisted reproductive technology because it raises complex legal, ethical, social, and religious questions. This study examines the regulation of surrogacy under Common Law from an Islamic legal perspective. It analyses the concept and forms of surrogacy, explores the regulatory approaches adopted in selected Common Law jurisdictions, and evaluates the Islamic legal position on the practice. The study adopts a doctrinal and comparative legal methodology to examine relevant legislation, judicial decisions, international legal instruments, primary sources of Islamic law, and contemporary scholarly opinions. The findings reveal that Common Law jurisdictions adopt different regulatory models, including prohibition, restrictive regulation, and liberal regulation. In contrast, Islamic law generally prohibits all forms of surrogacy because of concerns relating to lineage (nasab), maternity, inheritance, and the preservation of family relationships. The study further reveals that the absence of a comprehensive international framework has contributed to increasing legal disputes, particularly in cases involving cross-border surrogacy. The study concludes that although both Common Law and Islamic law seek to protect children and preserve family stability, they differ fundamentally regarding the permissibility of surrogacy and the determination of parentage. It recommends the adoption of clearer regulatory frameworks, stronger international cooperation, greater protection of children's rights, and increased consideration of Islamic principles relating to lineage and family preservation.

Keywords: Surrogacy, Common Law, Islamic Law, Assisted Reproductive Technology, Lineage (*Nasab*), Family Law, Parenthood, Inheritance.

1.0 INTRODUCTION

The rapid advancement of science and technology has transformed virtually every aspect of human life, including the process of human reproduction.¹ However, developments in modern medicine

*Phd Candidate, Department of Islamic Law, Faculty of Law, Al-Hikmah University Ilorin, Nigeria
kaykaycail@gmail.com +2348033787075



have introduced various forms of Assisted Reproductive Technology (ART), thereby providing alternative methods of conception for individuals and couples experiencing infertility.²

Among the various reproductive alternatives available today, surrogacy remains one of the most controversial forms of assisted reproduction.³ Surrogacy is an arrangement in which a woman agrees to carry and deliver a child for another individual or couple who intend to become the child's legal or social parents after birth.⁴

Although surrogacy provides hope for infertile couples, it raises numerous legal, ethical, moral, and religious concerns.⁵ Questions relating to legal parenthood, maternity, paternity, lineage, inheritance, custody, exploitation, commodification of women's reproductive capacities, citizenship, and the welfare of children born through surrogacy continue to generate intense debates across different legal systems.⁶

Different jurisdictions have adopted different approaches to the regulation of surrogacy.⁷ Under Common Law, there is no universally accepted model for regulating surrogacy arrangements.⁸ For example, the United Kingdom permits altruistic surrogacy⁹ while prohibiting commercial surrogacy¹⁰ through a regulated legal framework.¹¹ Certain states in the United States recognise surrogacy agreements and permit contractual arrangements between surrogate mothers and intended

** Senior Lecturer, Department of Islamic Law, Faculty of Law, Al-Hikmah University Ilorin, Ilorin, Nigeria; aaonikosi@alhikmah.edu.ng +2348069841316

*** Professor of Islamic Law and Former Dean, Faculty of Law, Al-Hikmah University Ilorin, Ilorin Nigeria aqzubair@gmail.com +2348034031725

¹ Liza Mundy, *Everything Conceivable: How the Science of Assisted Reproduction Is Changing Our World* (Anchor Books 2008).

² World Health Organization, *Infertility* (WHO, 3 April 2023) <https://www.who.int/news-room/fact-sheets/detail/infertility> accessed 13 August 2026.

³ Katherine O'Byrne and Paula Gerber, 'Surrogacy and Human Rights: Contemporary, Complex, Contested and Controversial' in Paula Gerber and Katie O'Byrne (eds), *Surrogacy, Law and Human Rights* (Ashgate Publishing 2015) 1–7.

⁴ Susan Golombok, *Modern Families: Parents and Children in New Family Forms* (Cambridge University Press 2015) 117.

⁵ Nayana Hitesh Patel *et al*, 'Insight into Different Aspects of Surrogacy Practices' (2018) 11(3) *Journal of Human Reproductive Sciences* 212.

⁶ *Ibid*

⁷ Kirsty Horsey, *Surrogacy and the Myth of Altruism* (Hart Publishing 2015)

⁸ *Ibid*

⁹ *Ibid*

¹⁰ *Ibid*

¹¹ *Surrogacy Arrangements Act 1985* (UK), ss 1A and 2.



parents.¹² Other countries¹³ have completely prohibited surrogacy because of concerns relating to public policy, human dignity, and the protection of family values.¹⁴

From an Islamic perspective, the legal and ethical implications of surrogacy are even more complex.¹⁵ Islamic law places considerable emphasis on the preservation of lineage (*hifz al-nasl*), one of the fundamental objectives of the *Shariah*.¹⁶

Existing literature has examined surrogacy from medical, ethical, sociological, and human rights perspectives.¹⁷ However, relatively few studies have undertaken a comprehensive comparative analysis of surrogacy regulations under common law from an Islamic legal perspective.¹⁸ Most existing studies focus either on the legal frameworks of individual jurisdictions or on the religious dimensions of assisted reproduction without critically examining the relationship between the two legal traditions.¹⁹

This gap in the literature necessitates a comparative study that evaluates surrogacy regulations under Common Law through the lens of Islamic jurisprudence. Such an evaluation is necessary to identify the strengths and weaknesses of existing regulatory models, examine their compatibility with Islamic principles, and determine areas of convergence and divergence between Common Law and Islamic law.

Against this background, this study examines the concept of surrogacy, analyses the different regulatory approaches adopted under Common Law, evaluates the Islamic legal position regarding surrogacy, and identifies the areas of convergence and divergence between the two legal systems. The study seeks to contribute to contemporary legal scholarship by providing a comprehensive analysis of surrogacy regulations from an Islamic legal perspective while offering recommendations for policymakers, legal practitioners, Islamic scholars, and researchers.

¹² *Johnson v Calvert* 851 P 2d 776 (Cal 1993).

¹³ Italy prohibits surrogacy under Article 12(6) of Law No 40/2004 because it considers the practice contrary to human dignity; France declares all surrogacy agreements void under Article 16-7 of the Civil Code to protect the principle of the non-commercialisation of the human body; Germany prohibits surrogacy under the Embryo Protection Act and the Adoption Placement Act to preserve human dignity and prevent reproductive exploitation; Spain prohibits surrogacy under Article 10 of Law 14/2006 on Assisted Human Reproduction Techniques to protect public policy and family values; while Malta, Croatia, Lithuania, Bulgaria, and Slovenia have also explicitly prohibited surrogacy because of similar concerns relating to the commodification of reproduction and the protection of women and children. Italy, *Law No 40/2004*, art 12(6); France, *Civil Code*, art 16-7; Germany, *Embryo Protection Act 1990* and *Adoption Placement Act 1976*; Spain, *Law 14/2006 on Assisted Human Reproduction Techniques*, art 10; David de Groot, *Surrogacy: The Legal Situation in the EU* (European Parliamentary Research Service 2025) 8 https://www.europarl.europa.eu/RegData/etudes/BRIE/2025/769508/EPRS_BRI%282025%29769508_EN.pdf accessed 17 August 2026.

¹⁴ *Paradiso and Campanelli v Italy* (Application No 25358/12) (European Court of Human Rights, Grand Chamber, 24 January 2017) 65 EHRR 2, paras 161–215.

¹⁵ Folorunsho Ahmad Hussein et al, 'Maqāsid Al-Sharī'ah and the Ethics of Surrogacy: A Critical Appraisal of Lineage and Legal Certainty in Contemporary Islamic Law' (2025) 7 *Mazahibuna: Jurnal Perbandingan Mazhab* 157, 160. <https://journal.uin-alauddin.ac.id/index.php/mjpm/article/view/56753> accessed 14 August 2026.

¹⁶ Fakhriyah Annisa Afroo et al, 'Protection of Children's Identity Rights through the Determination of The Origin of Children: An Analysis of Maqashid Syariah on the Decision of the Religious Court' (2026) 5(2) *Tasyri': Journal of Islamic Law* 465, 465.

¹⁷ Sonia Allan, 'The Surrogate in Commercial Surrogacy: Legal and Ethical Considerations' in Paula Gerber and Katie O'Byrne (eds), *Surrogacy, Law and Human Rights* (Ashgate Publishing 2015) 113, 113, available at <https://researchers.mq.edu.au/en/publications/the-surrogate-in-commercial-surrogacy-legal-and-ethical-considera/> accessed 14 August 2026.

¹⁸ Hossam E Fadel, 'The Islamic Viewpoint on New Assisted Reproductive Technologies' (2002) 30(1) *Fordham Urban Law Journal* 147, 160–162 <https://ir.lawnet.fordham.edu/ulj/vol30/iss1/8/> accessed 14 August 2026.

¹⁹ Ayesha Kanwal et al, 'The Sanctity of Lineage in Islam: Legal, Ethical, and Social Implications' (2025) 7(1) *Majallah-e-Talim o Tahqiq* <https://ojs.cer.edu.pk/index.php/mtt/article/view/340> accessed 17 August 2026.



2.0 RESEARCH METHODOLOGY

This study adopts a doctrinal and comparative legal research methodology. The doctrinal approach involves the examination and analysis of primary and secondary legal sources, including legislation, judicial decisions, international instruments, classical Islamic legal texts, contemporary *fatwas*, and scholarly literature on surrogacy. The comparative approach is employed to examine the different regulatory models adopted in selected Common Law jurisdictions and to evaluate them from the perspective of Islamic law. The study relies on relevant provisions of the *Qur'an*, the *Sunnah*, juristic opinions of the major schools of Islamic jurisprudence, and contemporary scholarly writings to identify areas of convergence and divergence between Common Law and Islamic legal approaches to surrogacy. This methodology provides a framework for assessing the legal, ethical, and religious implications of surrogacy and for proposing recommendations for future legal and policy development.

3.0 MEANING OF SURROGACY

The term *surrogacy* derives from the Latin word *surrogatus*, the past participle of *surrogare* or *subrogare*, meaning “to substitute” or “to put in another’s place.” It is formed from *sub* (“under” or “in place of”) and *rogare* (“to ask” or “to propose”).²⁰ Historically, the word Surrogate is referred to individuals appointed to act on behalf of others, such as judges or clerics.²¹ Over time, the term evolved to signify any person or thing that takes the place of another.²²

The concept of substitution remains central to the contemporary understanding of surrogacy because the surrogate mother temporarily performs the biological function of pregnancy for another person.²³ However, modern surrogacy differs significantly from the traditional meaning of substitution because it involves medical procedures, legal agreements, financial arrangements, and complex questions relating to parental rights and responsibilities.

From a legal perspective, surrogacy is generally defined as an alternative or proxy method whereby a woman consents to conceive and bear a child for another individual or couple, typically under a contractual agreement.²⁴ Another perspective offers a more critical approach, viewing surrogacy as a contractual engagement in which a woman agrees to gestate and deliver a child for another individual or couple who will assume parental rights after birth.²⁵ Similarly surrogacy is also describes from the legal perspective as an arrangement in which a woman carries a pregnancy for commissioning parents and relinquishes the child upon delivery.²⁶

²⁰ Bryan A Garner (ed), *Black's Law Dictionary* (11th edn, Thomson Reuters 2019) 1759. see also *Oxford English Dictionary*, 'Surrogate' (Oxford University Press 2025) <https://www.oed.com>, Accessed 23 August 2023 and Douglas Harper, 'Surrogate', *Online Etymology Dictionary* <https://www.etymonline.com/word/surrogate>. Accessed 23 August 2023 and *Merriam-Webster Dictionary*, 'Surrogate' <https://www.merriam-webster.com/dictionary/surrogate>. Accessed 23 August 2023.

²¹ Anca Gheaus and Christine Straehle, *Debating Surrogacy* (Oxford University Press 2024) <https://doi.org/10.1093/oso/9780190072162.001.0001>. Accessed 23 August 2023

²² Aakash Singh *et al*, 'Artificial Intelligence for Sustainable Development Goals: Bibliometric Patterns and Concept Evolution Trajectories' (2024) 32(1) *Sustainable Development* 724–754 <https://doi.org/10.1002/sd.2698>. Accessed 23 August 2023

²³ Paola Salomone, *Bioethical Issues Concerning Assisted Reproductive Technologies: Gestational Surrogacy and Human Rights* (PhD Dissertation, Alma Mater Studiorum–Università di Bologna, 2025) <https://amsdottorato.unibo.it/id/eprint/10581/> accessed 17 August 2026.

²⁴ M. A. Taiwo, and A. Khadijat, *Family Law and Reproductive Rights in Nigeria* (Lagos: Halal Press, 2016), 64.

²⁵ C. C Nwaeze, *Legal Controversies in Assisted Reproduction* (Enugu: Doxa, 2020), 51.

²⁶ B. T. Adelakun, “A Legal Examination of Surrogacy Contracts in Nigeria,” *Nigerian Journal of Private and Comparative Law* 15, no. 1 (2021): 88.



From a medical perspective, surrogacy is defined as a therapeutic intervention for infertility, where a woman carries a pregnancy for another person or couple with the intent to surrender the child after birth.²⁷ It is also considered to be a substitute reproductive process where a woman carries and delivers a child for another individual or couple.²⁸ The medical understanding of surrogacy focuses primarily on the reproductive process rather than the legal consequences of the arrangement. Consequently, medical practitioners classify surrogacy according to the biological relationship between the surrogate mother and the child.²⁹ Surrogacy is often recommended in situations involving infertility, recurrent pregnancy loss, congenital reproductive disorders, uterine abnormalities, or medical conditions that make pregnancy impossible or dangerous for the intended mother.³⁰

International organisations have also attempted to define surrogacy within the broader framework of assisted reproductive technology. The World Health Organization generally describes surrogacy as a reproductive arrangement in which a woman carries and gives birth to a child for another individual or couple.³¹ Similarly, international reproductive medicine organisations define surrogacy as an assisted reproductive technique involving an agreement between a surrogate mother and intended parents for the purpose of achieving pregnancy and childbirth.³²

From an Islamic perspective, surrogacy may be defined as a reproductive arrangement involving the participation of a third party in the conception or gestation of a child for another couple. Islamic scholars generally focus on the implications of third-party involvement, particularly regarding lineage (nasab), legitimacy, inheritance, and family relationships.³³ Since Islamic law places significant emphasis on preserving lineage and regulating reproduction within the institution of marriage, many Islamic scholars consider surrogacy incompatible with the fundamental principles of Islamic family law.

Although definitions vary across legal, medical, and religious disciplines, they all recognise one essential characteristic of surrogacy: a woman carries a pregnancy on behalf of another person or couple with the intention of transferring parental responsibility after childbirth.

4.0 FORMS OF SURROGACY

Surrogacy may be classified according to the surrogate mother's genetic relationship with the child, the financial nature of the arrangement, and the geographical location of the parties involved.³⁴ The two principal forms of surrogacy are traditional and gestational surrogacy.³⁵

²⁷ J. Lasker, *Surrogacy and the Politics of Reproduction* (New York: Palgrave Macmillan, 2013), 33.

²⁸ S. Kumar, and S. Choudhary, "Medical Ethics in Surrogacy," *Indian Journal of Bioethics* 22, no. 2 (2020): 119.

²⁹ Rebeca Santamaría-Gutierrez *et al*, 'Exploring Attachment Dynamics in Surrogacy: A Systematic Review' (2025) 6(4) *Psychiatry International* 145

³⁰ A. A. Shafy, 'Commodification, Exploitation and Human Rights: A Critical Analysis of Cross-Border Surrogacy Practices' (2024) 1(1) *IOSR Journal of Multidisciplinary Research (IOSR-JMR)* 23 www.iosrjournals.org Accessed 17 June 2024.

³¹ Margot Lherbet and Samir Hamamah, 'Surrogacy from a Reproductive Rights and Justice Perspective: A Comprehensive Review' (2025) 40(Suppl 1) *Human Reproduction* <https://doi.org/10.1093/humrep/deaf097.224> Accessed 17 June 2024.

³² Ibid

³³ Folorunsho Ahmad Hussein *et al* (n15)

³⁴ Kirsty Horsey (n7)

³⁵ Practice Committee of the American Society for Reproductive Medicine and Practice Committee of the Society for Assisted Reproductive Technology, 'Recommendations for Practices Using Gestational Carriers: A Committee Opinion' (2022) 118(1) *Fertility and Sterility* 65–74 <https://doi.org/10.1016/j.fertnstert.2022.05.001> accessed 17 August 2026.



Traditional surrogacy occurs when the surrogate mother uses her own egg and therefore becomes both the genetic and gestational mother of the child.³⁶ Conception usually occurs through artificial insemination using the sperm of the intended father or a donor.³⁷ Because the surrogate mother has a direct biological relationship with the child, this form of surrogacy often creates disputes concerning parenthood, custody, lineage, and inheritance.³⁸ In contrast, gestational surrogacy occurs when a surrogate mother carries an embryo created through in vitro fertilisation (IVF) but has no genetic relationship with the child.³⁹ Although gestational surrogacy reduces disputes relating to biological parenthood, it continues to raise legal and ethical questions concerning maternity and the status of the child.⁴⁰

Surrogacy may also be classified as commercial or altruistic. Commercial surrogacy involves financial compensation beyond pregnancy-related expenses, whereas altruistic surrogacy limits compensation to legitimate medical and related expenses.⁴¹ In addition, surrogacy may be either domestic or international, depending on whether the arrangement occurs within one jurisdiction or across national borders.⁴² Cross-border surrogacy frequently creates legal challenges relating to citizenship, immigration, parental recognition, and the legal status of children.⁴³ Understanding these forms of surrogacy provides an essential foundation for examining the regulatory approaches adopted under Common Law and evaluating them from an Islamic legal perspective.

5.0 REGULATORY APPROACHES TO SURROGACY UNDER COMMON LAW

The regulation of surrogacy under Common Law varies considerably across jurisdictions because of differences in legal, ethical, social, and cultural values relating to reproduction and family relationships.⁴⁴ Consequently, Common Law jurisdictions generally adopt one of three regulatory models: prohibition, restrictive regulation, and liberal regulation.⁴⁵

The United Kingdom represents the restrictive model. Under the *Surrogacy Arrangements Act 1985* and the *Human Fertilisation and Embryology Act 2008*, surrogacy is legal, but only altruistic surrogacy is permitted, while commercial surrogacy remains prohibited.⁴⁶ Furthermore, surrogacy agreements are generally unenforceable, and the woman who gives birth to the child is recognised as the child's legal mother until a parental order transfers legal parenthood to the intended parents.⁴⁷ India has also adopted a restrictive approach through the *Surrogacy (Regulation) Act, 2021*, which abolished commercial surrogacy and permits only altruistic surrogacy under specified legal conditions.⁴⁸ The legislation was enacted to prevent the exploitation of women, regulate fertility clinics, protect children, and address the challenges associated with reproductive tourism.⁴⁹

³⁶ Susan Golombok, *Modern Families: Parents and Children in New Family Forms* (Cambridge University Press 2015) 117.

³⁷ Ibid

³⁸ Folorunsho Ahmad Hussein *et al*, (n15)

³⁹ Ayman Shabana, 'Islamic Perspectives on Gamete Donation and Surrogacy' in Dena S Davis (ed), *The Oxford Handbook of Religious Perspectives on Reproductive Ethics* (Oxford University Press 2024) 337, 340 <https://doi.org/10.1093/oxfordhb/9780190633202.013.19> accessed 17 August 2026.

⁴⁰ *Surrogacy Arrangements Act 1985* (UK), s 2; *Surrogacy (Regulation) Act 2021* (India), ss 4–5.

⁴¹ Amrita Pande, *Wombs in Labor: Transnational Commercial Surrogacy in India* (Columbia University Press 2014).

⁴² Katherine O'Byrne and Paula Gerber (n3)

⁴³ Ibid

⁴⁴ Kirsty Horsey (7)

⁴⁵ Ibid

⁴⁶ *Surrogacy Arrangements Act 1985* (UK), ss 1A–2; *Human Fertilisation and Embryology Act 2008* (UK), ss 33–35.

⁴⁷ Ibid

⁴⁸ *Surrogacy (Regulation) Act 2021* (India), ss 4–5.

⁴⁹ Amrita Pande (n41)



In contrast, some jurisdictions, particularly certain states in the United States, recognise surrogacy agreements and allow surrogate mothers to receive financial compensation beyond pregnancy-related expenses.⁵⁰ Regardless of the regulatory model adopted, important legal issues continue to arise concerning the enforceability of surrogacy agreements, the determination of parenthood, the rights of surrogate mothers and intended parents, and the protection of children born through surrogacy.⁵¹ These differences provide an important foundation for evaluating surrogacy from an Islamic legal perspective, particularly regarding lineage, legitimacy, inheritance, and the preservation of family relationships.

6.0 THE ISLAMIC LEGAL POSITION ON SURROGACY

The Islamic legal position on surrogacy differs fundamentally from the approach adopted under many Common Law jurisdictions. While Common Law systems often regulate surrogacy through contractual arrangements, reproductive autonomy, and individual rights⁵², Islamic law evaluates it through the principles of lineage (*nasab*), legitimacy, motherhood, inheritance, family preservation, and the objectives of the *Sharī'ah* (*Maqāṣid al-Sharī'ah*).⁵³ Although Islam recognises infertility as a legitimate hardship and generally encourages medical treatment, assisted reproductive technologies are only permissible when both the sperm and the ovum belong to legally married spouses and when no third party participates in the reproductive process.⁵⁴

Although the Qur'an does not specifically mention surrogacy, it establishes principles that guide the evaluation of contemporary reproductive technologies, particularly the preservation of lineage, the recognition of motherhood, the sanctity of marriage, and the protection of family relationships.⁵⁵ The preservation of lineage occupies a central position in Islamic law because it determines parentage, inheritance, guardianship, maintenance obligations, and family identity.⁵⁶ The Qur'an states:

Indeed, the penalty for those who wage war against Allah and His Messenger and spread mischief in the land is death, crucifixion, cutting off their hands and feet on opposite sides, or exile from the land. This 'penalty' is a disgrace for them in this world, and they will suffer a tremendous punishment in the Hereafter.⁵⁷

Another relevant verse states:

And He is the One Who creates human beings from a 'humble' liquid,¹ then establishes for them bonds of kinship and marriage. For your Lord is Most Capable.⁵⁸

These principles have led many contemporary scholars to conclude that surrogacy creates uncertainty regarding parentage and family relationships.

The Qur'an also associates motherhood with pregnancy and childbirth. Allah says:

⁵⁰ *Johnson v Calvert* (n12)

⁵¹ Katherine O'Byrne and Paula Gerber (n3)

⁵² Ibid

⁵³ Hossam E Fadel (n18)

⁵⁴ Ayman Shabana (n39)

⁵⁵ Muhammad Nazir Alias *et al*, 'Contemporary Legal Perspectives on Paternity and Their Intersection with Islamic Family Law: A Doctrinal Literature Synthesis' (2025) 8(2) *Al-Hikmah: International Journal of Islamic Studies and Human Sciences* 178, 178.

⁵⁶ Ayesha Kanwal *et al*, (n 19).

⁵⁷ Q33:5

⁵⁸ Q25:54



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.⁵⁹

Similarly, the Qur'an states:

We have commanded people to honour their parents. Their mothers bore them in hardship and delivered them in hardship. Their 'period of' bearing and weaning is thirty months. In time, when the child reaches their prime at the age of forty, they pray, "My Lord! Inspire me to 'always' be thankful for Your favours which You blessed me and my parents with, and to do good deeds that please You. And instil righteousness in my offspring. I truly repent to You, and I truly submit to Your Will"⁶⁰

These verses have become central to the Islamic debate on surrogacy because they identify childbirth as the basis for motherhood. Consequently, the separation of genetic and gestational motherhood through surrogacy creates significant legal challenges regarding maternity, inheritance, and family identity.⁶¹ The institution of marriage also remains central to the Islamic regulation of reproduction because Islam recognises marriage as the only legitimate framework for procreation.⁶² The Sunnah further strengthens the importance of preserving lineage. The Prophet (peace be upon him) stated:

Amr ibn Khārijah (may Allah be pleased with him) reported: The Prophet (may Allah's peace and blessings be upon him) delivered a sermon upon his she-camel, while I was under the front of her neck, and she was chewing her curd, with her saliva dripping between my shoulders. I heard him say: "Indeed, Allah has given everyone deserving a right his due right. So, there is no will for an inheritor. The child belongs to the bed, and the adulterer gets the stone. Whoever claims to belong to someone other than his father or (a freed slave) attributes himself to those other than his masters, spurning them, upon him will be the curse of Allah, and no obligatory or supererogatory act of worship will be accepted from him."⁶³

The classical schools of Islamic jurisprudence also provide valuable insights into the legal evaluation of surrogacy. Although classical jurists did not specifically address surrogacy in its modern form, the principles they developed concerning lineage, marriage, parentage, and reproduction have been applied by contemporary scholars to evaluate assisted reproductive technologies.⁶⁴

The *Hanafi* School places significant emphasis on preserving lineage and protecting the institution of marriage.⁶⁵ Classical *Hanafi* jurists maintain that reproduction should occur exclusively within a valid marital relationship.⁶⁶ Contemporary *Hanafi* scholars have therefore applied these principles

⁵⁹ Q58:2

⁶⁰ Q46:15

⁶¹ Folorunsho Ahmad Hussein *et al*, (n15)

⁶² Allah says 'And of His signs is that He created for you from yourselves mates that you may find tranquillity in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought' Q 30:21.

⁶³ *Jāmi' al-Tirmidhī*, Kitāb al-Waṣāyā (Book of Wills), ḥadīth no 2121 <https://sunnah.com/tirmidhi:2121> accessed 17 August 2026; *Sunan Ibn Mājah*, Kitāb al-Waṣāyā (Book of Wills), ḥadīth no 2712 <https://sunnah.com/ibnmajah:2712> accessed 17 August 2026.

⁶⁴ Hossam E Fadel (n18)

⁶⁵ Wahbah al-Zuhaylī, *Al-Fiqh al-Islāmī wa Adillatuhu* (Dar al-Fikr 1985), Vol. 7, 690–692.

⁶⁶ Ibid



to conclude that surrogacy is generally impermissible because it introduces a third party into the reproductive process and creates uncertainty regarding maternity, lineage, and inheritance.⁶⁷

The *Maliki* School adopts one of the strictest approaches to preserving lineage. *Maliki* jurists rely heavily on the principle of *sadd al-dharā'i* (blocking the means to harm), which prohibits actions that may lead to harmful consequences.⁶⁸ Contemporary *Maliki* scholars argue that surrogacy should be prohibited because it creates confusion regarding parentage, increases the likelihood of legal disputes, and undermines family stability.⁶⁹

Similarly, the *Shāfi'i* School emphasises the importance of maintaining the integrity of marriage and preserving clear family relationships. Contemporary *Shāfi'i* scholars generally permit assisted reproductive technologies only when both the sperm and the ovum belong to legally married spouses and when embryo implantation occurs within the same marriage. Any form of third-party participation, including surrogacy, is therefore considered impermissible.⁷⁰

The *Hanbali* School also prioritises the preservation of lineage and family identity. Contemporary *Hanbali* scholars generally prohibit surrogacy because the separation of biological and gestational motherhood creates uncertainty regarding maternity, inheritance, custody, and legal parenthood.⁷¹ Their position reflects the broader Islamic principle that preventing harm should take precedence over pursuing potential benefits.

Unlike the four major Sunni schools, some contemporary *Shia* scholars have adopted a more flexible approach to assisted reproductive technologies. This position is particularly evident in Iran, where some jurists have permitted certain forms of third-party reproductive assistance, including surrogacy.⁷² This approach is based on the principle of *ijtihād*, which allows scholars to exercise independent legal reasoning when addressing contemporary issues that were not explicitly discussed by classical jurists.

In addition to classical juristic opinions, contemporary Islamic institutions have issued several important *fatwas* concerning surrogacy. Among the most influential of these institutions is the Islamic *Fiqh* Academy of the Organisation of Islamic Cooperation. The Academy initially considered permitting a limited form of surrogacy involving the implantation of an embryo into the uterus of a second wife within a polygamous marriage. However, after further deliberation, the Academy withdrew this position and declared all forms of surrogacy impermissible because of the confusion they create regarding lineage and motherhood.⁷³

Al-Azhar scholars have also consistently maintained that assisted reproductive technologies are permissible only when fertilisation occurs between legally married spouses without the involvement of a third party. Several prominent *Al-Azhar* scholars, including *Shaykh Jād al-Haqq* and *Shaykh Muḥammad Sayyid Ṭanṭāwī*, have concluded that surrogacy is prohibited because it creates uncertainty regarding lineage and threatens the integrity of the family.⁷⁴

The Islamic legal position on surrogacy is founded upon the preservation of lineage, the protection of marriage, the recognition of motherhood, and the maintenance of family relationships. Although Islamic law permits medical treatment for infertility, the involvement of a third party in the

⁶⁷ Ibid

⁶⁸ Sayyed Mohamed Muhsin *et al*, 'Framework for Harm Elimination in Light of the Islamic Legal Maxims' (2019) *International Journal of Academic Research in Business and Social Sciences* 9(11) 728–740

⁶⁹ Ibid

⁷⁰ Hossam E Fadel (n18)

⁷¹ Wahbah al-Zuhayli (n65)

⁷² Hossam E Fadel (n18)

⁷³ *Resolutions and Recommendations of the Islamic Fiqh Academy 1985–2000* (Islamic Research and Training Institute, Islamic Development Bank 2000) 58–60.

⁷⁴ Ayman Shabana (n39)



reproductive process remains highly problematic from both legal and ethical perspectives. The Qur'an, the Sunnah, classical juristic opinions, contemporary *fatwas*, collectively support the conclusion that surrogacy is generally incompatible with Islamic family law. While some contemporary *Shia* scholars have adopted a more flexible approach, the dominant position within Islamic jurisprudence remains one of prohibition.

7.0 AREAS OF CONVERGENCE AND DIVERGENCE: AN ISLAMIC CRITIQUE OF COMMON LAW REGULATIONS

The comparative study of surrogacy regulations under Common Law and Islamic law reveals both similarities and differences. Although both systems seek to protect children, preserve family relationships, prevent exploitation, and regulate reproductive practices, they differ significantly in their treatment of surrogacy, motherhood, lineage, parentage, and inheritance.

One major area of convergence is the protection of children. Common Law jurisdictions apply the principle of the best interests of the child in resolving disputes relating to custody, parentage, and guardianship.⁷⁵ Similarly, Islamic law protects children's rights through the principles of *wilāyah* (guardianship), *nafaqah* (maintenance), *ḥaḍānah* (custody), and *mīrāth* (inheritance).⁷⁶ Both legal systems also recognise the importance of preserving family stability and protecting vulnerable individuals, particularly women and children, from exploitation.⁷⁷

Despite these similarities, the legality of surrogacy remains the most significant point of divergence. Common Law jurisdictions generally adopt one of three approaches: prohibition, restrictive regulation, or liberal regulation. Some jurisdictions permit altruistic surrogacy,⁷⁸ while others allow commercial surrogacy under regulated contractual arrangements.⁷⁹ In contrast, the majority of contemporary Muslim scholars prohibit all forms of surrogacy because the involvement of a third party in reproduction is considered inconsistent with the principles of marriage and family under Islamic law.⁸⁰

Another important difference concerns the concept of motherhood. Common Law jurisdictions often distinguish between genetic, gestational, and legal motherhood and may transfer parental rights through judicial mechanisms.⁸¹ Islamic law, however, recognises the woman who gives birth as the legal mother, based on the Qur'anic injunction which says:

...*Their mothers are none but those who gave birth to them...*⁸²

Consequently, Islamic law rejects the separation of biological and gestational motherhood.

Lineage (*ḥifẓ al-nasl*) represents the central point of the Islamic critique of Common Law surrogacy regulations. While Common Law frequently balances lineage against reproductive autonomy and contractual freedom,⁸³ Islamic law treats the preservation of lineage as one of the fundamental objectives of the *Sharī'ah* because it determines inheritance, guardianship, maintenance, and family

⁷⁵ *Surrogacy Arrangements Act 1985* (UK), s 2

⁷⁶ Wahbah al-Zuhayli (n65)

⁷⁷ Convention on the Rights of the Child (1989) arts 3 and 7; Jamal J Nasir, *The Islamic Law of Personal Status* (3rd rev edn, Brill 2009) 145–196.

⁷⁸ *Surrogacy Arrangements Act 1985* (n46); *Human Fertilisation and Embryology Act 2008* (n46)

⁷⁹ Kirsty Horsey (n7)

⁸⁰ *Resolutions and Recommendations of the Islamic Fiqh Academy 1985–2000* (n73)

⁸¹ Douglas NeJaime, 'The Nature of Parenthood' (2017) 126(8) *The Yale Law Journal* 2260–2381.

⁸² Q58:2

⁸³ Ariela R Dubler, 'Governing Through Contract: Common Law Marriage in the Nineteenth Century' (1998) 107(6) *The Yale Law Journal* 1885–1920.



identity.⁸⁴ Therefore, Islamic law maintains that any reproductive arrangement that creates uncertainty regarding parentage should be prohibited.

8.0 MAJOR FINDINGS

The comparative analysis of surrogacy regulations under Common Law and Islamic law reveals several important findings concerning the legal, ethical, and religious dimensions of assisted reproductive technology. Although surrogacy has gradually become a more widely accepted solution to infertility, its regulation remains one of the most controversial areas of contemporary family law because different legal systems adopt different approaches based on their social, cultural, religious, and public policy considerations.⁸⁵

One of the major findings of this study is that there is no uniform approach to the regulation of surrogacy under Common Law. Some jurisdictions prohibit surrogacy entirely because of ethical and social concerns, while others permit only altruistic surrogacy under strict legal supervision. In contrast, certain jurisdictions recognise and regulate commercial surrogacy through legally enforceable arrangements.⁸⁶ These differences demonstrate the absence of a consensus regarding the most appropriate method of regulating surrogacy.

Another important finding is the absence of a comprehensive international legal framework governing surrogacy. Although international human rights instruments recognise the rights of children and emphasise the protection of the family, there is currently no universal international convention specifically governing surrogacy arrangements.⁸⁷ Consequently, cross-border surrogacy continues to generate legal disputes relating to parentage, citizenship, nationality, and the recognition of parental rights across different jurisdictions.⁸⁸

The study further reveals that Islamic law generally prohibits surrogacy because it is considered inconsistent with the principles governing marriage, lineage (*nasab*), and family relationships.⁸⁹ Although Islamic law recognises infertility as a legitimate medical condition and permits medical treatment within certain limits, the overwhelming majority of contemporary Sunni scholars reject surrogacy because it introduces a third party into the reproductive process.⁹⁰

The preservation of lineage (*hifz al-nasl*) constitutes the central principle underlying the Islamic prohibition of surrogacy. Islamic law places considerable emphasis on maintaining clear and identifiable family relationships because lineage determines important legal rights and obligations, including inheritance, guardianship, maintenance, marital eligibility, and family identity. Consequently, any reproductive arrangement that creates uncertainty regarding parentage is considered incompatible with one of the fundamental objectives of the *Shari'ah*.⁹¹

Another significant finding is that the greatest point of divergence between Common Law and Islamic law concerns the determination of motherhood and parentage. Common Law jurisdictions

⁸⁴ Abū Ishāq Ibrāhīm ibn Mūsā al-Shāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah* ('Abd Allāh Darrāz ed, Dār Ibn 'Affān 1997) vol 2, 8–12.

⁸⁵ Claire Fenton-Glynn, 'Surrogacy and the "Best Interests Principle"' in Katarina Trimmings, Sharon Shakargy and Claire Achmad (eds), *Research Handbook on Surrogacy and the Law* (Edward Elgar Publishing 2024) 40-53.

⁸⁶ Kirsty Horsey and Sally Sheldon, 'Still Hazy After All These Years: The Law Regulating Surrogacy' (2012) 20(1) *Medical Law Review* 67-89. <https://kar.kent.ac.uk/28991> Accessed on 17th August 2026

⁸⁷ Hague Conference on Private International Law, *The Parentage/Surrogacy Project* <https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy> accessed 18 August 2026.

⁸⁸ *Paradiso and Campanelli v Italy* (n14).

⁸⁹ Abdulaziz Sachedina, 'Assisted Reproductive Technology: Islamic Perspective' in *Contemporary Bioethics* (Springer 2014).

⁹⁰ Ibid

⁹¹ Abū Ishāq Ibrāhīm ibn Mūsā al-Shāṭibī Abū Ishāq Ibrāhīm ibn Mūsā al-Shāṭibī (n84)



may distinguish between genetic, gestational, and legal motherhood and permit the transfer of parental rights through statutory or judicial mechanisms.⁹² Islamic law, however, recognises the woman who gives birth as the legal mother.⁹³

In conclusion, the findings of this study demonstrate that advances in assisted reproductive technology continue to challenge traditional legal principles in both Common Law and Islamic legal systems. The absence of a universal regulatory framework, the centrality of lineage in Islamic jurisprudence, and the unresolved legal status of children born through surrogacy highlight the need for continuous legal reform, scholarly engagement, and international dialogue to ensure that reproductive technologies are regulated in a manner that protects human dignity, family relationships, and the rights of children.

9.0 RECOMMENDATIONS

The findings of this study reveal significant differences between Common Law and Islamic law in the regulation of surrogacy. While Common Law jurisdictions have developed different legal models to regulate surrogacy, Islamic law generally prohibits the practice because of concerns relating to lineage, parentage, and the preservation of the family institution. Based on these findings, the following recommendations are proposed:

1. Common Law jurisdictions should adopt clearer and more comprehensive surrogacy regulations to ensure consistency in the recognition of surrogacy agreements, parental rights, and the legal status of children.
2. The preservation of lineage (*hifz al-nasab*) should be recognised as a fundamental principle in the regulation of surrogacy, particularly in matters relating to parentage, inheritance, and family identity.
3. The rights and welfare of children born through surrogacy should be given the highest priority, regardless of the legal status of surrogacy in a particular jurisdiction.
4. Commercial surrogacy should be subjected to stricter regulation to prevent the exploitation of women and the commodification of reproduction.
5. International cooperation should be strengthened to address the legal challenges associated with cross-border surrogacy, particularly issues relating to citizenship, nationality, parentage, and the recognition of parental rights.
6. Further research should be encouraged to examine the implications of surrogacy for parentage, inheritance, and child welfare within the framework of Islamic law.

10.0 CONCLUSION

This study demonstrates that surrogacy remains one of the most controversial issues in contemporary family law because of its legal, ethical, and religious implications. Although Common Law jurisdictions have adopted different approaches to surrogacy regulation, Islamic law emphasises the preservation of lineage and generally prohibits the practice. Therefore, any future regulatory framework should balance scientific advancement with the principles of human dignity, child welfare, and family preservation.

⁹² Douglas NeJaime (n82)

⁹³ Q58:2