

Legitimacy and Legacy: Comparative Analysis of *Sunni* and *Shi'a* Jurisprudence on the Inheritance Rights of Surrogate Children

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Abstract

Assisted reproductive technologies (ARTs), particularly surrogacy, have reshaped global family dynamics, offering solutions to infertility while challenging Islamic law's foundational principles of nasab (lineage) and mirāth (inheritance). This paper examines the compatibility of surrogacy with Shari'ah by analysing the determination of nasab and inheritance rights of surrogate children under Sunni and Shi'a jurisprudence. Using doctrinal and comparative methodologies through Qur'anic verses, hadiths, classical juristic opinions, fatwās and resolutions of bodies such as Al-Azhar and the Islamic Fiqh Academy, the paper finds that Sunni scholars generally prohibit surrogacy due to ikhtilāf al-ansāb (lineage confusion), while Shi'a jurists conditionally permit gestational surrogacy by prioritizing genetic parentage. The paper concludes that collective ijtihād and maqāṣid-based reforms are necessary to preserve lineage while protecting the rights and dignity of surrogate-born children. It recommends that Muslim Scholars develop broad legal and ethical frameworks regulating assisted reproductive technologies, supported by collective ijtihād involving medical experts and policymakers. It further recommends the harmonization of contemporary Islamic bioethical guidelines to safeguard nasab while ensuring that children born through assisted reproductive technologies are not deprived of their fundamental rights and legal protection.

Keywords: Legitimacy, Inheritance Rights, Surrogate children, Sunni Jurisprudence, *Shi'a* Jurisprudence, Islamic Family Law

1.0 INTRODUCTION

The advent of assisted reproductive technologies (ARTs) has revolutionized human procreation, offering hope to infertile couples while igniting ethical and legal controversies worldwide. Since the birth of the first IVF baby in 1978, innovations like in vitro fertilization (IVF), sperm donation, egg donation and surrogacy have proliferated, with global surrogacy markets valued at billions annually.¹ Surrogacy, in

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particular where a woman carries and delivers a child for intended parents has surged, especially in countries like India, Ukraine and the United States, driven by infertility rates affecting 15% of couples and evolving social norms around family formation. Yet, in Muslim-majority societies, these technologies clash with Islamic family law (*fiqh al-ahwal al-shakhsiyya*), which prioritizes the sanctity of marriage, lineage purity (*hifz al-nasab*) and equitable inheritance as divine imperatives. Rooted in Qur'anic verses like *al-Mujādilah* 58:2 ("Their mothers are only those who gave them birth") and prophetic traditions such as *al-walad lil-firāsh* ("The child belongs to the marital bed"), Islamic jurisprudence views procreation as an exclusive marital act, rendering third-party interventions suspect.²

This tension manifests acutely in surrogacy, which fractures the unity of genetic, gestational and social parenthood, challenging classical doctrines of *nasab* (lineage) and *mirāth* (inheritance) across *Sunni* and *Shi'a* schools. In *Sunni* fiqh, surrogacy risks *ikhtilāf al-ansāb* (lineage confusion), equating it to *zinā* (adultery) and denying paternal rights, thus confining inheritance to the gestational mother. *Shi'a* jurisprudence, more accommodating via *ijtihad*, permits gestational surrogacy under conditions, attributing *nasab* to genetic donors and full inheritance accordingly. These divergences highlight a broader dilemma: how to preserve the *maqāsid* (objectives) of *Shari'ah* protecting lineage (*al-walad lil-firāsh*), family and dignity amid biomedical progress. Its objectives are to provide an analytical and comparative assessment of *Sunni* and *Shi'a* positions on surrogacy and inheritance, drawing on scriptural sources, *fatwās* and contemporary rulings.³

2.0 CONCEPT OF LEGITIMACY AND LINEAGE (NASAB) IN ISLAMIC LAW

In Islamic jurisprudence, *nasab* refers to the lawful and biological relationship that connects a child to their parents, established primarily through a valid marriage⁴. Jurists define it as the bond of descent, particularly the paternal link that determines family affiliation⁵. The mother's connection is confirmed through conception and birth, while the father's is affirmed through lawful marriage.⁶ This notion goes beyond biological descent; it forms a core element of personal status law (*ahwal shakhsiyya*), governing matters such as marriage, divorce, parentage, maintenance and inheritance. Classical jurists viewed *nasab* as the

¹ Swarna Jaiswal and Reshma Umair, "The Price of Parenthood: Ethical and Legal Dilemmas in Surrogacy," *International Journal of Creative Research Thoughts (IJCRT)*, Vol. 13, Issue 4 (April 2025), ISSN: 2320-2882

² *Ibid.*

³ O. W. Chima-Agbara, D. A. Odunaike, P. O. Olanrewaju and I. R. Akintoye, "Surrogacy Practices in Nigeria: How Relevant are Religious Beliefs?" *Innovations*, No. 80 (March 2025)

⁴ Maulana, Anas, et al. "Inheritance Rights of Nasabiyyah Children Born Out of Wedlock According to Islamic Family Law." *El-Ussrah: Jurnal Hukum Keluarga* 7.2 (2024): 444-461.

⁵ Parkes, Peter. "Milk kinship in Islam. Substance, structure, history." *Social Anthropology* 13.3 (2005): 307-329.

⁶ Siti Nur Adibah binti Haji Matnor and Cecep Soleh Kurniawan, 'The Birth of Illegitimate Children According to Islamic Law and Legislation in Brunei Darussalam' (2024) 4(2) *Maqasidi: Journal of Sharia and Islamic Studies* 222–230 <https://ejournal.staindirundeng.ac.id/index.php/maqasidi> accessed on 13 June 2025

legal evidence that distinguishes a legitimate child from one born of *zina* (adultery or fornication), where the offspring is not recognized in law as belonging to a father and therefore lacks rights of paternity or inheritance.⁷

The evidentiary value of *nasab* plays a central role in resolving disputes over paternity and legitimacy. Within a lawful marriage, the husband's paternity is presumed, providing legal certainty in matters of inheritance, custody and maintenance⁸. This presumption avoids unnecessary investigations into private marital life and safeguards family stability. In contemporary judicial settings, such as Indonesia's Religious Courts, *nasab* is often proven through documents like birth certificates and witness statements, integrating *Shariah* principles with state procedure. Where *nasab* is not established, a child may suffer social and legal disadvantage, including loss of inheritance rights and social exclusion. For instance, Brunei's Islamic Family Law excludes illegitimate children from paternal lineage and associated entitlements.⁹ These rules reflect the protective purpose of *nasab*: to preserve family order, prevent unfounded claims and uphold the sanctity of marriage.

2.1 Legal Sources: Qur'an, Sunnah, *Ijma'* (Consensus) and *Qiyās* (Analogy)

The doctrine of *nasab* derives its authority from the recognized sources of Islamic law. The Qur'an presents lineage as a sacred trust. *Surah al-Nisa* (4:1) reminds believers of their common origin and kinship ties, while *Surah al-Ahzab* (33:4-5) forbids attributing false parentage. These verses establish truthfulness in lineage as a moral and legal obligation.

The Sunnah reinforces this framework. Prophet Muhammad (peace be upon him) declared, "The child belongs to the marital bed and for the adulterer is the stone" (*al-walad lil-firash wa lil-'akirin al-hajar*), as recorded in *Sahih al-Bukhari* and Muslim. This *hadith* laid down the principle that a child born within a valid marriage is attributed to the husband, ensuring legal stability and protecting the child from social harm.¹⁰ *Ijmā'*, or consensus among jurists, confirms the same rule. Scholars of the *Hanafi*, *Maliki*, *Shafi'i* and *Hanbali* schools agree that *nasab* is valid only where there is a legitimate or, in some cases, an irregular but consummated marriage. The *Shi'a Ithna Ashari* school extends legitimacy to children born within a temporary marriage (*mut'a*), though it rejects any paternity link in cases of *zina*. Jurists also agree on

⁷ *Ibid.*

⁸ Edlund, Lena. "The role of paternity presumption and custodial rights for understanding marriage patterns." *Economica* 80.320 (2013): 650-669.

⁹ *Laws of Brunei (Revised Edition 2012), Chapter 217 – Islamic Family Law*, B.L.R. 0/6/2012.

¹⁰ Akshaya Shukla, 'Evaluation of the Presumption of Legitimacy of a Child and the Muslim Law' (2017) 3(3) *International Journal of Law* 117–119 <www.lawjournals.org> accessed on 13 June 2025

evidentiary conditions, such as a minimum gestation period of six lunar months after marriage to presume legitimacy.¹¹

Through *qiyās* (analogy), classical rulings are applied to modern situations. Jurists use analogical reasoning to address new reproductive circumstances, such as artificial fertilization or cloning.¹² For instance, Shi'a scholars have compared the genetic similarity of cloned children to that of twins, thereby extending the logic of *nasab* even in the absence of direct marital relations. Malaysian jurists¹³ have applied the same reasoning to determine legitimacy in assisted reproduction, provided the birth falls within the legally presumed marital timeframe. These applications show that *nasab* remains adaptable while maintaining its doctrinal core.

2.2 Doctrinal Foundations: The Maxim *Al-walad lil-firāsh* Origin, Purpose and Limits

The maxim *al-walad lil-firāsh* ("the child belongs to the marital bed") forms the foundation of Islamic lineage law.¹⁴ It arose to replace pre-Islamic customs that left paternity uncertain and permitted infanticide. The "bed" represents the lawful relationship between spouses, while the "stone" symbolizes punishment for adultery. Together, they express the ethical and legal intent of the law to protect lineage and deter immorality.¹⁵ The rule serves multiple purposes. It preserves the purity of lineage (*hifz al-nasab*), one of the recognized objectives of Sharia (*maqasid al-Shari'ah*) and provides legal presumption in favour of legitimacy. It promotes social harmony by attributing a child to the husband during marriage or the waiting period (*'iddah*) after divorce. This presumption spares families from public scandal and reduces the need for invasive evidence. Some jurisdictions, such as Perlis in Malaysia, even accept paternal acknowledgment for births under six months if the husband does not contest it, reflecting the law's compassionate intent.¹⁶ Yet the maxim is not absolute. It operates only within a lawful marriage and within accepted gestation limits, generally between 180 and 360 days depending on the school of law. It may be displaced through *li'ān* the procedure of mutual oaths where a husband denies paternity after alleging adultery after which the child is legally linked to the mother alone. Children from void marriages, such as a fifth wife in polygamy,

¹¹ Ebrahimi A and Ghodrati F, 'Comparative Investigation of Surrogacy Laws in Asian Islamic Countries: A Narrative Review' (2025) 13(1) *Journal of Midwifery and Reproductive Health* 4523–4535 <https://doi.org/10.22038/JMRH.2024.70669.2080>, accessed on 22 May 2025

¹² Mohammed Ghaly, 'Islamic Shari'ah Rulings on New Reproductive Technologies' (2010) 42(2) *Journal of the Islamic Medical Association* 120–126.

¹³ Masum, Ahmad, Nehaluddin Ahmad, and Nuarrual Hilal Md Dahlan. "Legitimacy Of Children Born By Artificial Insemination In Malaysia: A Legal Analysis Of Section 112 Of The Evidence Act 1950." *LNS (A) cxiii Legal Network Series* 2 (2021): 1-18.

¹⁴ Sarumi, I. A. R., Mohd, A. B., & Ibrahim, N. B. (2019). A Polemical Discourse over the Legitimation of Illegitimate Children under Islamic Law. *IIUMLJ*, 27, 151.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

are also excluded from the presumption. *Shi'a* jurisprudence in Iran maintains a stricter view, completely denying paternal recognition for children conceived outside lawful union.¹⁷

2.3 Functions of *Nasab*: Legal Paternity, Maintenance, Inheritance and Social Identity

The functions of *nasab* are both legal and social. It confirms paternity, thereby assigning rights and duties to the father, including guardianship and decision-making in family matters. In Indonesian family courts, a confirmed *nasab* obliges the father to support and care for the child even after marital disputes.¹⁸ Through *nasab*, the duty of maintenance (*nafaqa*) becomes enforceable. The father must provide food, shelter and education, as required by the Qur'an (al-Baqara 2:233). Where a child is born without lawful lineage, the responsibilities rest solely on the mother, who create for him the social and financial disadvantage.¹⁹

Inheritance law further demonstrates the significance of *nasab*. A legitimate child inherits fixed portions under the Qur'anic system, whereas an illegitimate child is restricted to maternal inheritance. Statistics from Brunei reveal a growing number of such cases, prompting debate on whether Islamic family law should adopt equitable measures while remaining faithful to doctrinal boundaries.²⁰ Beyond legal rights, *nasab* defines personal and communal identity. It determines family honour, social status and inclusion within a lineage group. Administrative records in Malaysia between 2005 and 2009 show thousands of Malay children registered without paternal names, a condition that can lead to discrimination despite Islamic principles of equality.²¹

2.4 Contemporary Challenges: Genetic Testing, IVF, Sperm Donation and Surrogacy

Advances in science and medicine have created new challenges for *nasab*. DNA testing can provide near-certain proof of paternity, questioning the continued reliance on presumptive maxims. Contemporary scholars, including Sheikh Yusuf al-Qaradawi, support its limited use in disputes where traditional evidence is inconclusive, as seen in Indonesian Sharia courts that now accept DNA evidence under judicial supervision.²² Assisted reproductive methods such as IVF and sperm donation raise deeper legal questions. The introduction of third-party genetic material breaks the unity of the marital bed presumption. *Sunni* authorities permit IVF only between married couples, while *Shi'a* scholars in Iran have authorized certain

¹⁷ Mirshkari, Abbas, and Jamshid Zargari. "Legal Status of Illegitimate Children in Iran: Historical and Contemporary Insights." (2024): 192-220.

¹⁸ Idris, Ahmad Rusyaid, Muhammad Khusaini, and Syaiful Anwar Al-Mansyuri. "Contemporary Islamic Law in Indonesia: The Fulfillment of Child Custody Rights in Divorce Cases Caused by Early Marriage." *MILRev: Metro Islamic Law Review* 3.1 (2024): 1-21.

¹⁹ *Ibid.*

²⁰ Syukriya Husni, Fadilla Syahriani, Alfi Husni, Annisa Wahid and Valensius Ngardi, 'Determination of Nasab of Children Outside of Marriage in the Islamic Legal System: The Role and Decisions of Religious Courts in Indonesia' (2024) 3(1) *HAKAMAIN: Journal of Sharia and Law Studies* 26–36

²¹ Moeinifar M and Ardebeli FA, 'Lineage and the Rights of Cloned Child in the Islamic Jurisprudence' (2012) 13(4) *Journal of Reproduction and Infertility* 183–192.

²² Ahmad Riady and Age Surya Dwipa Chandra, 'Determination of the Child's Nasab in Li'an Cases Through DNA Test in the Opinion of Sheikh Yusuf Al-Qaradawi' (2024) 4(2) *SMART: Journal of Sharia, Tradition and Modernity* 130 <http://ejournal.radenintan.ac.id/index.php/smart> accessed on 25 January 2026

forms of donation under regulated conditions, assigning *nasab* to the genetic parents to avoid lineage confusion.²³

Surrogacy creates further ambiguity. Many Muslim-majority states, including Indonesia, Malaysia, Pakistan and Turkey, prohibit it entirely on the ground that it compromises lineage. In Iran and Afghanistan, surrogacy is permitted under strict contracts that define the intended parents' rights. In jurisdictions without clear rules, such as Uzbekistan, disputes have arisen over the legal parentage of surrogate-born children.²⁴ These developments call for renewed *ijtihād*, or independent legal reasoning, to harmonize religious law with scientific reality. Muslim jurists are increasingly urged to adopt procedural safeguards that respect both the ethical goals of *Shari'ah* and the human rights of children. By adapting the law of *nasab* to contemporary reproductive practices, Islamic jurisprudence can continue to uphold its central aim: the protection of lineage, justice and human dignity.

Having established the doctrinal foundations of *nasab* and its role in preserving lineage and inheritance within Islamic law, it becomes necessary to examine how surrogacy challenges these classical assumptions of parentage and legitimacy in contemporary Islamic jurisprudence.

3.0 SURROGACY AND THE QUESTION OF LEGAL PARENTAGE IN ISLAM

The issue of surrogacy presents one of the most intricate intersections between modern reproductive technology and Islamic jurisprudence, raising profound legal, ethical and theological challenges foremost among them, the determination of *nasab* (legal parentage).²⁵ Within the framework of *Shari'ah*, the protection of lineage (*hifẓ al-nasab*) constitutes a fundamental objective (*maqṣad*), which surrogacy potentially undermines by introducing a third party the surrogate mother into what is traditionally an exclusive marital and procreative relationship.

3.1 Traditional vs. Gestational Surrogacy

Surrogacy is generally defined as an arrangement whereby a woman (the surrogate mother) agrees to conceive, carry and deliver a child for another individual or couple the commissioning or intended parents with the understanding that she will relinquish the child and all maternal rights upon birth. The term “surrogate” originates from the Latin *surrogatus*, meaning “a substitute” or “one appointed to act in place of another”.²⁶

Two primary forms of surrogacy are recognized:

²³ Moeinifar M and Ardebeli FA (*Opt Cit* 10)

²⁴ *Ibid.*

²⁵ Md Zawawi Abu Bakar, Wan Ibrahim Wan Ahmad and Mahyuddin Abu Bakar, ‘Registration Problems of Illegitimate Children among Muslims in Malaysia’ (2017) 5(1) *Journal of Islamic Studies and Culture* 9–15 <https://doi.org/10.15640/jisc.v5n1a2>

²⁶ K. Horsey, “The Future of Surrogacy: A Review of Current Global Trends and National Landscapes,” *Reproductive BioMedicine Online (RBMO)*, Vol. 48, Issue 5 (2024)

1. **Traditional Surrogacy (Genetic or Partial Surrogacy):** In this arrangement, the surrogate provides her own ovum, which is fertilized by the sperm of the intended father through Artificial or Intrauterine Insemination (AI/IUI). Consequently, the surrogate is both the genetic and gestational mother, as she contributes both the egg and the womb. This method establishes a direct biological link between the surrogate and the child.²⁷
2. **Gestational Surrogacy (Host or Total Surrogacy):** Here, the embryo is created externally via In Vitro Fertilization (IVF) using the gametes of the intended parents and implanted in the uterus of the surrogate. The surrogate in this case serves solely as a gestational carrier, having no genetic connection to the child. Legal and theological debates in Islam primarily focus on this latter form, as it detaches genetic identity from gestational experience, thereby complicating the attribution of *nasab*.²⁸

3.2 The Ethical and Legal Dilemma: Who is the “Real” Mother Genetic or Gestational?

The advent of surrogacy fractures the traditional unity of motherhood, previously inseparable in conception, gestation and nurture. It therefore raises the fundamental legal question: *who qualifies as the “real” mother in Islamic law?*

A child born through surrogacy may, in theory, be linked to several potential parents: the sperm donor (biological father), the ovum donor (genetic mother), the surrogate mother (gestational mother) and the commissioning parents (social or contractual guardians). In *fiqh*, the attribution of *nasab* has direct implications for legitimacy, inheritance and marital prohibitions.

- **Argument for the Gestational Mother (Birth Mother):** A majority of *Sunni* jurists hold that the mother is she who gives birth to the child. Their reasoning rests on the Qur’anic injunction: “*Their mothers are only those who gave them birth*” (Qur’an 58:2), which explicitly associates motherhood with the act of parturition. Jurists also invoke the lived hardship of pregnancy and childbirth as an index of maternal identity, affirming that *nasab* follows the woman who delivers the child, even if she is not genetically related.²⁹
- **Argument for the Genetic Mother (Ovum Donor):** Conversely, some scholars especially within the *Shi’a* tradition argue that motherhood should be attributed to the ovum donor, as she constitutes the *aṣl* (origin) of the child’s genetic material. Ayatollah Khamenei, among others, maintains that *nasab* should

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Jadva, V., Murray, C., Lycett, E., & Maccallum, F. (2003). Surrogacy: The experiences of surrogate mothers. *Human Reproduction*, 18(10), 2196–2204. <https://doi.org/10.1093/humrep/deg397>

follow the biological parents who provide the sperm and egg, viewing the surrogate merely as an instrument of gestation.³⁰

- **Lineage Confusion (*Ikhtilāf al-Nasab*):** The primary legal concern is that surrogacy confuses lineage by introducing ambiguity in parental identity. Islam prohibits *ikhtilāf al-ansāb* (lineage confusion) because it threatens family integrity and inheritance certainty. The clarity of descent is a pillar of Islamic family law and any mechanism that introduces uncertainty is viewed as contravening *Shari'ah* objectives.³¹

3.3 Scriptural and Juristic Arguments

3.3.1 Qur'anic Injunctions on Motherhood (Qur'an 58:2; 33:4–5)

Islamic rulings on surrogacy derive from the application of *qawā'id fiqhīyyah* (juristic maxims) and textual analogies to contemporary biomedical developments.³²

- **Qur'an 58:2 (Surah al-Mujādilah):** This verse is pivotal, declaring that those who liken their wives to their mothers are mistaken, for “*none are their mothers except those who gave them birth.*” Jurists interpret this as a definitive textual basis for identifying the gestational carrier as the legal mother.³³
- **Qur'an 33:4–5 (Surah al-Aḥzāb):** While primarily addressing adoption, this passage reinforces the importance of maintaining clear biological lineage, instructing believers to call adopted sons by their true fathers' names. Although not directly concerning surrogacy, the principle of preserving authentic *nasab* applies analogically.³⁴
- **Qur'an 23:5–7 and 70:29–31:** These verses restrict sexual relations to lawful spouses or those within legitimate ownership, proscribing third-party participation in reproduction. Since surrogacy introduces a uterus or gamete external to the marital bond, it is deemed to contravene divine injunctions safeguarding chastity and lineage.³⁵

3.3.2 Prophetic Traditions and Juristic Reasoning

Juristic analogies often equate surrogacy with prohibited sexual acts, based on the principle of preserving lineage purity and marital exclusivity.

- **Surrogacy as *Zina* (Adultery):** Many *Sunni* jurists categorize surrogacy involving a third party as akin to *zina*, as it entails depositing semen or embryos in a woman to whom the man is not lawfully married.

³⁰ Mohsin Raza, Fouzia Batool, Sada Hussain Alvi, Farhad Ahmad Bhatti, Ghulam Safoora and Ghous Uddin Khan, 'Legal Status of Surrogacy in Islam (A Critical Analysis in View of Jurisprudence Ruling)' (2022) 19(3) *Webology* 3289 <http://www.webology.org> accessed on 13 June 2025

³¹ *Ibid.*

³² Fadhilah, Nur, Ahmad Musonnif, and Muhammad Nurraavi Alamsyah. "Reconciling surrogacy with Islamic ethics: Maqāṣid al-sharī'a, ijtihad, and contemporary legal debates." *Sakina: Jurnal of Family Studies* 9.2 (2025): 165-186.

³³ Shrabana Chatterjee, 'Permissibility of Surrogacy in Islamic Law' (2020) *SSRN Electronic Journal* <https://ssrn.com/abstract=3952492> or <http://dx.doi.org/10.2139/ssrn.3952492> accessed 1 October 2025.

³⁴ *Ibid.*

³⁵ *Ibid.*

Accordingly, a child born through such a process is often treated as *walad al-zina* (illegitimate), inheriting only from the gestational mother.³⁶

- **Prophetic Prohibition of Lineage Mixing:** The Prophet (peace be upon him) warned: “*It is not permissible for one who believes in Allah and the Last Day to pour his semen into the womb of one who is not his lawful wife.*” This principle unequivocally forbids third-party involvement in conception.³⁷
- **The Maxim of the Marital Bed (*Al-walad lil-firāsh*):** The Hadith stating “*The child belongs to the marriage bed and the adulterer receives only the stone*” establishes that a child born to a married woman is attributed to her husband unless denied by *li‘ān*. Consequently, if a married surrogate carries an embryo conceived from others’ gametes, the child would, by legal presumption, belong to her husband thus deepening the complications surrounding *nasab* in surrogacy.³⁸

3.4 Modern *Fatāwā* and Rulings

3.4.1 *Sunni* Institutional Positions (Al-Azhar, Islamic Fiqh Academy/Jeddah)

Sunni jurisprudence maintains a near-unanimous prohibition (*tahrīm*) of all forms of surrogacy involving third-party participation.

- **Al-Azhar (Egypt):** Since 1980, Al-Azhar has held that fertilisation must occur strictly between the gametes of a legally married couple, rejecting any involvement of a third party whether sperm, egg, or womb as a violation of lineage preservation.³⁹
- **Islamic Fiqh Academy (OIC, Jeddah) and Islamic Fiqh Council (Makkah):** These authorities, in resolutions issued between 1985 and 1986, categorically prohibited surrogate motherhood, classifying it among methods that engender *ikhtilāf al-ansāb*. The OIC specifically banned implantation of a husband and wife’s embryo in another woman, even as a volunteer, on grounds that it disrupts *nasab* and contravenes *Shari’ah* objectives. Earlier exceptions allowing surrogacy between co-wives were subsequently rescinded.⁴⁰

3.4.2 *Shi’a Marāji’* (Iran and Iraq)

³⁶ 8108 <https://doi.org/10.4102/hts.v79i1.8108> accessed 1 October 2025.

Siraj Islam, ‘Is Surrogacy Haram?’ (2022) *Lamp of Islam Blog* <https://lampofislam.wordpress.com/2022/12/15/is-surrogacy-haram/> accessed 1 October 2025.

³⁷ Bambang Sujadmiko, Nurul Aji, L. W. Mulyani, S. Al Rasyid and I. F. Meutia, ‘Surrogacy in Indonesia: The Comparative Legality and Islamic Perspective’ (2023) 79(1) *HTS Teologiese Studies / Theological Studies* a8108 <https://doi.org/10.4102/hts.v79i1.8108>

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Nur Fadhilah, Ahmad Musonnif and Muhammad Nurravi Alamsyah, ‘Reconciling Surrogacy with Islamic Ethics: Maqāsid al-Sharī’a, Ijtihad, and Contemporary Legal Debates’ (2025) 9(2) *Sakina: Journal of Family Studies* 165–186 <http://urj.uin-malang.ac.id/index.php/jfs> accessed on 22 may 2025

The *Shi'a* tradition, particularly as developed in Iran, adopts a more permissive view grounded in *ijtihad* (independent reasoning) and *maṣlaḥa* (public interest).⁴¹

- **Iran:** Gestational surrogacy is legally recognized and regulated. *Shi'a* jurists argue that implantation of an externally fertilized embryo does not constitute *zina*, as no illicit sexual act occurs.⁴²
- **Ayatollah Khamenei (Iran):** In a 1999 ruling, he permitted surrogacy provided that the embryo originates from the gametes of the married couple. He further suggested that a temporary marriage (*mut'a*) could, under certain circumstances, legitimize the surrogate's gestation an argument wholly rejected by *Sunni* scholars.⁴³
- **Ayatollah Sistani (Iraq):** He also allows surrogacy and gamete donation, advising that contracts should address issues of inheritance and motherhood attribution.⁴⁴
- **Legal Status of the Child:** Many *Shi'a* scholars analogize the surrogate to a *raḍā'a* (wet nurse), acknowledging her gestational role without conferring permanent parental rights. In Iran, while the surrogate may initially appear on the birth certificate, legal parentage is later transferred to the intended genetic parents.⁴⁵

3.5 Comparative Table: *Sunni* and *Shi'a* Stances on the Permissibility of Surrogacy

Feature	<i>Sunni</i> Stance (Majority View)	<i>Shi'a</i> Stance (Dominant View in Iran)
Overall Permissibility	Strictly forbidden (<i>ḥarām</i>) in all forms involving a third party. Consensus upheld by Al-Azhar and the Islamic Fiqh Academy.	Generally permissible for gestational surrogacy under strict conditions ensuring genetic linkage to the intended parents.
Core Argument for Ruling	Preservation of <i>nasab</i> and avoidance of <i>ikhtilāf al-ansāb</i> . Third-party involvement is analogised to <i>zina</i> .	Focus on genetic origin; absence of sexual intercourse distinguishes surrogacy from <i>zina</i> .
Traditional Surrogacy	Prohibited due to use of surrogate's ovum.	Generally impermissible as it confers genetic motherhood on the surrogate.

⁴¹ Khodadadi, Bahman. "Public Interest (Maslahat) in Shi'i Theocracy: Implications for Legal and Political Decision-Making." *Iranian Studies* 58.3 (2025): 490-525.

⁴² Dashtizadeh, P., Mazloom Rahni, A., & Rajabzadeh, A. Legal and ethical challenges of surrogacy contracts in Iranian judicial and medical system. (2019). *Health, Spirituality and Medical Ethics*, 6(4), 52–58. <https://doi.org/10.29252/jhsme.6.4.52> accessed on 13 June 2025.

⁴³ Haddadi, M., Hantoushzadeh, S., Hajari, P., et al. (2025). Challenges and prospects for surrogacy in Iran as a pioneer Islamic country in this field. *Archives of Iranian Medicine*, 28(4), 252–254. <https://doi.org/10.34172/aim.33920>

⁴⁴ Khaled Hamad Fayadh, *The Legal Regulation of Assisted Reproductive Technology in Iraq – Lessons from the Australian Approach* (Being a PhD thesis of the School of Law, 2015)

⁴⁵ *Ibid.*

Gestational Surrogacy	Forbidden, as implantation in a non-wife's womb breaches marital exclusivity.	Permitted; surrogate viewed as gestational host, analogous to a <i>raḍā'a</i> (wet nurse).
Legal Motherhood	Attributed to the birth mother (gestational carrier) per Qur'an 58:2.	Attributed to the genetic mother (ovum donor), though gestational mother retains temporary rights.
Third-Party Gamete Donation	Absolutely prohibited.	Generally permitted by leading <i>marāji'</i> (e.g., Khamenei, Sistani).
Posthumous Surrogacy	Forbidden, as marriage is annulled by death.	Permissibility debated, but generally treated with caution.

Source: Authors

4.0 SUNNI JURISPRUDENCE ON LINEAGE AND INHERITANCE IN CASES OF SURROGACY

The issue of surrogacy, which separates the genetic conception of a child from the act of gestation, raises profound legal and ethical questions within *Sunni* Islamic jurisprudence (*fiqh*). At its core, surrogacy challenges the two most fundamental principles of Islamic family law: the legal determination of parentage (*nasab*) and the sanctity of the marital bond. For the majority of *Sunni* jurists, surrogacy especially when it involves a third party, is unequivocally prohibited, as it threatens the essential objective of preserving lineage (*ḥifẓ al-nasab*), which is among the highest *maqāṣid al-Shari'ah*.⁴⁶

Classical *Sunni* jurisprudence places exceptional emphasis on maintaining the clarity of lineage, ensuring that every child is born within a lawful marital union (*nikāḥ ṣaḥīḥ*) and is attributed to known parents. The four major *Sunni* schools generally prohibit surrogacy involving third-party participation because, as earlier discussed, it leads to *ikhtilāf al-ansāb* (lineage confusion) and undermines the sanctity of lawful marriage. Consequently, surrogacy is frequently treated as inconsistent with the *Shari'ah* objective of preserving lineage.⁴⁷

The principle of *al-walad lil-firāsh* (the child belongs to the marriage bed) governs questions of paternity and reinforces the sanctity of the marital framework. Under this rule, a child born to a married woman is presumed to belong to her lawful husband irrespective of genetic parentage. In cases where a married woman acts as a surrogate, the child is thus attributed to her and her husband, not to the commissioning couple. The Qur'anic verse stating that “*none are their mothers except those who gave them birth*”⁴⁸ further

⁴⁶ Zachariah M, “A Review of the Rulings by Muslim Jurists on Assisted Reproductive Technology and Reproductive Tissue Transplantation,” *Religions*, Vol. 12, No. 720 (2021), <https://doi.org/10.3390/rel12090720> accessed on 26 April, 2025

⁴⁶ *Ibid.*

⁴⁷ Sadia Saeed and Aneeqa Ansari, “A Comprehensive Examination of Surrogacy within the Islamic Framework,” *Guman*, Vol. 6, Issue 4 (Oct–Dec 2023), DOI: 10.63075/guman.v6i4.680

⁴⁸ Qur'an 58:2

establishes that maternity is ascribed to the woman who delivers the child. This creates a conflict between biological and gestational motherhood in surrogacy.⁴⁹

Modern *Sunni* juristic councils have reaffirmed the classical position with explicit rulings prohibiting surrogacy in all its forms. In 1986, the Islamic Fiqh Academy of the Organization of Islamic Cooperation and the Islamic Fiqh Council of Makkah reviewed various methods of assisted reproduction and declared those involving a third party unlawful, citing *ikhtilāf al-ansāb* and the violation of marital sanctity. Institutions such as Al-Azhar and the Islamic Organization for Medical Sciences similarly maintained that procreation must occur exclusively within a lawful marriage and that introducing an external womb or genetic donor fundamentally undermines the institution of marriage and the legal clarity of lineage.⁵⁰

Although a few early jurists considered whether surrogacy could be permitted between co-wives in a polygamous marriage where the embryo of one wife might be implanted in another's womb, such allowances were swiftly rescinded. Contemporary *Sunni* consensus now firmly prohibits this arrangement on the basis that it still introduces ambiguity in determining motherhood and inheritance. The legal principle of *sadd al-dharī'ah* (blocking the means to harm) is frequently invoked to prevent the possibility of lineage confusion, even in exceptional or medically justified cases.⁵¹

In the context of inheritance (*mirāth*), the establishment of legitimate lineage remains a prerequisite for legal succession. Islamic law recognizes inheritance rights only for children born within lawful marriage, as legitimacy (*nasab sharī'ī*) forms the basis of all familial and patrimonial relations. Where surrogacy is deemed invalid, the resulting child cannot inherit from the genetic father or his kin, as no lawful bond exists between them. The child is instead entitled to inherit solely from the woman who gave birth to him the gestational mother and her family. However, *Sunni* law allows the commissioning father to make a voluntary bequest (*waṣīyyah*) or gift (*hibah*) to such a child, provided it does not exceed one-third of the estate and does not infringe upon the rights of lawful heirs.⁵²

The dominant *Sunni* reasoning remains guided by the *maqāṣid al-Shari'ah*, particularly the objective of *ḥifẓ al-nasab*. Jurists maintain that the harm caused by lineage confusion outweighs the personal or emotional benefits of achieving parenthood through surrogacy. The principle of *al-ḍarar lā yuzāl bi al-ḍarar* (harm cannot be removed by another harm) underscores this view. While some modern scholars have invoked *maṣlaḥah* (public interest) or *ḍarūra* (necessity) to argue for limited permissibility in cases of infertility, the mainstream position rejects this reasoning on the grounds that protecting lineage is an

⁴⁹ *Ibid.*

⁵⁰ A. Ebrahimi and F. Ghodrati, "Comparative Investigation of Surrogacy Laws in Asian Islamic Countries: A Narrative Review," *Journal of Midwifery and Reproductive Health*, Vol. 13, No. 1 (2025), pp. 4523–4535, DOI: 10.22038/JMRH.2024.70669.2080

⁵¹ M. Zawawi, A. Mohd and B. Hussain, "Nasab (Filiation) of Children in Assisted Reproductive Technology (ART) under the Shari'ah Discourse," *International Islamic University Malaysia Law Journal (IIUMLJ)*, Vol. 32, No. 1 (2024), pp. 27–64

⁵² *Ibid.*

inviolable legal and moral imperative. Thus, *Sunni* jurisprudence continues to uphold the prohibition of surrogacy, affirming that the desire for a child cannot justify the violation of one of the core objectives of the *Shari'ah*.⁵³

5.0 *SHI'A* JURISPRUDENCE ON LINEAGE AND INHERITANCE IN CASES OF SURROGACY

The *Shi'a* school of Islamic jurisprudence presents a distinctive and pragmatic approach to the issue of surrogacy, particularly gestational surrogacy, diverging considerably from the prevailing *Sunni* consensus. This divergence arises from the epistemological flexibility embedded in the *Shi'a* legal methodology, which accords a greater role to human reason (*'aql*) and independent juristic reasoning (*ijtihad*). Such methodological latitude has enabled *Shi'a* jurists, particularly within the Ja'fari tradition, to accommodate assisted reproductive technologies (ARTs), including surrogacy, within the framework of *Shari'ah* compliance. The application of these principles in *Shi'a*-majority jurisdictions such as Iran has led to the institutionalization and regulation of surrogacy, marking a profound departure from *Sunni* orthodoxy.⁵⁴ In contrast to *Sunni* jurisprudence, the *Shi'a* legal methodology gives wider scope to *ijtihad* and *'aql* (reason), thereby permitting greater flexibility in addressing assisted reproductive technologies such as surrogacy.⁵⁵ A crucial aspect of the *Shi'a* reasoning on surrogacy is the distinction drawn between the biological process of conception and the moral implications of sexual relations. *Shi'a* jurists generally distinguish surrogacy from *zinā* on the basis that assisted reproduction involves no physical sexual relationship, thereby allowing conditional permissibility under regulated circumstances.⁵⁶

Modern *Shi'a* authorities, particularly in Iran, permit surrogacy under specific ethical and contractual conditions, emphasizing biological lineage and the absence of unlawful sexual relations. Iran's regulatory environment reflects this juristic flexibility. Since the early 2000s, surrogacy and embryo donation have been legally sanctioned, supported by the Embryo Donation Act of 2003 and subsequent court practices. Although the Iranian Civil Code lacks a comprehensive statute specifically governing surrogacy, Article 10 which recognizes the validity of contracts not contrary to public order or morality has been invoked to legitimize surrogacy agreements. These arrangements are typically subject to judicial approval and though administrative inconsistencies remain in registering children's lineage, the legal trend aligns with the *fatāwā* recognizing the genetic parents as the rightful legal parents.⁵⁷

⁵³ M. N. U. Al-Mabruri, W. F. Rizki & A. R. Hakimi, 'Children Born out of Wedlock Inherit the Lineage of Their Biological Father: Auda's Maqāsid asy-Syari'a Perspective' (2021) 55(2) *Asy-Syirah Jurnal Ilmu Syari'ah dan Hukum* 415, doi:10.14421/ajish.v55i2.415.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

⁵⁶ A. Ellenbogen, D. Feldberg & V. Lokshin, 'Surrogacy – A Worldwide Demand: Implementation and Ethical Considerations' (2021) 2(2) *Gynecological and Reproductive Endocrinology and Metabolism* 66

⁵⁷ M. Zawawi, et al (n. 37)

An important question in the jurisprudential discourse concerns the identification of the true mother: whether it is the genetic (ovum-providing) or gestational (birth-giving) woman. *Shi'a* jurists such as Ayatollah Khamenei maintain that maternity (*ummūmah*) should be attributed to the genetic mother, as she provides the fundamental biological material from which the child is formed. This reasoning draws analogies with the *rāḍi'a* (wet nurse), whose nurturing role does not establish legal maternity. The surrogate is thus viewed as a temporary custodian of the fetus, performing a gestational function without generating legal or hereditary bonds. The Qur'anic verse stating that "their mothers are only those who gave birth to them" (Q. 58:2) is interpreted in this context as descriptive rather than prescriptive affirming the biological fact of childbirth but not determining legal lineage.

Despite these theological and legal rationales, practical complications persist, particularly concerning inheritance. While Iranian jurisprudence accepts the validity of surrogacy, statutory law has not fully clarified the inheritance rights of children born through such arrangements. Most jurists hold that inheritance follows the genetic link: the child inherits from the biological parents, not from the surrogate. Thus, where both gametes belong to the married couple, the child enjoys full inheritance rights from both. However, in cases involving third-party gamete donation, inheritance becomes more complex. The child's paternity is attributed to the biological father (the sperm donor) and the infertile husband of the woman is regarded as an adoptive parent without hereditary rights.⁵⁸

Ayatollah Khamenei's position typifies this reasoning, permitting surrogacy and third-party donation while affirming that inheritance attaches only to biological lineage. In contrast, Ayatollah 'Ali al-Sistani allows ART procedures but refrains from definitive pronouncements on lineage and inheritance, instead recommending contractual stipulations between the parties. Ayatollah Yousef Sane'i extends permissibility even further, allowing gestational surrogacy within familial relationships under stringent ethical conditions. Conversely, conservative scholars such as Ayatollahs Tabrizi, Lankarani, Bahjat, Montazeri and Nouri Hamadani reject surrogacy, primarily on grounds of *nasab* preservation and moral uncertainty.⁵⁹

Jurist	Stance on Surrogacy & Third-Party ART	Inheritance Ruling
Ayatollah Khamenei (Iran)	Permits gestational surrogacy and third-party gamete donation.	Child affiliated to biological parents; inherits only from genetic father and mother.
Ayatollah Sistani (Iraq)	Permits ART procedures but urges contractual clarity.	No definitive ruling; recommends contracts to regulate inheritance.

⁵⁸O. S. Adelakun, 'The Concept of Surrogacy in Nigeria: Issues, Prospects and Challenges' (2018) 18 *African Human Rights Law Journal* 605, 605–624 <http://dx.doi.org/10.17159/1996-2096/2018/v18n2a>, accessed on 12 January 2026

⁵⁹ *Ibid.*

Ayatollah Yousef Sane'i	Permits gestational surrogacy, including between close relatives.	Generally follows the genetic link principle.
Opposing Scholars	Reject surrogacy on moral and <i>nasab</i> grounds.	No inheritance recognised; surrogate's link emphasised.

Source: Authors

The *Shi'a* interpretation thus represents a methodological and ethical divergence from *Sunni* orthodoxy. *Sunni* jurists view surrogacy as an infringement upon marital sanctity and lineage purity, grounded in the principle of *hifz al-nasab* (protection of lineage). In contrast, *Shi'a* jurisprudence employs *ijtihad* and *maṣlaḥa* (public welfare) to reconcile technological progress with religious ethics. While *Sunni* reasoning assesses surrogacy by its outcome – the potential confusion of lineage – *Shi'a* scholars focus on the nature of the act itself, arguing that medical intervention devoid of sexual intercourse cannot constitute *zinā*.⁶⁰

This divergence has far-reaching implications. By privileging biological over gestational connection, the *Shi'a* framework redefines maternity, paternity and inheritance in line with the realities of reproductive science. It thus transforms *nasab* from a strictly gestational concept into a genetic-legal construct anchored in the intent and biological contribution of the parents. The result is a jurisprudence that remains faithful to the objectives of the *Sharī'ah* – particularly the protection of lineage – while adapting its application to contemporary reproductive realities.⁶¹

6.0 COMPARATIVE JURISTIC ANALYSIS: *SUNNI* AND *SHI'A* PERSPECTIVES ON SURROGACY

The juristic debate over surrogacy in Islamic law underscores one of the most complex doctrinal divides between the *Sunni* and *Shi'a* schools of jurisprudence. The core of this divergence lies in their differing methodologies in *uṣūl al-fiqh* and their interpretation of *Maqāṣid al-Sharī'ah*, particularly the objective of preserving lineage (*hifz al-nasab*). While both traditions recognise the sanctity of lineage as an immutable legal and ethical value, their approaches to reconciling it with modern reproductive technologies vary profoundly.⁶²

Sunni jurisprudence generally prohibits surrogacy because it threatens lineage certainty and marital exclusivity, thereby limiting inheritance rights to the gestational mother. By contrast, *Shi'a* jurisprudence

⁶⁰ M.I Muhammad, *Inheritance in Islam: An Attempt to Simplify One of the Complex Branches of Shari'ah* (Minna: Sadaqatu Tayyibatun Foundation, 2012).

⁶¹ *Ibid.*

⁶² A. Saifuddin, A. I Rosyid and A. Hidayah, "Muhammad Abu Zahrah's Istinbat Method on the Law of Isbat Nasab Son of Zina Based on the Ilhaq Method," *An-Nisa: Journal of Gender Studies*, Vol. 16, No. 1 (June 2023), p. 74–94, p-ISSN: 2086-0749, e-ISSN: 2654-4784

employs *ijtihād* and *maṣlahah* to permit regulated gestational surrogacy by prioritizing biological parentage over gestational status.⁶³

The *Sunni* approach remains largely restrictive. Rooted in the doctrines of *Qiyās* (analogical reasoning) and *Sadd al-dharāʾiʿ* (blocking the means to evil), it seeks to preserve lineage purity by prohibiting any practice that may blur genealogical certainty. The consensus among *Sunni* jurists is that motherhood belongs to the gestational woman, as affirmed by the Qurʾanic verse, “None are their mothers except those who gave them birth” (Qurʾan 58:2). On this basis, the surrogate mother being the one who carries and delivers the child is recognized as the legal mother, irrespective of genetic contribution. Even earlier *Sunni* proposals to permit gestational surrogacy between co-wives in polygamous marriages were later rescinded by the Islamic Fiqh Council and the Muslim World League, reflecting the overriding fear of lineage confusion. Thus, *Sunni* jurisprudence regards surrogacy as impermissible in all its forms and any child born through such means can inherit only from the birth mother, not the sperm donor or intended parents.⁶⁴ In contrast, *Shiʿa* jurisprudence employs *ijtihād* and *maṣlahah* to permit regulated gestational surrogacy by prioritizing biological parentage over gestational status.⁶⁵

Inheritance rules under the *Shiʿa* framework follow this logic. A child conceived through lawful ART using the couple’s gametes inherits from both biological parents. However, when donor gametes are used, the child’s *nasab* and inheritance attach to the biological donor, not to the social or intended parent. This distinction preserves the Qurʾanic imperative of clear lineage while accommodating technological mediation. *Sunni* jurisprudence, however, rejects such separation of genetic and gestational identity, arguing that it introduces ambiguity inconsistent with the divine command of lineage preservation.⁶⁶

The methodological tension lies in the application of *ijtihād* and *maṣlahah*. For *Sunni* scholars, *ijtihād* must operate within the boundaries of precedent and scriptural analogy and cannot override the clear legal objectives protecting lineage. Hence, they invoke the maxim *darʾ al-mafāsīd muqaddam ʿalā jalb al-maṣāliḥ* (averting harm takes precedence over securing benefit). The potential harm of lineage confusion, inheritance disputes and marital destabilization outweighs the benefit of resolving infertility. In contrast, *Shiʿa* jurists employ *ijtihād* expansively, viewing the removal of hardship (*rafʿ al-ḥaraj*) and the promotion of family welfare as legitimate *maṣāliḥ* that justify permitting surrogacy, provided lineage is identifiable.

⁶³ *Ibid.*

⁶⁴ N Dian, k. Setiyowati, *Inheritance Rights of the Heirs of Different Religions According to Islamic Heritage Law (A Study of Decision Number 402 K/AG/2013)*, *South East Asian Journal of Contemporary Business, Economics and Law*, Vol. 19, Issue 4 (2019) 30-36

⁶⁵ *Ibid.*

⁶⁶ S Jaiswal and R Umair, “The Price of Parenthood: Ethical and Legal Dilemmas in Surrogacy,” *International Journal of Creative Research Thoughts (IJCRT)*, Vol. 13, Issue 4 (April 2025), ISSN: 2320-2882 accessed on 6 June 2026.

The *Shi'a* reasoning thus transforms the issue from one of prohibition to controlled regulation, focusing on preserving the family unit rather than prohibiting medical intervention.⁶⁷

This interpretive flexibility has produced markedly different legal outcomes across Muslim-majority jurisdictions. In Iran, where *Shi'a* jurisprudence predominates, gestational surrogacy is legal and widely practiced under judicial supervision, with contractual provisions ensuring that the child is registered under the genetic parents. In *Sunni*-majority Egypt, the Al-Azhar *fatwas* strictly prohibit all forms of third-party involvement in reproduction, viewing surrogacy as contrary to Islamic morality and family law. Pakistan, also predominantly *Sunni*, prohibits surrogacy on similar grounds, though a few reformist scholars have called for limited regulation to protect children's rights. In Nigeria, the absence of a specific statutory framework leaves surrogacy in a legal vacuum, but religious and cultural norms shaped by *Sunni* interpretations effectively render it impermissible, especially in relation to inheritance under Islamic personal law.⁶⁸

State	Dominant Juristic School	Surrogacy Legal Status	Practical Implication for Personal Law
Iran	<i>Shi'a</i>	Legal (Gestational Surrogacy)	Genetic link determines <i>nasab</i> and inheritance; contracts are legally enforceable.
Egypt	<i>Sunni</i>	Prohibited (Haram)	All third-party involvement forbidden; child considered illegitimate and inherits only from birth mother.
Pakistan	<i>Sunni</i> /Mixed	Prohibited (Haram)	Religious rulings prohibit surrogacy, but debates continue on safeguarding the rights of children born through it.
Nigeria	<i>Sunni</i> /Mixed	Unregulated but Deemed Prohibited	Cultural and religious norms oppose surrogacy; inheritance tied to legitimate <i>nasab</i> under Islamic law.

Source: Authors

While both *Sunni* and *Shi'a* traditions affirm the centrality of lineage preservation, their divergent methodologies produce opposite outcomes. *Sunni* jurisprudence prioritises the protection of lineage through prohibition, adopting a preventive stance rooted in scriptural literalism and analogical reasoning. *Shi'a* jurisprudence, through rational *ijtihad*, seeks to preserve lineage through regulation, accommodating

⁶⁷ *Ibid.*

⁶⁸ Atimah Karim, 'Fundamentals of Inheritance (Faraid) in Islam: Ensuring Fair Distribution' (Islam on Web, 16 July 2024) <https://en.islamonweb.net/fundamentals-of-inheritance-faraid-in-islam-ensuring-fair-distribution> accessed on 18 February, 2026

technological innovation within the ethical framework of *Shari'ah*. The result is a bifurcated Islamic legal landscape: one that bans surrogacy in defense of *nasab* and another that legalizes it in service of human welfare while redefining the contours of lineage and inheritance.

In Nigeria, the absence of a comprehensive legal framework regulating assisted reproductive technologies creates ambiguity regarding the lineage and inheritance rights of surrogate-born children under Islamic personal law. Given the dominant *Sunni* orientation of Islamic jurisprudence in many Northern Nigerian States, surrogacy is generally viewed as inconsistent with the objective of preserving lineage (*ḥifẓ al-nasab*). This highlights the need for legislative and juristic engagement capable of addressing emerging bioethical challenges within the framework of *Shari'ah* and contemporary legal realities.

7.0 REFORM, HUMAN RIGHTS AND THE ROLE OF *IJTIHĀD*

The dynamic tension between Islamic jurisprudence and contemporary bioethical challenges calls for a deliberate reconsideration of classical doctrines through the lens of *ijtihād* and the higher objectives of the *Shari'ah* (*maqāṣid al-Shari'ah*). The evolving realities of reproductive technology and family structure have introduced legal questions that classical jurists could not have envisaged. These include the attribution of lineage (*nasab*), inheritance and the legitimacy of children born through assisted reproductive technologies (ARTs). In this context, the question therefore arises whether modern bioethical principles, grounded in human dignity and justice, can coexist with or even necessitate a reinterpretation of Islamic legal rulings without compromising divine intent.

Classical jurisprudence developed its rules on lineage and reproduction at a time when biological processes were understood solely through natural conception within the bounds of lawful marriage. Consequently, rulings on *nasab* and *ḥifẓ al-nasab* were designed to protect the integrity of the family and prevent *ikhtilāṭ al-ansāb* (mixing of lineages). However, the introduction of technologies such as IVF and surrogacy now challenges these parameters by separating genetic, gestational and social motherhood. Revisiting these doctrines through *ijtihād* does not imply deviation from the *Shari'ah*; rather, it seeks to uphold its objectives particularly the preservation of lineage, human dignity (*karāmah insāniyyah*) and welfare (*maṣlaḥah*). The *maqāṣid* framework allows scholars to consider whether existing prohibitions achieve or frustrate these higher objectives in the present context.

Reconciling *Shari'ah* with contemporary realities requires the development of clear statutory or *fiqh*-based mechanisms that can accommodate legitimate technological needs while preserving core ethical boundaries. This could take the form of hybrid legal frameworks combining traditional *fiqh* principles with modern legislative precision. For instance, statutes could explicitly define the parameters of lawful assisted reproduction limiting it to married couples using their own genetic materials while outlining clear procedures for parentage registration, custody and inheritance. Such frameworks would protect the integrity

of *nasab* while providing legal certainty and protecting the rights of the child. Precedents from countries such as Iran, Malaysia and Indonesia demonstrate that context-sensitive models of Islamic bioethics are achievable through systematic *ijtihād* and institutional consultation (*shūrā*).

Suggested reforms must therefore proceed along three lines. First, **legislative clarity**: Muslim-majority states must enact comprehensive laws governing ARTs and surrogacy to prevent exploitation, lineage ambiguity and the marginalization of children born through such means. Second, **fatwa harmonization**: major juristic bodies such as Al-Azhar, the Islamic Fiqh Council and national councils of ulama should coordinate to issue unified guidance that balances *Shari'ah* principles with medical realities. Third, the **establishment of Islamic bioethics councils** at national and international levels would provide an ongoing platform for reviewing emerging biomedical challenges and ensuring that rulings remain responsive to changing contexts.

Reform through *ijtihād* does not signify a departure from *Shari'ah* but its revitalization. The historical adaptability of Islamic jurisprudence demonstrates that when faced with novel circumstances, jurists have always reinterpreted the law to achieve justice, welfare and the preservation of human dignity. In the case of surrogacy and ARTs, the challenge is to ensure that these technologies serve the moral ends envisioned by the *Shari'ah* rather than undermine them. A balanced approach rooted in *maqāṣid*, *maṣlaḥah* and human rights principles can reconcile fidelity to divine law with the legitimate needs of contemporary society affirming that Islamic law, when guided by enlightened *ijtihād*, remains a living and dynamic system of moral reasoning.

8.0 CONCLUSION

The legitimacy of a surrogate child under Islamic law directly determines the child's right to inheritance, as *nasab* (lineage) remains the foundation of familial rights and social identity within the *Shari'ah* framework. Firmly rooted in the Prophetic tradition *al-walad lil-firāsh* and Qur'anic guidance, *nasab* serves as the basis for establishing paternity and maternity, determining inheritance rights, and preserving family order within Islamic law.

This study reveals a clear doctrinal divide between *Sunni* and *Shi'a* jurisprudence on surrogacy. *Sunni* scholars generally prohibit both traditional and gestational surrogacy because of the danger of *ikhtilāṭ al-ansāb* (lineage confusion), thereby restricting inheritance mainly to the gestational mother's side. On the contrary, *Shi'a* jurists, particularly in Iran, Ayatollah Khamenei's *fatwās*, cautiously permit gestational surrogacy by prioritizing genetic origins over gestation. Under this approach, inheritance rights are granted to the genetic or commissioning parents, while the surrogate is viewed as a temporary custodian.

The debate reflects the broader tension in Islamic law between preserving *ḥifẓ al-nasab* and responding to modern reproductive technologies such as IVF and surrogacy. It also exposes the limitations of classical *qiyās* where genetic realities challenge traditional assumptions of parentage.

Finally, the study emphasizes the need for a unified Islamic bioethical jurisprudence guided by *maqāṣid al-Shari'ah*, human dignity, justice, and *maṣlaḥah*. Through collective *ijtihād* and interdisciplinary collaboration, Muslim scholars can formulate balanced legal frameworks that preserve lineage while protecting the rights and welfare of surrogate-born children and affected families in the modern era.