



The US, Israel and Iran Perspectives on Enforceability of Contract of Surrogacy: Time to Enforce Surrogacy Contracts in Pakistan

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ABSTRACT

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The research article with comparative surveys of US, Israel, and Iran discusses that the Pakistani courts' judicial approach requires an adjustment towards the enforcement of surrogacy contract as the grounds to assume the surrogacy and its contract invalid does not sit well with Contract Act 1872, Constitutions of Pakistan and International Human Rights Laws. The qualitative research approach has been utilized in this paper. The article concludes that the Pakistani judicial approach needs reforms to formalize and ascertain the enforceability of surrogacy contracts in alignment with international standards. This will help the courts to evaluate the enforceability of surrogacy contracts based on the "best interest of the surrogate child."

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INTRODUCTION

Surrogacy is a scientific technique wherein a surrogate mother reproduces a child for the commissioning parents. (Daniela, 2015) Surrogacy is categorized as traditional and gestational and the purpose of both is either altruistic or commercial. (Yehezkel, 2014) In Traditional Surrogacy, the surrogate mother provides not only the ovum but also gives the Gestational contribution while in gestational surrogacy, just the gestational contribution is provided by the surrogate mother. (Dominique, 2012). Federal Shariat Court of Pakistan (FSC hereinafter) in *Farooq Siddique v Farzana Naheed*, determined the validity of surrogacy and

enforceability of surrogacy contract. FSC decided that test tube arrangement for the reproduction of a child is a valid method; however, the court considered traditional and gestational surrogacy unlawful and surrogacy contract unenforceable in the context of its unlawful proposal and object. Furthermore, FSC directed the legislature to criminalize surrogacy. This research article challenges the effectiveness of the decision of FSC by the comparative study of recognition of surrogacy in various countries including the United States (US), Israel, and Iran. The article is divided into various segments. The first segment critically analyses the judgment of FSC to discuss considering surrogacy contract unenforceable on the ground of its object and proposal does not sit well with the canons of Contract Act 1872. Moreover, it explains how this decision violates the provisions of the Constitution of Pakistan 1973 (1973 Constitution) and the International Human Rights Law including the United Nations Convention on Rights of Child 1989 (1989 Convention) and the European Convention for the Protection of Human Rights (ECHR). Additionally, this segment confers the direction of FSC to the legislature to criminalize surrogacy is beyond the jurisdiction of FSC because FSC has no power to strike down Muslim Personal Law and surrogacy being an issue of institution of marriage falls in the purview of Muslim Personal Law.

The second segment demonstrates the enforcement of surrogacy contracts in the US, Israel, and Iran with the aim that Pakistan courts may mend their ways for enforcement of the contract of surrogacy according to the aforementioned countries. This part provides recommendations for the Pakistani courts to conclude the surrogacy contract in the welfare and best interest of the child and to regulate surrogacy and its contract by following the standards set by the US, Israel, and Iran. In the end, all the article culminates into a reasonable conclusion.

Facts of the Case

Petitioner, a Pakistan-born American citizen, being a doctor deals with the cases of surrogacy but his spouse was unable to conceive pregnancy so the petitioner advertised in a newspaper for surrogacy contract. According to the petitioner, the respondent after perusal of advertisement agreed to be the surrogate mother. Respondent received monetary consideration and entered into an oral contract of surrogacy. Other than monetary consideration she received Rs.25,000 for medical checkups. The medical reports have declared her fit for surrogacy and the procedure of surrogacy started.

The surrogacy procedure was carried out in Pakistan to keep it secret a fake drama of marriage was arranged by the petitioner and respondent. In a year, the respondent gave birth to a daughter. But after the birth of the daughter respondent negated to perform contractual obligations and she refused to give the child back to the intended father consequently, the contract of surrogacy was breached. The respondent asserted that the oral contract of surrogacy was false and fabricated as she was legally married to the petitioner and the daughter was born after their lawful contract with Nikkah furthermore, she pleaded that petitioner was bound to pay the maintenance of the minor. Since the petitioner remained unsuccessful to get custody of his daughter up to the Supreme Court of Pakistan. So the petitioner filed a petition to FSC. FSC scrutinized the validity of the oral contract of surrogacy and decided on the issue of surrogacy vis-à-vis the contractual obligations of the surrogacy contract.

Analysis of Court's Verdict

FSC had considered the contract of surrogacy unenforceable, illegal, and void on the grounds of the unlawful proposal and illegal object without making any reasonable justifications. Hence, this segment aims to critically analyze whether surrogacy contracts are enforceable or not. How has this decision breached the 1973 Constitution and International Human Rights Law protocols?

Proposal and Object of Surrogacy Contract

The Federal Shariat Court had examined the enforceability of surrogacy contract on the touchstone of Contract Act 1872 however; the interpretation of exact jurisprudence of the canons of Act 1872 by FSC has generated some controversies. In the view of the FSC, the test tube arrangement for the reproduction of a child is legal and valid. The court assumed that in test tube arrangement sperm of the father and the egg of the mother are fertilized outside the body and after fertilization, the embryo is placed in the womb of the actual mother by using the medicinal method and the child reproduced by such method belongs to the actual parents. However, the FSC declared all the contracts of gestational and traditional surrogacy to be void and unenforceable. In the sight of FSC, the surrogacy contracts are invalid on the grounds of their unlawful proposal and object. The laid out judgment of FSC hypothesized the object of surrogacy contract could either satisfy a woman who is hesitant of marrying or does not want to experience labor pain. The object could be the desire of any gay couple to have a child.

In the case under consideration, the advertisement of surrogacy contract made by the petitioner was called a proposal by the FSC and in the views of the court, that proposal was unlawful and invalid although, in *Ishrat Jabeen v Multan Development Authority*, the court conceded that advertisement is not a proposal it is an invitation to the proposal or invitation to treat. (Ishrat, 2007) Hence, the advertisement discussed in the present case was not a proposal but an invitation to the proposal. It is a fundamental principle of Contract Law that "where there is no proposal there is no contract" (Taymour, 2015). Pragmatically, when no proposal was made by the petitioner then how it would be unlawful. The infertility of the spouse of the petitioner was the object of their surrogacy contract. FSC considered it void without giving reasons. Here, it is pertinent to define infertility along with its causes and effects. Infertility is a disease that makes an individual incapable of reproduction. (WHO, 2018) It occurs equally both in males and females. An infertile female is unable to conceive a pregnancy after constant unprotected sexual intercourse or in some cases she is unable to carry pregnancy owing to certain medical complications. (Sembulingam, 2010).

Male and female gonads produce sperm and eggs respectively. (Ganong, 2001) The abnormality in gonads including ovaries, uterus, sperm countdown, or absence of ovulation leads to infertility. (Sembulingam, 2010) Infertility is a natural phenomenon and according to WHO reports 2020 it has affected nearly 48 to 186 million couples worldwide. Infertility is deemed as ominous for married couples as it is a source of hopelessness, tension, stress, anxiety, embarrassment, guilt feeling, depression, despondence, loss of societal status, and bad of all they are socially labeled as incomplete (Cousineau, 2007).

Infertility is a result of a natural phenomenon; it is not a man-made thing. Every human being has a desire to promote its lineage for the continuity of the human race. Consequently, in this era of technological advancement, surrogacy has proved a silver lining for infertile

couples to enjoy the blessing of children. Contracts of surrogacy are the only reliable way to achieve their ultimate desire. The intention of involved parties is nothing, but to help in making the dreams of infertile couples true. So, the invalidation of surrogacy contracts needs a proper discussion and debate. Such sensitive decisions cannot be made by a single stroke of the pen of a judge.

The FSC decision, no doubt, is valid in the case of Commercial Surrogacy. Commercial Surrogacy is unacceptable for a certain class of society including Human rights activists and essentialist feminists etc. Given that, it is considered as a sort of child trafficking. Parallel to this, in the case of altruistic surrogacy their point of view is opposite (Rothman, 2014). FSC declared the contract of surrogacy illogical, cruel, and absurd because it violates the rights of surrogate mothers. This is a valid point made by the FSC. What if a surrogate mother enters into a contract of surrogacy with her free will and consent? Moreover, she accepts the proposal of the commissioning couple and is given with consideration in the form of money. So in the wake of such measures the FSC decision is invalid.

Constitution Protection to Surrogacy

While considering the surrogacy contract unenforceable the FSC had ignored the basic provisions of the 1973 Constitution. Article 35 of the 1973 Constitution deliberates the protection of marriage, family, mother, and child. Arguably, the words mother and child in Article 35 protect all the mothers either actual or surrogate and all the children including surrogate because Article 35 of the 1973 Constitution has not repealed either expressly or impliedly surrogate mother or child. Hence, not only the surrogate mother or child is under constitutional protection but the surrogacy contract is protected by the 1973 Constitution. So, FSC cannot deprive anyone of their constitutional rights.

Violation of United Nations Convention on Rights of Child 1989

FSC in the present case had disregarded and overlooked the “rights-based approach” and it had also ignored the “welfare of the surrogate child.” The decision of the court does not sit well with the United Nations Convention on Rights of Child 1989 (1989 Convention hereinafter) to which Pakistan is a signatory. Article 8(1) of the 1989 Convention protects the identity and nationality of the child while Article 7 of the 1989 Convention never encourages any kind of discrimination to the child regarding his birth. The 1989 Convention provides the right to the child to know his parents and encourages parents to take care of their offspring while Article 9 of the Convention 1989 forbids the unlawful separation between the parents and the child.

Article 16 of the 1989 Convention strictly prohibits the state from interfering in the private life and privacy of a child, family, house, or dignity. Moreover, Article 3 of the 1989 Convention says that the state is encouraged to legislate any necessary laws for the administration of rights of the child and his family, and the state is obliged to consider the welfare and best interest of the child. The court stated that a surrogate child carries no legal paternity and the court denies the rights of claim of paternity, maintenance, and inheritance. The court remained unsuccessful in recognizing the welfare and best interest of surrogate children and had disregarded the International Human Rights Laws protocols.

Violation of Privacy

It can be observed that the invalidity of surrogacy restricts the fundamental rights of a surrogate child by uncovering its identity. The surrogate baby can face societal exploitation, mistreatment, and abuse when its privacy is alienated by the state. Article 14(1) of the 1973 Constitution protects the privacy rights and dignity of an individual. Moreover, Article 8 of the European Convention for the Protection of Human Rights (ECHR hereinafter) guards the rights of private and family life. Article 8 ECHR declares no one should interfere in the private and family life of individuals as well as no one should interfere in the home and correspondence of an individual. Article 8 discourages the intrusion of government or public authority in the private life of an individual. In this way, Article 8 of ECHR protects the rights of children produced by surrogacy either internationally or nationally.

Federal Shariat Court beyond its Jurisdiction

FSC made a policy decision in the case and utilized its jurisdiction beyond its limits. FSC considered the contract of surrogacy invalid and illegal as this evaluation is not legislated by the state. FSC stated that the social contract of Nikkah is the only legitimate way for the reproduction of a child and the child produced by the surrogacy contract is illegitimate and the maternity and paternity of such child become irrelevant. The full-fledged "*conception of adoption and acknowledgment*" of a child might be invoked to validate the enforceability of surrogacy. Islamic Law's "*doctrine of acknowledgment*" gives the legal rights to an adopted child and this doctrine permits assimilation of the adopted child as a part of the family. Supreme Court of Pakistan in *Asma Naz v Younas Qureshi*, affirmed that an adopted child is legitimate when it obtains the right of paternity under the principle of acknowledgment. Further in *Allahdad v Ismail*, court conceded that the acknowledged son or daughter is the legitimate offspring of the acknowledger.

Considering surrogacy invalid sits well with the approach of the majority of Sunni School of thought and in views of these Sunni jurists, surrogacy disrupts the concept of genealogical lineage. Additionally, it affects the rights of children regarding identity and inheritance. (Ruaim, 2016). The ijtihād done by FSC was based on the views of Sunni Jurists however; the point of view of Shi'a school is opposite to the Sunni school of thought as Shi'a School considered surrogacy and its contract legal and binding. This point will be discussed under the head of Iran's perspective in recognition of surrogacy and surrogacy contracts. The court suggested that the legislature should legislate a law to criminalize surrogacy. The court stated that:

"Pakistan Penal Code be also amended and suitable section of law be added regarding definition of surrogacy. The same be declared as an offence punishable with imprisonment as well as fine. Further amendment be made in the Pakistan Penal Code that the couple who arranges a surrogate mother would be liable to punishment along with surrogate and the doctor who carries on the surrogacy procedure. Another amendment be made in Pakistan Penal Code to provide punishment of the doctor who maintains the sperm bank or egg bank for using in future, which should include imprisonment and fine. It must also be provided that any doctor involved in the procedure of surrogacy shall lose his license."

Here the questions arise whether the legislature is bound to act upon the directions of FSC? Whether FSC has to direct the legislature to add new provisions in PPC?

Article 203 B (c) gives clear answers to these questions. Under Article 203 B (c) FSC cannot direct or bound the legislature in any case. Consequently, the legislature is not obliged to follow the directions made by the FSC to criminalize surrogacy. If any law is legislated regarding surrogacy or enforceability of surrogacy contract whether FSC has the power to review that law? FSC is incompetent to review the law on surrogacy because FSC has no jurisdiction to review Muslim Personal Law and surrogacy falls in the domain of Muslim Personal Law. In *Mehmood v Pakistan*, Muslim Personal law is defined as the law of each sect of Muslims based on the interpretation of the Quran and Sunnah by that Sect. This shows if any law is relating or dealing with the sectarian affliction of Muslims that law will be called Muslim Personal Law and under Article 203 B (C) FSC is not able to deal with that deal as it falls beyond the jurisdiction of FSC. The reason behind the rationale that why FSC has no jurisdiction to deal with the Muslim Personal Law is that FSC is a non-sectarian judicial institution and FSC is not bounded to follow any specific sect for interpretation of Islam. However, Muslim Personal law acknowledges the interpretation of every jurist of a particular sect.

Enforceability of Surrogacy Contract

This segment discusses the enforceability of surrogacy in various countries including the US, Israel, and Iran. This part demonstrates which standards are used by the aforementioned countries in concluding surrogacy contracts and what prerequisites are required to enter into the contract of surrogacy. By following the footsteps of the aforementioned countries the Pakistan Courts might find very reasonable grounds for evaluating surrogacy contracts.

United States Perspective

In the US, the contract of surrogacy was not enforced at once. It was evolved step by step. The contract of surrogacy was invalidated by the courts during the 1980s on the ground that surrogacy entails the sale of a child. The Baby M case can be cited in this regard. The main motivations for considering contract of surrogacy void were as follows:

“The surrogacy contract conflicts with: 1) laws prohibiting the use of money in connection with adoptions; 2) law requiring proof of parental unfitness or abandonment before termination of parental rights is ordered or an adoption is granted; and 3) laws that make surrender of custody and consent to adoption revocable in private placement adoptions.”

“The surrogacy contract guarantees permanent separation of the child from one of its natural parents. Our policy, however, has long been that to the extent possible, children should remain with and be brought up by both of their natural parents.” “The whole purpose and effect of the surrogacy contract was to give the father the exclusive right to the child by destroying the rights of the mother. This is the sale of a child, or, at the very least, the sale of a mother's right to her child, the only mitigating factor being that one of the purchasers is the father.”

The judicial attitude of US courts changed when the concept of gestational surrogacy was introduced in the late 1980s. The cause for the change in the attitude of the US judiciary was the scientific novelty of embryo transfer. In *Baby M case* recognition of the birth mother was decided while in *Johnson v Calvert*, the court conceded that the genetic

provenience of the ovum plus intention to procreate made the baby belong to the genetic mother, while the birth mother was declared not a natural mother. However, in *Baby M case*, the principle "*best interest of the child*" was applied, and the custody of Baby M was given to the intended parents because the intended parents were financially more stable than the birth mother. This decision was not good for the birth mother as she claimed custody of Baby M but she received only the right to visit Baby M.

The principle "*best interest of the child*" was internationally recognized by the 1989 Convention. In *Johnson v Calvert*, the court utilized the principle of "*best interest of the child.*" The Supreme Court of California by its decision had opened the doors for the surrogacy industry and the contract of surrogacy was considered legal and enforceable. In the final judgment, the court stated that:

"We conclude that although the Act recognizes both genetic consanguinity and giving birth as means of establishing a mother and child relationship when the two means do not coincide in one woman, she who intended to procreate the child that is, she who intended to bring about the birth of a child that she intended to raise as her own is the natural mother under California law."

The contract of surrogacy is enforceable and is legal in California and was first validated in 1993 in *Johnson v Calvert*. In 2013 the California Uniform Parentage Act and Law on Surrogacy was introduced, approved, and propagated in California. In California traditional and gestational surrogacy both are legal. (Stephanie, 2015). Consequently, for enforceability of surrogacy contracts, the principle "*best interest of the child*" can be utilized although there is a question of what will be the best interest of the newly born infant. This approach can be followed by Pakistani courts. The attitude of Pakistani Courts towards surrogacy is rigid and they don't have any lawful justifications for considering the surrogacy contract unenforceable although when surrogacy in the US was illegal the courts of the US had some reasonable reasons for it as can be seen in the decision of Baby M case. So Pakistan Court should evaluate the surrogacy contract in the "*best interest of the child.*"

Israel Perspective

Israel has propagated an act called Embryo Carrying Agreement Act in 1996. (KELLY, 2005) Under this Act, a committee evaluates the agreements of surrogacy. The Act approves the surrogacy agreement if fertile father and infertile mother resident of Israel apply for it. The surrogacy agreement requires the surrogate mother to be unmarried and the Committee approves the compensation for her. While the commissioning parents and surrogate mothers also are evaluated by a psychologist and a social worker. On the birth of a surrogate infant, the temporary custody of this child is given to intended parents in presence of an agent of the state. During this time the welfare agent of the state is the legal guardian of the surrogate infant until the court decides otherwise. The intended parents are obliged to initialize the proceeding within a week of the birth of the infant for getting a Parenthood Order otherwise the state's agent initiates these proceedings. In the end, the court decrees unless the best interests of the child are demanded in the favor of the intended parents. (Shakargy, 2013). Like Israel, a committee for evaluation of surrogacy contracts can be made in Pakistan that should assist the court to evaluate the surrogacy contract. The committee should protect the rights of surrogate children, surrogate mothers, and commissioning parents.

Iranian Perspective

Iran is the only Islamic country that has legalized reproductive technologies, surrogacy, and surrogacy contracts. (Muhammad, 2008) Article 10 of the Iranian Civil Act, 1928 (1928 Act) considers the contract of surrogacy legal, valid and enforceable. (Serour GI, 2008) The object is to save the families and rights of infertile couples. (Sadeghi, 2005). However, the contract will be valid when its essentials are fulfilled. The essential includes the free consent of contracting parties and for surrogacy contracts, the consent must be in written form. The surrogacy contract requires the competent parties to have the legal capacity to enter into the contract. The contract will be void and cannot be enforced if it breaches public order or peace. While evaluating the surrogacy contract, the court prefers to verify the balance in terms of the contract and inspect its legal requirements. (Amir, 2011). The surrogacy contract contains the rights and responsibilities of the infertile couple that are going to be the legal guardian of the child. The contract of surrogacy requires that all the medical expenses should be borne by the commissioning parents as well as the surrogate mother must carry the fetus and give the new infant to the intended parents. (Gader, 2014)

The fertility clinic is the basic requirement of the contract of surrogacy. It requires providing all the information to surrogate mothers and infertile couples regarding the procedure of surrogacy. All of them must know about the techniques that would be utilized during the surrogacy including various screening, medicinal tests for confirmation of couple's sterility, psychological test, then in the end reasonable counseling will be provided to the parties about the medical protocols to avoid unnecessary medical risks. (Behjati, 2015) Article 2 of the Act concerning Embryo Donation to Infertile Couples 2005 requires the complete examination of the physical and mental health of surrogate mothers. (America, 2004).

In Iran, there is no requirement like in Israel that surrogate mothers should be unmarried. If the surrogate mother is married then she has to get the consent of her husband for entering into the contract of surrogacy. Certain duties and rights of husbands of surrogate married women are also recognized. Under Articles 1117 and 1103 of the 1928 Act husband of a married wife has the right to forbid or allow his wife to enter into the surrogacy contract. Consent of the husband of the surrogate mother is also necessary to avoid any kind of disputes in the social life of the surrogate mother as such disputes can affect the infant which is carried by the surrogate mother. FSC could utilize these grounds for scrutinizing the enforceability of surrogacy contracts. In the future, Pakistani Courts must use these basic requirements for evaluating the enforceability and validity of the contract of surrogacy.

CONCLUSION

The unenforceability of surrogacy contract on grounds of unlawful proposal and object was a passive assumption by FSC. Pakistani Courts should evaluate such contracts in the view of human rights; protection of privacy rights and protection of rights of infertile couples, surrogate mothers, and, welfare and best interest of the surrogate child. The drafting and enactment of surrogacy law will be considered as an incredibly welcome initiative that will surely revive Pakistan's soft image across the globe as a progressive country. Along with the promulgation of surrogacy law, the courts must ponder their retrogressive approach regarding surrogacy. The act of FSC to direct the legislature to criminalize surrogacy was beyond its jurisdiction. FSC being a non-sectarian judicial body cannot try the matter of Muslim Personal Law and surrogacy is a matter of institution of marriage so falls in the realm of Muslim

Personal Law.

The court while concluding the contract of surrogacy must use the yardstick maintained by the US, Israel, and Iran to give friendly decisions for infertile parents. The Pakistani judicial outlook will be changed by following the doctrine of welfare and best interest of the child as followed by the US for surrogacy contract. Furthermore, the participants of contract surrogacy must obey certain terms and conditions as followed in Israel and Iran. For the sake of an effective regulatory framework and basic requirements for entering into surrogacy contracts, Pakistan should follow in the footsteps of its neighbor Iran.

REFERENCES

- American Society for Reproductive Medicine. Appendix A: minimal genetic screening for gamete donors. *Fertil Steril*. 2004;82 Suppl 1:S22-3.; Amir Samavati Pirouz and Nassrin Mehra, 'Legal Issues of a Surrogacy Contract Based on Iranian Acts Continuation' (2011) 5 *Journal of Family and Reproductive Health* 41-50.
- Asma Naz v Muhammad Younas Qureshi 2005 SCMR 401; Act concerning Embryo Donation to Infertile Couples 2005
- Behjati-Ardakani, Z., Karoubi, M. T., Milanifar, A., Masrouri, R., & Akhondi, M. M. (2015). Embryo Donation in Iranian Legal System: A Critical Review. *Journal of reproduction & infertility*, 16(3), 130–137.
- Cousineau TM, Domar A. Psychological impact of infertility. *Best Practice & Research: Clinical Obstetrics & Gynaecology*. 2007;21(2):293-308;
- Constitution of the Islamic Republic of Pakistan 1973; Contract Act 1872
- Daniela Danna, (2015), *Contract Children Questioning Surrogacy*, Ibidem, Chapter 1, ISBN-13 Paperback edition: 978-3-8382-0760-5; Dominique Ladomato, Protecting Traditional Surrogacy Contracting Through Fee Payment Regulation, 23 *HASTINGS WOMEN'S L.J.* 245, 250–57 (2012).
- Embryo Carrying Agreement Act 1996; European Convention for the Protection of Human Rights; Farooq Siddique v Farzana Naheed, PLD 2017 FSC 78
- Gader Dargahi and others, 'Attitudes Toward Surrogacy amongst Iranian Fertile and Infertile Women' (2014) 3 *Global Advanced Research Journal of Microbiology* 5-11.; Ganong .F. William, (2001) *Review of Medical Physiology*, Edition 20, Lange, P 398, 434
- Iranian Civil Act 1928; Ishrat Jabeen Saeed v Multan Development Authority and another 2007 MLD 1164; Johnson v. Calvert, 851 P.2d 776—Cal. 1993; Karachi Development Authority v Ali Muhammad 1993 MLD 1061
- Lieber, Katherine B. (1992) "Selling the Womb: Can the Feminist Critique of Surrogacy Be Answered?," *Indiana Law Journal*: Vol. 68 : Iss. 1 , Article 7. Available at: <https://www.repository.law.indiana.edu/ilj/vol68/iss1/7;>
- Muhammad Jalal Abbasi-Shavazi and others, 'The Iranian ART Revolution: Infertility,

Assisted Reproductive Technology, and Third-Party Donation in the Islamic Republic of Iran' (2008) 4 *Journal of Middle East Women's Studies* 1-28. Muhammad Allahdad Khan v Muhammad Ismail Khan 1888 ILR 10 AII 289

NEW FAM. ORG. (May 23, 2011), <http://www.newfamily.org.il/en/2148/surrogacy/>. The act is often referenced by its unofficial name: Surrogate Motherhood Agreements (Approval of Agreement and Status of the Newborn) Law. For an unofficial translation of it, see D. KELLY WEISBERG, THE BIRTH OF SURROGACY IN ISRAEL 219–28(2005).

re Baby M, 537 A.2d 1227, 109 N.J. 396; Rothman BK. The legacy of patriarchy as context for surrogacy: or why are we quibbling over this? *Am J Bioeth.* 2014;14(5):36–7; Agacinski S. *Corps en miettes*. Paris: Flammarion; 2009; Anderson E. Is women's labor a commodity? *Philos Public Aff.* 1990;19(1):71–92

Ruaim M. Muaygil, 'Reexamining the Prohibition of Gestational Surrogacy in Sunni Islam' (2016) *Developing World Bioethics* (online) <<https://www.ncbi.nlm.nih.gov/pubmed/27762091>> accessed 13 April 2017; Hassan Chamsi-Pasha and Mohammed Ali Albar, 'Assisted Reproductive Technology: Islamic Sunni Perspective' (2015) 18(2) *Human Fertility* 107

Sadeghi Moghaddam MH. [The Iranian law of "How to grant embryo to infertile spouses": A view from Islamic law]. *NAMEH-YE-MOFID.* 2005;10 (6);31-60.

Taymour, S. (2015) *The Contract Law of Pakistan*, Oxford University Press, Pakistan; There have been some cases in Canadian courts, too, see "Who is a Parent? Not a Simple Question!" by Stephanie Laskoski (<http://www.lawnow.org/parent-simple-question/> accessed 15.3.2015).; United Nations Convention on Rights of Child 1989

World Health Organization (WHO). *International Classification of Diseases, 11th Revision (ICD-11)* Geneva: WHO 2018.; Yehezkel Margalit, In Defense of Surrogacy Agreements: A Modern Contract Law Perceptive, 20 *Wm. & Mary J. Women & L.* 423 (2014), <https://scholarship.law.wm.edu/wmjowl/vol20/iss2/6>