Uterus surrogacy: a jurisprudence and law perspective

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Abstract:

One of the modern methods used in infertility treatment is the use of another woman’s womb which is called uterus surrogacy or rental uterus and this can be performed in return for money or it can be done solely for the altruistic reasons. The objective of the current study is the survey of uterus surrogacy from Iran’s jurisprudence and law perspectives. The study methodology is of the content-analysis type and the subject is analyzed through the study of the jurisprudence and law books. The findings of the present study signify that some conditions should be considered in surrogacy womb contracts which are: surrogate mother promise implying not to claim kinship relation with the child, the existence of conditions such as quitting smoking cigars and narcotics, quitting drinking alcoholic drinks, not consuming some types of foods and even not having sexual intercourse with her husband during the pregnancy period. Such contacts alike any other contract or arrangement is followed by consequences and effects that have to be clearly determined, some of which are: the subject of determining the parentage, intimacy, tutelage, fostering relationship, heritage, and so on and the subjects related to uterus surrogacy contracts and even its legality and validity is the subject of discrepancies and disagreements among the jurisprudents and jurists and the existence of such disagreements and on the other hand the absence of clear and eloquent contexts and codified legal rules regarding the uterus surrogacy subject matter necessitates the evaluation of the subject’s various aspects by the Islamic scientists and thinkers and expert jurists and all of these should be followed by the legislators’ intervention for the related rules and regulations to be enacted and vividly justified.

Keywords: reproduction ancillary methods, uterus surrogacy, fostering, parentage.
Introduction:

Having children is wished for by any couple and this desire has been existed with the human beings from the very beginning of human’s life up to now and it will last into the future, but it has been for always that about 10% to 15% of the women are infertile. Some of the families are deprived of having children due to medical complications and difficulties and they have always been seeking to find different methods to solve their infertility problems, from donating oblation and begging and resorting to God to various sorts of medical treatments and even fostering a child. But, in many of the cases the existence of such a problem in infertile couples forces them to divorce. Nowadays, there has been offered modern and novel methods for solving the infertility difficulties via considerable advancements in medical sciences for example in cases that the infertility problem is related to the woman and she cannot be treated and cured via prescribing medications or doing surgery operations, another woman can be used for adopting ovules and accepting pregnancy which is called womb leasing or uterus surrogacy. Two researchers named Patrick Steptoe and Robert Edwards procreated a girl, Luis Brown, in 25th of July, 1978, for the first time by taking advantage of in-Vitro Fertilization (IVF) method and implanting the fetus inside her mother’s womb and she was named the first laboratory infant and Outian and his colleagues reported the first birth based on the uterus surrogacy method in 1985, of course After spending a lot of efforts and struggling too much, Patrick Steptoe and Robert Edwards were the first who arranged a surrogate uterus agreement in Europe and the respective infant was born in 19891. (Akhundi and Behjati Ardakani, 2008, p.15)

Study background:

Artificial fertilization was first performed by a German scientist, Jacobine, on the fishes for the purpose of animals breeding and propagation in 1765 and it was consequently examined to be used for human reproduction. This method become common practice in some of the countries such as the US and by the advancement of science and by making use of the superior techniques, the first laboratory infant, Luis Brown, was born in London in 1978 by the efforts of Dr. Steptoe and his colleagues. After that, in 1988, one year after this accomplishment in England, 956 children were born via the invitro fertilization method. Also, in the US this method has been conducted for more than 40 thousand times, out of which there has been 8741 normal births and 5103 in-vitro fertilizations. In the legislative history of the IVF in third world countries in which most of the Islamic countries are located there are no specific rules and regulations enacted. Fertilization via artificial inoculation has become a remarkably widespread common practice from the second half of the 20th century. And it is in such a manner that today this method is considered one of the most important phenomena and advances in this century and it has been

1

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applied in the majority of the countries from long ago. Adopting such a technology has been launched in Iran in 1989 and nowadays Iran is playing a leading role regarding such a subject. Islamic Republic of Iran has codified the act of donating a fetus to an infertile couple (enacted in 4/29/2003 in five articles) and only one of the extant methods has been clearly prescribed by this act. Fertilization by making use of medical tools in a manner which is common these days in the form of delivering semen through homosexuality means which is forbidden in Imamyeh jurisprudence and inserting semen which is appropriate in Shafe’ee jurisprudence. But, there is no history of this type of fertilization (by medical tools) in narrations and it has no background in jurisprudence except for the contemporary era and it is only through verses, narrations, related jurisprudential gates and the general Shi’ite jurisprudence principles and generalities and through the specific reasoning and special narrations related to the unnatural reproduction methods that we can infer and deduce the religious orders and effects of medical fertilization. (Lotfi, 2012)

The first topic for discussion: infertility treatment advanced methods

The physicians make use of various medications and treatments in treating the infertility according to its type from among which we can point to different kinds of auxiliary reproduction methods such as IVF and IUI and so forth or in case that there is a fault with the woman’s womb the surrogate uterus which is the focus of the present study.

Uterus surrogacy:

Uterus surrogacy is a method that is performed in order for the infertile couples to have a child by which method the surrogate mother accepts the peremptory parents’ fetus (which is produced via the auxiliary reproduction methods through artificial fertilization by sperm and ovule fusion by getting help from artificial tools and without sexual intercourse) and after the pregnancy period is expired and the infant is born it will be delivered to the infertile couples.

Peremptory parents:

Despite considerable advances in the medical sciences, the physicians have not yet found an environment more appropriate than the uterus for fostering and nurturing the fetus. Due to the same reason one of the important results obtained from the ancillary reproduction methods is the use of another woman’s womb (uterus surrogacy).

The woman should be perfectly healthy both physically and psychologically and she should undergo examinations and checkups including non-addiction test, not being diagnosed with AIDS, Hepatitis and thalassemia and contagious diseases and psychological and mind diseases. This woman should have had at least one history of pregnancy and she should preferably between 20 to 35 years of age and of course if she has a husband a letter of consent should be acquired from her husband that is because the husband can prevent his wife from working in a
profession or industry which is not consistent with his or his wife’s family prudence and reputation according to the article 1117 of the civil law and of course the philosophy behind enacting such act is the family prudence preservation and because according to the article 1105 of the civil law the husband is in charge of the family and has to support and manage it and it is regarded as a feature specific to the husband, he has the right to inhibit his wife from accepting and carrying a fetus belonging to the others for nine months.

This idea can be understood, plus the two above-mentioned articles, from the article 1233, unity of proprietor, of the civil law which prevents from accepting the women’s tutelage without her husband being consent, that is because submitting oneself to agree with the surrogate mother contract is accompanied by suffering limitations and constraints and even pains and discomforts which will surely influence the matrimonial life of the surrogate mother.

Speech One: uterus surrogacy uses

The uterus deficiency due to congenital reasons or medical causes such as surgery and the womb tubules obstruction as a result of having tuberculosis or chronic diseases such as hypertension, acute diabetes, heart diseases or severe thalassemia which makes gestation difficult for a woman or the womb being small which is the cause of unsuccessful fertilization or recurrent abortions or the infeasibility of the woman’s pregnancy due to RH sensitivity are among the serious vocational motivations for preventing one person from being pregnant, of course there are other reasons that may bring about the use of uterus surrogacy, such as due to tendency for having physical fitness or having inclinations toward not bothering oneself or being indolent all of which make some of the women to dodge their duty of becoming pregnant and instead ask another woman to become pregnant for them and of course such reasons are not accepted by the jurists and jurisprudences and even the society members in Islamic community of Iran both morally and legally.

Also, it seems that according to the diversity of the reproduction ancillary methods in case that there is a defection in peremptory parents’ sperm or ovule there is an opportunity for substituting the exogenous healthy sperm or ovule and even in case that there is a defection in both the peremptory parents’ sperm and the ovule there is the possibility of using granted fetuses for the purpose of uterus surrogacy method implementation, but, due to the judicial and jurisprudential effects of such undertakings like the infeasibility of lineage determination or the inheritance issues or intimacy and so forth methods like these are not so much supported by the jurists and religion scientists; on the other hand, from the jurists point of view methods such as these contradict moral senses and the general social order and thus are not approved by the law science experts and, in the meantime, according to the article 1 of the quality of endowing a fetus Act to the infertile couples enacted in 2/8/2003, after the legal and judicial terms are met the fetus resulting from artificial fertilization is transplanted to the wombs of the women who have been
proved and diagnosed to have infertility after doing their best and performing medical actions and undergoing medical examinations.

So it can be said that the use of sperm, ovule and even fetus donated by the others and transplanted into the surrogate mother uterus for infertile couples signing a uterus surrogacy agreement cannot be feasible since legally and judicially this fetus belongs to the original possessors of the embryo and it is not of any relationship and lineage with the applicant infertile couple, as it is ordered by Ayat Allah Makarem Shirazi the use of exogenous embryo to have a child of one’s own is not allowed (Fattahi, 2003).

**Speech Two: uterus surrogacy opponents**

Uterus surrogacy opponents reason many various logics and it can be generally stated that this group substantially base their rationale upon two narrations.

1. Narration by Ali Ibn Salem which has been quoted from Imam Sadegh (peace be upon him): the worst of the people on the Judgment Day is the person who places his sperm in the womb of the woman who is not intimate and married to him (Horr Ameli, 2010, v.3, p.193).

2. Ishaq Ibn Ammar narration who says that “I asked Imam Sadeq which is worse fornication or drinking wine and why it is that for drinking wine there is determined eighty lashes and in fornication there is one hundred lashes?” Imam ordered that “Lo! Ishaq, punishing by lash (had) is the same, but this much has been added to the punishment for fornication because it destroys the sperm and it is laid in the place other than what is ordered by Allah.” (Ibid)

This group of the jurists by drawing upon the aforementioned narrations state that the same way as laying sperm directly in the womb of a woman by way of adultery, which is considered the common practice, is forbidden it is forbidden and not allowed via the uncommon ways such as sperm-ovule fusion and transplanting it to an non-intimate woman’s womb, since the subject of forbiddance which is laying sperm into the womb of a not married to, non-intimate woman has taken place. On the other hand, the lawful place for laying sperm is the man’s wife womb and if it is laid in an illegitimate location the same as it is asserted in the narrations “في غير مىضعه” that means “an illegitimate place” this is forbidden and illegal. Some of the jurists who have supported the uterus surrogacy forbiddance and illegality are Ayat Allah Behjat, Ayat Allah Tabrizi and Ayat Allah Fazel Lankarani and Ayat Allah Noori Hamedani (the collection of articles, 2003, p.88). in contrast to this notion which can be claimed that it is the idea of the minority of the jurists most of the contemporary jurists have allowed uterus surrogacy which is going to be elaborated in the next few paragraphs.
Speech Three: uterus surrogacy proponents:

This group of the jurists believes that the surrogate mother solely carries the fetus and fosters in her uterus and this action does not contain any forbidden and unlawful title and it is not the same as both fornication and spilling sperm in the womb of a woman who is not lawfully legitimate to the man, since the narrations documented by the opponent jurists regarding the uterus surrogacy is related to the unlawful and illegitimate sexual exploitation or it is the same as performing adultery and these narrations point to the case that the womb of a woman who has been a part of fornication action has been one of the two premises for fetus formation and the embryo has been a result of her ovule, therefore the aforementioned news and narrations do not include the subject of uterus surrogacy and it is withdrawn from the subject of uterus surrogacy. On the other hand, based on the judicial theorem of “اصاله الاباحه” to wit “the individuals are free to do or withdraw from doing any action”, everything is lawful and ceremonially clean unless there is a reason for its forbiddance and taboo proposed and because this is the only method by which an individual can have a child of his own the reason approves it and based on another judicial theorem which states that “كلما حكم به العقل، حكم به الشرع” that means that “whatever is approved by reason is also judicially confirmed”, the uterus surrogacy can be allowed. This is meanwhile some of the evidences order that it is allowed for an individual to be hired and used for his or her services so uterus surrogacy can be allowed too.

Of course, based on this preposition that the surrogate mother has a husband the jurists agreeing with the uterus surrogacy method have proposed two possibilities, a group of these jurists such as Ayat Allah Montazeri believe that the transplantation of the fetus is allowed only to the womb of a woman not having a husband and another group of these jurists which is comprised of the majority of the contemporary jurists required the husband consent presupposing that the surrogate mother has a husband from among these jurists we can point to Hazrat Ayat Allah Khmenei [the great leader of the Islamic revolution], Ayat Allah Makarem Shirazi, Ayat Allah Ardabili, Ayat Allah Sistani, Ayat Allah Safi Golpayegani, Ayat Allah Mousavi Ardabili, Ayat Allah Momen and Ayat Allah Sanei (Ibid).

Speech Four: jurisprudents perspective

There is discrepancy among the jurisprudents regarding the subject of uterus surrogacy; a group of them by drawing upon the principle of volition domination and authenticity principle in article 10 of the civil law consider the uterus surrogacy agreement as valid and accurate and another group, quite contrary, regard it as unauthentic and they base their documents and evidences upon this issue that the human body cannot be subjected to any obligatory and pacta sunt servanda agreement, if so, this would be another face of slavery in the contemporary century (Katoozyan, 2003, v. 2, p.222) and this agreement contradicts the principles of human body cannot being
tenured and the human individuals situations cannot being tenured and it can be claimed that it is discordant with the general order (Safaee, 2004, p. 11).

**Second Discussion: uterus surrogacy necessity and contract parties**

**Speech One: contract necessity**

The existence of a contract seems to be necessary for determining the individuals genetically related to the child, determination of the child’s legal father and mother, determination of the parties’ commitments and obligations and the agreed terms and conditions, agreeing upon the parties’ common intention, resolution of the subject of the mother being suspicious of adultery and determination of the lineage of the child born from the surrogate mother (Nayebzadeh, 2001, pp.94 and 95). Therefore, because we do not have specialized and characteristic statutory laws regarding the present subject in Iran, the parties’ commitments and obligations and the contract terms and conditions which are predicted beforehand while signing the contract make the existence of a contract necessary and this contract can play a considerable role in removing the parties’ concerns and preventing from filing possible lawsuits.

**Speech Two: uterus surrogacy contract parties**

Uterus surrogacy contract parties are the peremptory parents and the surrogate mother upon the agreement of whom the contract is signed. But it has to be known that the uterus surrogacy contract is not a simple mere bilateral contract comprised of two individuals like the other ordinary contracts, rather, other individuals are involved in it and they are somehow engaged to the contract or they have to be informed and coordinated with regarding the fulfillment of the obligations and commitments inserted in the contract.

**Speech Three: legal nature of the uterus surrogacy contract:**

Here we deal with the legal nature of the uterus surrogacy agreement to make it clear that whether such contracts should be considered among definite, indefinite or private contracts.

Therefore, according to the fact that the structure of the contracts such as hiring individuals or renting things, promise of reward, bailment contract, borrow and peace pact are more appropriate and closer in structure to uterus surrogacy contracts we deal with their comparison in order to determine and specify the feasibility or infeasibility of using them for our purpose and tailoring an agreement.

Speech One: the comparison between uterus surrogacy contract with hiring an individual or renting a thing contracts
According to the article 466 of the civil law renting contract is an agreement by which the tenant becomes the possessor of the interests or benefits provided by what is being rented or hired. According to the jurists’ opinions (Mousavi Khomeini, 1984, p.575) and article 466 of the civil law the landlord provides the tenant with the right to make use of the residential premises from which time on the tenant becomes the landlord and makes use of the interests of what being rented or hired (Katoozyan, 1995, v.1, p.361).

Although the surrogate mother has the competency to take advantage of her body, she cannot transfer this right which is a right related to her personality to the others. Also, according to the article 467 of the civil law the landlord should submit the rented or hired thing to the tenant as it is and this submission according to the article 477 of the same law should be in a manner for the tenant to be able to make use of it favorably and as he or she desires.

On the other hand, because taking advantage of the thing subject to rent or hire requires its submission as it is, thus its submission by the landlord is necessary and it is evident that the surrogate mother cannot submit her body organs, “uterus”, to the real parents.

Accordingly, based on the above-mentioned cases the contract for uterus surrogacy cannot be matched to the rent or tenancy of things.

But, regarding hiring a person it has to be said that hiring a person is a sort of contract by which the tenant becomes the proprietor of the hired person interests. In this respect, hiring a person is a possessory contract the hired person’s interests are exchanged for a definite price (Katoozyan, 1995, v.1, p.567).

Speech Two: uterus surrogacy and bailment contract

According to the article 607 of the civil law, bailment is a contract by which a person trusts his or her property or possession to another person in order for the property to be kept free of charge. What makes the nature and exigency of the bailment contract is rusting a property or belonging to another person for the purpose of taking care of and it should be returned to its possessor by his or her first request (Katoozyan, 2008, v.2, p.7).

Therefore, if it turns out that the main objective of the parties is not to take care of a property or something then their relationship should not follow the bailment contract principles and terms.

In uterus surrogacy contract taking care of the fetus or embryo is not regarded as the main orientation of the contract by the parties. The purpose of trusting the fetus is performed for fostering the fetus and not for keeping it and the surrogate mother accepts it inside her womb to foster and nurture the fetus and not for keeping it in such a manner that when the real parents ask its return she will be able to return it. However, the main promise requirement (fostering the
fetus in one’s womb) is to take care of it as well and in such contracts taking care is regarded as a secondary promise. So, uterus surrogacy contract cannot correspond to the bailment contract structure.

**Speech Three: uterus surrogacy and borrowing agreement**

“Borrowing agreement, [According to the article 635 of the civil law], is a contract by which one of the parties lets the other to take advantage of his or her property at no price”. However, in borrowing agreement the item is bestowed to the borrower in order to be taken advantage of, but what is conceded here is the advantage taken from the property (Katoozyan, Ibid, p. 4).

Now, if we consider that the uterus surrogacy is some sort of borrowing agreement in this case the surrogate mother allow the peremptory parents to take advantage of one of her body organs, which here it is the natural function of her womb. In this way, the surrogate mother causes an exploitation right of one of her body organs to the peremptory parents in respect to the intended advantage and because the humans’ right over their body organs is enumerated among the rights related to the personality the surrogate mother has no right to entitle the others over her body organs (Nayebzadeh, 2001, p.157).

Besides, submission of the borrowed property or item and its holding by the beneficiary and its return to the lender (surrogate mother) is not practical in uterus surrogacy contracts, so, the uterus surrogacy agreement does not correspond to the borrowing contracts.

**Speech Four: uterus surrogacy and promise of reward agreement**

Based on article 561 of the civil law “promise of reward is an agreement in which the person is committed to pay definite price in return for a work, incorporating both specified and unspecifi
ced parties.”

Some of the judicial authors and writers believe that the uterus surrogacy contract nature can be matched to the promise of reward agreement (Moeeni, 2008, p.29).

The only flaw here is that the promise of reward contract is an allowable agreement but permissible uterus surrogacy contract is necessary.

To eliminate the recent problem, some believe that the uterus surrogacy contract is permissible before pregnancy and it turns out to be obligatory after pregnancy (Rahimi, 2008, p.24). To find a solution to this problem, some of the others suggest that the promise of reward agreement
should be signed meanwhile the obligatory contract signed beforehand (Alizadeh, anonymous, p.159).

According to the above cited materials although it is possible to consider uterus surrogacy contract as a promise of reward agreement by exerting some changes but in the present situation considering the real features of these two agreements in Iran’s judicial system the uterus surrogacy contract cannot be matched with the promise of reward agreement.

Speech Five: uterus surrogacy contract and peace pact

Peace or settlement agreement includes the agreement between parties for the purpose of creating or benefiting from one or several judicial effects without it being dependent on special orders of a definite contract (J’afari LAngeroodi, 1991, p.157). Also, in cases where the existence of a right between two parties is misrepresented, or if the right is the subject of dispute or if the purpose is to avoid the possible future disputes the contract which is being signed based on these and the parties’ mutual remissions can be regarded as a peace pact (katoozyan, 2006, p.280).

According to the expanded and wide concept of peace pact in civil laws and based on articles 758, 754 and 752 of the civil law some believe that the agreement between the infertile couple for taking advantage of the surrogate mother’s womb for carrying and fostering the fetus belonging to them and eventually delivering the infant to the infertile couple should be actualized in the format of a peace pact, in such a manner that, on the one hand, it is the hopeful will of the infertile wife and her husband and, on the other hand, it is the surrogate mother’s volition which leads to the emergence of a judicial action in the peace pact paradigm (Dehghani, 2008, p.159).

Although this point of view seems to be apparently true but one should notice that the uterus surrogacy agreement nature does not conform to a peace pact. As we know, the individuals can sign a settlement agreement or peace pact not only for the uterus surrogacy agreement but also for any other agreement such as purchase contract and so forth and achieve what they intend to through signing such a contract without being it enforceable in a specific format by the legislator. But, the main objective of the agreement parties should have been settling over something otherwise it should be explicitly mentioned in the contract.

Therefore, although the parties can sign a settlement or peace pact for the uterus surrogacy contract ignoring whatever the format of the agreement but the uterus surrogacy contract cannot be corresponding with the peace pact agreement merely from its nature point of view.

Speech Six: uterus surrogacy contract and private contracts (Article 10 of the civil law)
According to the previous materials it seems that the surrogate mother contract is an independent contract which has its own unique and specific constraints and effects.

The main exigency of the aforementioned contract is the surrogate mother’s promise and commitment to carry the fetus to the benefit of and for the applicant couple and consequent submission of the child to them after it is born and this can be done in return for something or at no cost (altruistic causes). According to the above-mentioned subjects, in Iran’s judicial law such agreements are considered among the nameless and anonymous contracts and these can be analyzed within the framework of a verse in the Holy Quran stating that “أفىا بالعقى” meaning “keep your promises”.

According to the article 10 of the civil law “the private contracts can be enforced in respect to those who have signed it and in case it does not straightly and explicitly contradict the country constitution.”

As it was pointed out the surrogate mother’s agreement does not contradict any of the statutory contexts. Therefore, it can be stated that the uterus surrogacy contract is an accepted private contract based on the article 10 of the civil law.

Speech Seven: uterus surrogacy contract from the comparative law perspective

The nature of the uterus surrogacy contract differs in different law systems; for instance, it is naturally regarded as a special contract in the US, Russia, India, Canada, Australia, England, South Africa, and Argentine, while countries such as Sweden, Spain, France, Germany, Turkey and Egypt consider such contracts as unlawful and forbidden (Abbasi, 1931, p.15).

In the United States of America some of the states regard such contracts as crime and some of the other states regard these contracts as invalid. For example signing such a contract is a crime in Michigan and this is while these contracts are inoperative and invalid in states such as Indiana and North Dakota and Arizona. Member countries of the European Union have acted differently. England and Greece have enacted rules and regulations regarding this subject. For specimen, in England the uterus surrogacy procedures act was enacted in 2006. In Belgium, Cyprus, Czech Republic, Holland, Estonia, Finland, Lithuania, Luxemburg, Malt, Portugal, Spain and Romania there exists no specific rule and law regarding the subject of uterus surrogacy but the ancillary fertilization methods which can lead to the uterus surrogacy are allowed. In Canada the commercial use of uterus surrogacy is forbidden. In India, there is no governing law regarding the uterus surrogacy process and this has caused the country to become a suitable and cheap destination for the uterus surrogacy applicants during the recent years and in fact it has become an example of medical tourists (Tabae, 1931, p.112).
In France law system, according to the articles 16-7 and 16-9 of its civil law signing the uterus surrogacy contract is unlawful and based on the articles 15-511 and 24-511 of the penal law of this country it is regarded as a criminal action and those who commit such crimes are sentenced to seven years simple imprisonment and about one hundred thousand Euros as pecuniary punishment and in case that the items of the article 2-2141 of the sanitation and public health code is not observed and enforced they are sentenced to a 5-year simple imprisonment and seven thousand and five hundred Euros as pecuniary punishment (Abbasi, 2011, p.11).

Conclusions:

The uterus surrogacy contract is one of the latest methods of treating infertility by which a woman who is named surrogate mother agrees to carry the fetus resulting from the sperm and ovule of the infertile husband and wife, called peremptory parents, applying for the use of surrogate uterus or a third party by making use of ancillary reproduction methods. The fetus is fused from the sperm and ovule of the infertile couple in laboratory environment and after the infant is born the child is delivered to its peremptory parents and it is possible for the surrogate mother to receive money or a price for doing such an action which is called a reciprocal agreement and it can only performed with altruistic motivations based on relationship or friendship and this sort of uterus surrogacy contract is called non-reciprocal contract. Uterus surrogacy agreement is judicially regarded as a contract, but it is not considered as corresponding to any of the aforementioned definite contracts in the civil law such as renting things or hiring persons, bailment, borrowing agreement, the right to take advantage of the benefits provided by one thing or person and so forth and it should be regarded as private contract according to the article 10 of the civil law and because it is a subject related to the personal features of an individual it is of a very high importance and while according to the article 10 of the civil law the main theme here is the parties’ volitions domination some of the imperative rules and regulations should be enforced and exerted.

Because the issue of uterus surrogacy has become popular in the present era, like blood donation and transplantation and subjects like these and it is one of the so-called newly occurred phenomena we should refer to the ideas and notions ordered by the jurists to find their terms and conditions which is the source of our constitution and law in many of the cases such as family law and especially the subjects related to the personal characteristics.

In a sort of pregnancy based on the uterus surrogacy in which the fetus is formed by another woman’s ovule or the surrogate mother the jurists generally do not consider such a method as permissible; since the embryo formation and consequently the formation of the fetus should be...
through the fertilization of a sperm and ovule of the man and the woman between whom there is a marriage relationship, either perpetual or temporary (discontinuous). So, it can be asserted that morally, judicially and legally the uterus surrogacy in the form of complete and perfect surrogacy in which the surrogate mother is the carrier of the fetus formed by the peremptory parents sperm and ovule is of more interest and can be accepted; of course, in this method there are discrepancies among the jurists and a group of them consider it as forbidden and taboo but the majority of the jurists have ordered in favor of its permissibility, of course in the proponent group of uterus surrogacy some are of the belief that the surrogate mother should not have a husband but many of the other jurists believe that performing such an action does not contradict the problem of the surrogate mother having a husband whose consent should be required in the uterus surrogacy contract.

Also, the jurists consider that the infant’s lineage draws after its peremptory parents in determining the genealogy of the infants of such kind (that is to say the owners of the sperm and ovule) and the surrogate mother in the superiority hierarchy is regarded as the foster-mother of the child and she is inhibited to marry this child but their relationship does not incorporate other effects such as inheritance or tutelage.

There are also discrepancies among the jurisprudents regarding the uterus surrogacy legality the same as there is for the jurists, some of them by basing their deductions on the principles of accuracy and permissibility of everything unless otherwise is reasoned and also this issue that the uterus surrogacy contract does not explicitly contradict the law and also because it is confirmed by reason and by what is understood from the theorem that “whatever is ordered by reason it is also ordered by religious law”, state that the uterus surrogacy contract is valid, but, quite contrary to this, some of the jurisprudents assert that the use of uterus surrogacy is some sort of slavery in the present era and according to the principle that the human body cannot be exploited such a contract is regarded as conflicting with the moral sense and public order of the society and therefore it is deemed to be invalid.
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