

# HUMAN DIGNITY AND WOMEN'S RIGHTS IN SURROGACY

## A Comparative Analysis of Islamic and International Human Rights Perspectives

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### Abstract

*This study explores surrogacy through the lenses of both international human rights and Islamic law, with particular attention to women's reproductive rights, human dignity, and the well-being of children. As a modern reproductive practice, surrogacy raises complex ethical, legal, and religious questions. Although international human rights instruments do not explicitly regulate surrogacy, they emphasize principles such as autonomy, privacy, and gender equality, which support women's freedom in reproductive decision-making. Islamic law, by contrast, approaches the issue differently within its two main traditions: Sunni and Shia. Sunni scholars generally prohibit surrogacy to safeguard lineage, preserve family integrity, and prevent the exploitation of women, while Shia scholars permit it under carefully defined conditions. Despite these distinctions, both frameworks share a common concern for protecting women's dignity and preventing abuse. By examining the intersections and divergences between them, this study aims to illuminate the ethical, legal, and cultural complexities surrounding surrogacy, particularly in societies where religious and international legal systems coexist. This study argues that although both Islamic law and international human rights invoke human dignity in regulating surrogacy, neither framework fully resolves the tension between women's reproductive autonomy and structural vulnerability, resulting in persistent risks of exploitation. However,*

*farming human dignity either primarily as reproductive autonomy or as moral containment fails to fully address the structural inequalities that shape women's participation in surrogacy arrangements.*

**Keywords:** *Human Dignity, International Human Rights, Islamic Law, Reproductive Rights, Surrogacy*

## INTRODUCTION

With the advancement of assisted reproductive technologies in the late 1980s, surrogacy emerged as one of the most controversial methods of family formation for couples unable to conceive naturally. Beyond its medical dimensions, surrogacy raises profound legal, ethical, and social questions concerning human dignity, women's agency, and the rights of children. These questions become particularly complex in societies where religious legal systems and international human rights norms coexist, often generating unresolved normative tensions.

In most interpretations of Islamic jurisprudence, surrogacy is not recognized as a legitimate method of reproduction. The use of third-party gametes is generally prohibited and is discussed only in highly exceptional circumstances. Moreover, any contractual arrangement related to surrogacy is expected to meet strict ethical and legal standards, ensuring respect for women's dignity, protection of children's rights, preservation of family integrity, and clarity of lineage. Such restrictions are typically justified not as limitations on women's rights, but as measures aimed at safeguarding human dignity, preventing exploitation, and maintaining the moral and legal stability of the family. Nevertheless, critics argue that these restrictions may constrain women's reproductive agency and limit their ability to make autonomous decisions regarding their bodies and fertility.

By contrast, international human rights law, as a global normative framework, places strong emphasis on individual autonomy, privacy, and gender equality. Although no universal human rights instrument explicitly regulates surrogacy, several provisions implicitly support reproductive decision-making.

The right to marry and to found a family, subject to free consent, legal age, and compliance with national laws, is recognized without discrimination. At the same time, international human rights law remains normatively ambivalent toward surrogacy, particularly in light of concerns surrounding commodification, inequality, and the exploitation of women in structurally unequal contexts.

This article offers a comparative analysis of Islamic legal perspectives and international human rights norms on surrogacy, with particular attention to women's reproductive rights and human dignity. It asks whether Islamic legal restrictions and the freedoms articulated within international human rights law genuinely protect women's dignity in the context of surrogacy, or whether, through different mechanisms, they risk reinforcing women's structural vulnerability. The article argues that while both frameworks invoke human dignity as a central normative principle, neither adequately resolves the tension between women's reproductive autonomy and their social and economic vulnerability. Rather than endorsing either an autonomy-centered or a prohibitionist position, this article argues that both frameworks inadequately address the structural inequalities and power asymmetries shaping women's participation in surrogacy arrangements.

Methodologically, this study adopts a normative comparative approach grounded in human dignity theory and the objectives of Islamic law (*maqāṣid al-sharīʿa*). The article is structured into four parts: the first examines surrogacy within international human rights law, the second analyzes Islamic legal perspectives, the third explores key normative and practical challenges, and the final section offers concluding reflections and recommendations.

## **THEORETICAL FRAMEWORK**

The human dignity theory highlights the inherent value of every individual (Hill 2020). It also emphasizes women's right to make independent decisions about their bodies and reproduction (Gozdecka 2020: 2). From this perspective,

women should not be treated as instruments for economic purposes, and their autonomy must be respected (Triviño-Caballero 2023: 543). This framework allows us to assess the impact of surrogacy on women's dignity and the risks of potential exploitation.

*Maqāṣid al-Sharī'a*, a central framework in Islamic jurisprudence, outlines the overarching objectives of Islamic law to protect the fundamental interests of human beings. It emphasizes five key principles: protection of religion, life, intellect, lineage, and property. This framework can guide the evaluation of surrogacy, examining whether it respects women's dignity, children's well-being, and family integrity (Alfahmi 2022: 3–4). By combining these two frameworks, the study analyzes women's rights and dignity from an international perspective, alongside the ethical and familial considerations of Islamic law. This approach offers a balanced and comprehensive understanding of surrogacy.

Human dignity in the context of surrogacy is not a fixed or uncontested concept. While autonomy is often considered central to dignity, unregulated autonomy may expose women to economic and social exploitation. Conversely, excessive protection may restrict women's agency and reinforce paternalistic control. This tension between autonomy and vulnerability constitutes the core analytical lens of this study. Similarly, *maqāṣid al-sharī'a* are employed not as static normative objectives, but as evaluative tools for assessing contemporary legal conflicts, particularly when the protection of lineage may conflict with women's lived experiences and reproductive autonomy.

## LITERATURE REVIEW

Recent studies indicate that surrogacy lies at the intersection of human dignity, women's rights, and religious values, sparking extensive debates in ethics, Islamic law, and international law. While international law focuses on women's autonomy, protection against exploitation, the social and economic realities of surrogate women, and cross-border risks, this perspective emphasizes

women's freedom of choice and individual rights. In contrast, the Islamic perspective prioritizes the preservation of lineage, family integrity, prevention of the commodification of the human body, and family ethics.

From an international law standpoint, women's autonomy and the protection of human dignity are central. Sinanaj (2021), drawing on Kantian philosophy, argues that dignity is closely linked to autonomy, and using women's bodies as economic instruments through surrogacy can threaten their dignity (Sinanaj 2021: 261–286). This underscores the need to balance women's freedom of choice with protection against exploitation, as emphasized in international instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Similarly, Danielowski (2023) views surrogacy as a form of reproductive labor, noting that legal frameworks often prioritize the rights of intended parents while overlooking the social and economic realities of surrogate women (Danielowski, 2023). Terec-Vlad (2023) also points out that cross-border surrogacy, due to differences in national regulations and medical tourism, raises complex issues regarding the protection of the rights of surrogate mothers and intended parents (Terec-Vlad, 2023). This highlights that even within international law, the risk of exploitation and vulnerability of women exists, emphasizing the need for practical and enforceable frameworks.

In Islamic jurisprudence, surrogacy is primarily evaluated in terms of religious permissibility and ethical considerations. Nadeem (2023) notes that most Sunni scholars reject surrogacy due to concerns about lineage and marital integrity, while some Shi'a scholars allow it under specific conditions (Nadeem et al., 2022). Ansari (2023) stresses the need to develop an ethical and legal framework that aligns technological advancements with Islamic principles while protecting the social, psychological, and health-related well-being of surrogate mothers (Ansari & Saeed, 2023).

On a broader ethical level, Sharmin Islam (2023) states that Islamic bioethics considers surrogacy incompatible with the objectives of Sharia, including the preservation of lineage, and emphasizes that the practice can lead to social disruption (Islam et al., 2013). Conversely, Fadhilah, Musonnif, and Alamsyah (2025) suggest that applying *maqāṣid al-sharī‘a* and *ijtihād* can reconcile Islamic law with modern reproductive technologies, provided that this is guided by an ethical framework balancing reproductive needs with Islamic values (Fadhilah et al., 2025).

Overall, these studies show that international law emphasizes women’s autonomy and protection against exploitation, while Islamic thought prioritizes lineage, family ethics, and preventing the commodification of the human body. Both perspectives are concerned with safeguarding women’s dignity, one by offering autonomy as a form of choice, and the other by implementing strict ethical and religious frameworks. However, the question remains as to how well these traditional frameworks can be applied in today’s world, and whether women’s freedom of choice can be ensured alongside sufficient safeguards against abuse. This article departs from both autonomy-centered and prohibitionist approaches by arguing that neither adequately addresses structural inequality and power asymmetry in surrogacy.

## **METHOD**

This study employs a qualitative comparative approach to examine surrogacy from both international human rights and Islamic law perspectives. It aims to highlight similarities, differences, and the ethical and legal tensions within these frameworks. Legal, religious, and scholarly texts were analyzed to provide a comprehensive understanding of the social and human implications of surrogacy.

The research draws on international human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All

Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC), as well as Islamic texts such as the Qur'an, Hadith, and selected fatwas of prominent Sunni and Shia scholars. Additionally, academic literature published between 2000 and 2025 on surrogacy, women's rights, children's rights, and human dignity was reviewed. Sources were selected based on their relevance to reproductive rights, ethical considerations, and legal frameworks.

Content analysis was applied thematically to identify key topics: human dignity and women's rights, children's rights and identity, and potential risks of economic and social exploitation. Each source was coded according to these themes, and findings were organized in parallel to facilitate a comparative analysis between Islamic and international perspectives, highlighting areas of convergence and divergence.

This approach provides a deeper understanding of surrogacy by connecting religious values with universal principles of women's rights and human dignity. It demonstrates how reproductive rights can be recognized and ethically managed within Islamic societies while remaining consistent with international human rights standards.

A key limitation of this study is its reliance on textual and religious sources, without empirical data or community interviews. Although this limits the inclusion of experiential perspectives, it allows for a rigorous analysis of prevailing ethical and legal principles and supports a coherent comparative assessment.

## **DISCUSSION**

### **Surrogacy in International Human Rights Perspective The right of reproduction**

From a human rights perspective, giving birth falls under the right to personal privacy (Kitaoka, 2022). Therefore, governments cannot violate the rights of

surrogate children under the pretext of public order (United Nations, 1996, Art. 17). For example, France prohibited surrogacy citing public order concerns (Bonnet, 2021). Similarly, the ICCPR states that no one can be arbitrarily or unreasonably subjected to interference in their private affairs. Undoubtedly, marriage and having a child are included in this article (United Nations, 1996, Art. 17).

CEDAW convention states that women have the right to decide about the number of children and on the spacing of their pregnancies, and governments have to provide a suitable situation for women to learn about it (United Nations General Assembly, 1979, Art. 16). This article highlights women's right to have children, to decide on pregnancy, and to choose the number of children they want. Although it does not explicitly mention the right to pregnancy or surrogacy, its emphasis on educating women about these matters reflects the importance of these rights and their recognition under international law. Generally, there is no article that directly supports surrogacy, as some doubts and issues about it still exist (Blauwhoff & Frohn, 2016). However, certain articles indirectly uphold the practice within society. Nevertheless, interpreting these provisions as an implicit endorsement of surrogacy remains contested, and international human rights bodies continue to approach surrogacy with caution.

## **Human dignity and women's rights**

Human dignity is one of the basic human rights, which requires that all individuals be treated with respect regardless of their gender or any other discrimination (United Nations, Art. 1). However, many concerns arise regarding surrogate mothers, as most enter this process not out of choice but due to economic pressures, making them highly vulnerable to exploitation (Panitch, 2013). In this regard, under Article 6 of CEDAW, states are obligated to take measures to suppress all forms of trafficking and exploitation of women, which could extend to the commercialization of surrogacy (United Nations General

Assembly, n.d., Art. 6). This risk increases if surrogacy is legally recognized, as it could reinforce gender discrimination and ultimately undermine human dignity. This is one of the potential reasons that no clear action has been taken to support surrogacy (Frohn).

According to the Universal Declaration of Human Rights, people have the right to enjoy their social and economic rights and to respect human dignity (United Nations, Art. 22). Considering the points discussed in this article, men and women have the right to exercise their social rights with government support. Women, who make up 80% (Rudolf & Eriksson, 2007) of domestic violence victims, face physical, emotional, verbal, sexual, social, and economic abuse. Since the right to marriage and family is considered a social right, access to pregnancy and reproductive choices should also be recognized within this framework (United Nations, Art. 16; United Nations General Assembly, 1966, Art. 10).

When surrogacy is treated purely as a reproductive service, reducing women to mere instruments, it violates human dignity (Sinanaj, 2021). This commodification is evident in India, where many women participate due to economic hardship (Deomampo, 2013). If the process also leads to the sale of children, it constitutes a further violation of human dignity (United Nations General Assembly, 1989, Art. 35). This highlights the practical importance of protecting both women's reproductive autonomy and children's rights.

Building on these considerations regarding women's dignity and reproductive autonomy, two central issues emerge in the realm of women's reproductive rights: women's autonomy over their reproductive choices and children's rights to identity and lineage (United Nations, 1979, Art. 16). While international law broadly affirms reproductive freedoms, it does not explicitly recognize surrogacy in a way that creates binding legal obligations. This normative ambiguity leaves the decision to legalize or prohibit surrogacy to individual states, resulting in a patchwork of national approaches.

Countries that allow surrogacy may provide greater formal autonomy to women, but the lack of detailed international safeguards can also increase the risk of economic and social exploitation, as women may be treated as means to an end under the banner of “reproductive rights.” Conversely, countries that prohibit surrogacy attempt to prevent potential harms, yet such restrictions may inadvertently limit women’s reproductive choices and reinforce existing social inequalities. This tension highlights the challenge for international human rights frameworks: while they aim to protect dignity and autonomy, the absence of clear, enforceable standards on surrogacy can produce both opportunities and vulnerabilities for women.

### **The rights of the child in surrogacy**

Children born through surrogacy in different legal systems have the same intrinsic rights as other children, regardless of their legitimacy or illegitimacy. Some of the most important rights that can guarantee the remainder of their rights are the right to identifiable parents, identity, and nationality. The right to have identifiable parents is central for children to enjoy their rights in a calm environment (Wade, 2017). The CRC convention about the role of parent states that: “Both parents have common responsibilities for the upbringing and development of the child” (United Nations General Assembly, Art. 18). Therefore, governments need to provide children’s rights, based on Article 7 of the CRC Convention; states and relevant authorities should support parents in realizing the children’s rights (United Nations General Assembly, Art. 7).

The right of identity is another important children’s right that the CRC convention pointed out directly. Under Article 8 in this convention, “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference” (United Nations General Assembly, Art. 8). HCCH 1993 Adoption Convention states, children’s identity should be preserved even in adoption cases

(Hague Convention on Intercountry Adoption, 1993, Art. 16). Children's identity is an important issue that must not be overlooked. Even if they are placed for adoption and join a new family, no one can deprive them of their identity rights without legal justification, which may vary by country (Dambach & Jeannin, 2021).

The right of nationality means that the surrogate children should be recognized as citizens of their country, the same as the other children (Iliadou, 2024). The CRC convention also mentions the right of nationality for children, which says: every child shall be entitled to a nationality from birth, and governments must ensure the nationality of children, especially in cases where they might otherwise be stateless (United Nations General Assembly, n.d., Art. 7). Article 7 of the Universal Declaration of Human Rights emphasizes equality and prohibits discrimination. This supports the argument, particularly in cases where denying citizenship results in children being unable to access their rights (United Nations, n.d., Art. 7).

Although the Convention on the Rights of the Child clearly states that all children are entitled to nationality from birth, in practice, children born through surrogacy may end up stateless due to conflicting laws between the country of the surrogate mother and that of the commissioning parents (Liu & Pachusanond, 2018). This situation highlights a broader gap in international law regarding surrogacy: just as states enjoy wide discretion over women's reproductive choices, with some legalizing surrogacy and others prohibiting it, differences in national legislation and lack of coordination can put children's fundamental rights at risk.

As a result, while international law provides general protections and freedoms for children and women, in practice, outcomes can create both opportunities and vulnerabilities. Children left stateless are denied access to their social and economic rights, emphasizing the urgent need for coordinated international frameworks to protect the rights of all stakeholders. A concrete

example of this issue involves twins born to a Norwegian woman through surrogacy in India. Since the Norwegian government prohibited egg donation, the twins were not granted Norwegian citizenship, and as a result, their fundamental rights were directly violated (Liu & Pachusanond, 2018).

## **Surrogacy in the Islamic perspective**

Surrogacy as a modern reproductive method raises many questions, especially when viewed through the lens of Islamic teaching. In Islam, there is a specific method for legislation, based on four primary sources of Islamic law (Alwani, 1990). First, the Qur'an, the holy book of Muslims, is the main source for deriving rules. Second, the Hadith, which records the actions and sayings of the Prophet Muhammad (PBUH). Third is Ijma, the consensus of jurists and Islamic scholars. Finally, Qiyas, which involves deducing rules for new cases by comparing them to known cases in the Qur'an or Hadith. This is the way Fuqaha decide about the different arguments and the legitimacy of surrogacy (Lasker & Ghilardi, 2018).

## **Islamic Perspective on Reproductive Method**

In Islam, marriage is considered the only acceptable context for childbirth. This is intended to prevent moral corruption, illicit sexual relations, and other socially undesirable behaviors (Rizvi, 1990). In other words, marriage in Islam is not merely for satisfying biological instincts; it is also a means of spiritual purification. Therefore, specific rules govern both marriage and pregnancy (Mehfooz et al., 2022).

This approach may initially appear stringent, but the most important issue about surrogacy in Islam is who the real mother is the woman who donates the ovum, or the woman who carries the pregnancy (Qur'an, 46:15). In this regard, many complexities still surround this issue because of the differences in interpreting divine laws. For example, in some of the verses of the Quran, it seems

to emphasize the biological mother, as Allah states:” We order humans to be kind to their mother, who gives birth to them with pain. (Al-Qur’ān, 46:15).” In other verses, Allah says, “your mother is the woman who gives you birth (Al-Qur’ān 58:2). In contrast, in other verses of the Quran, Allah Almighty says: “Indeed, we created man from a drop of mixed fluid (Q. 76:2).”

Dr. Yusuf Qarḍawi, a prominent Muslim scholar, states that the mother of a surrogate child is the woman who donates the ovum, not the woman who carries the pregnancy, since the child develops from the ovum (Mehfooz et al., 2022: 25). In contrast, almost all other Muslim scholars believe that the surrogate mother, who carries the pregnancy, is the real mother. They refer to the holy Quran, Surah Al-Mujadila, verse 2, when Allah says: “Your mother is only that one who gave you birth (Abu-Rabia, 2013). These different interpretations reflect the concerns about the permissibility of surrogacy in Islamic jurisprudence.

From the Sunni scholars' perspective, surrogacy is prohibited unless all fertilization and pregnancy steps are done only between legal couples, without a third person's intervention. This perspective belongs to the principle of preserving legitimate parentage and prohibiting mixing in marital relations. So, the surrogacy method, in which another woman carries a pregnancy instead of a legal wife, is forbidden by most Sunni Muslim scholars (Abu-Rabia, 2013). Although some contemporary scholars consider it permissible under specific circumstances.

However, the implementation of these rulings varies significantly across Sunni-majority countries, reflecting diverse legal and cultural approaches. Some, like Saudi Arabia and Indonesia, take a strict textual approach, interpreting the Quran and Hadith literally, and therefore prohibit surrogacy to protect lineage, ensure that childbirth occurs only within marriage, and prevent third-party involvement in reproduction. On the other hand, countries such as Malaysia and Turkey adopt a more flexible approach, guided by the higher objectives of Sharia (*maqāṣid al-sharī‘a*) and the intention (*niyyah*) behind actions. In this view,

surrogacy may be allowed as a medical solution for infertility, provided that ethical guidelines are followed (Fadhilah et al., 2025).

Overall, surrogacy remains a highly controversial practice. In Islamic countries that adopt a textualist approach, the prohibition of surrogacy has produced distinct social and legal consequences. For instance, in Saudi Arabia, surrogacy is not only considered religiously impermissible but is also criminalized under national law. This dual prohibition—both legal and religious—effectively constrains women’s reproductive choices, limiting their autonomy and reducing their ability to make decisions about their own bodies. Such restrictions reflect the priority placed on preserving lineage and marital integrity, yet they simultaneously raise questions about women’s rights and dignity, highlighting a tension between ethical-religious norms and individual autonomy.

In contrast, Indonesia also forbids surrogacy, but its legal framework lacks clear and enforceable guidelines. The only explicit provision is that the woman who gives birth is recognized as the child’s legal mother. This legal ambiguity has created a gray area in which many couples pursue surrogacy informally. However, this informal practice exposes both the children and the surrogate mothers to significant risks (Rina, 2025). For example, birth certificates—which formally establish parental identity and family ties—may not be issued, leaving children vulnerable to statelessness and legal insecurity. Moreover, the absence of formal regulations opens the door to exploitation, as economically disadvantaged women may be recruited under precarious conditions without proper medical or psychological safeguards.

These cases illustrate that these strict prohibitions, while intending to uphold ethical and religious principles, can paradoxically undermine the very human dignity they aim to protect. In Saudi Arabia, the legal enforcement of religious norms restricts women’s agency, whereas in Indonesia, legal ambiguity shifts the risks of exploitation onto women and children, even as the practice is technically prohibited. In both contexts, the gap between normative ideals and lived realities

reveals the limits of textualist approaches: strict rules alone cannot ensure ethical outcomes or protect vulnerable actors, underscoring the need to consider social, economic, and practical dimensions when evaluating reproductive policies.

After discussing Sunni perspectives, it is also important to examine Shi'a interpretations, which approach surrogacy differently. From the perspective of Shi'a jurisprudence, especially in *Maraji* (sources of emulation) such as Ayatollah Makarem Shirazi, Ayatollah Khamenei, and others responding, surrogacy, in itself, is not considered forbidden (*haram*). However, because surrogacy can be associated with acts considered forbidden, such as looking at or touching a non-*mahram* (a person of the opposite sex who is not closely related), Shi'a scholars have limited its practice to emergency situations (Makarem Shirazi, 2025).

This analysis underscores that while textualist and concept-based interpretations aim to uphold ethical and social principles, each carries distinct challenges. A strict textualist approach may inadvertently restrict women's autonomy and reproductive rights, whereas flexible interpretations, if poorly regulated, risk commercialization and exploitation under the guise of religious legitimacy. Both approaches reveal the limits of purely legalistic reasoning, emphasizing the need for a balance between human dignity, women's rights, and the preservation of lineage.

## **Women's Reproductive Rights and Human Dignity**

Beyond jurisprudential debates, surrogacy raises important questions about women's reproductive rights and human dignity. Two key issues are at stake: women's right to make decisions about their fertility, and children's right to identity and lineage. The International Conference on Population and Development (ICPD) in Cairo, 1994, defined reproductive health as a state of complete physical, mental, and social well-being in all aspects related to the reproductive system. It emphasized both women's and men's ability to have children, as well as their freedom to decide when and how many children to have.

The conference also noted that in many Muslim societies, women are often denied these rights due to cultural, religious, and legal factors (Khan, 2012).

Reproductive autonomy is directly linked to human dignity. In both human rights and Islamic thought, dignity is inherent and includes the right to make decisions freely from birth. As Allah says: “And We have honored the children of Adam...” (Qur’an, 17:70). Therefore, women’s right to pregnancy is part of their dignity, and depriving them of this right can constitute a violation. However, Islamic scholars do not infringe on women’s dignity; rather, they aim to protect it. Unrestricted surrogacy could become commercialized, potentially forcing women to bear children for sale, as has occurred in some cases in India. For example, scholars like Dr. Yusuf Qardawi argue that a woman’s reproductive system should only be exposed to her husband’s sperm, maintaining both family integrity and women’s dignity (Mehfooz et al., n.d.). These considerations reflect why scholars adopt a cautious approach: to safeguard women’s fundamental rights while preventing exploitation. In sum, both child and women’s rights in surrogacy require careful consideration of ethical, legal, and religious dimensions, highlighting the need for policies that protect dignity while preventing exploitation.

### **The Rights of The Child in Surrogacy**

In the debate over surrogacy, one of the most important aspects is the rights of the children involved in this method. Generally, in the Islamic perspective, children are equal and have the same rights, such as protection, health, education, and the right to dignity (Karimullah, 2023). Here we will discuss some children’s rights directly affected by the surrogacy method, such as the right of lineage, knowledge of biological parents, and financial and emotional support. Islam also emphasizes protecting children from exploitation in its different kinds, such as child labor, violence, and early marriage (Karimullah, 2023, p. 89).

The right to be protected from exploitation is what most of the Muslim scholars are concerned about. Scholars believe that if surrogacy gets normalized in society, it may lead to the exploitation of children being sold by those who turn surrogacy into a business. Some Islamic researchers warn that the commercialization of surrogacy leads to the commodification of women and children, and even “baby trafficking” (Hathout, 1989), which results in paving the way for various forms of exploitation. A further concern is the right to lineage and knowing one’s biological parents and identity. Muslim scholars argue that surrogacy may cause confusion in a child’s lineage (*ikhtilāf al-nasab*), meaning the child might not know their true biological parents (Abu-Rabia, 2013, p. 56). This is seen as a serious issue in both Islamic and international frameworks of children’s rights.

In addition to the Islamic perspective, international human rights instruments also stress children’s rights in the context of surrogacy. The Convention on the Rights of the Child (CRC), particularly Articles 7 and 8, guarantees a child’s right to know their parents and maintain their identity. Article 3 emphasizes that the child’s best interests must always be a primary consideration. Article 19 requires states to protect children from all forms of exploitation and abuse (United Nations General Assembly, n.d., Arts. 3, 7, 8, 19). These international provisions echo Islamic concerns regarding lineage, parental knowledge, and protection from commercial exploitation.

However, despite these international and Islamic provisions, there remains a significant legal gap concerning surrogacy. The Convention on the Rights of the Child implicitly supports the protection of children born through such methods, yet it fails to provide explicit rules or mechanisms to ensure their welfare. This ambiguity can indirectly violate children’s rights, as it leaves uncertainty about their legal status, parentage, and the purposes for which they are raised (de Sutter, 2019). In countries where surrogacy operates without clear regulations, this lack

of legal clarity increases the risk of child commodification and exploitation, undermining the very principles of the CRC (Bracken, 2025).

## **Comparative Analysis of the Views**

A comparative analysis between Islamic and international human rights perspectives has shown that there are some similarities. Both frameworks are concerned about individuals' human rights in the context of surrogacy. For example, the rights of reproduction, children's rights, and human dignity are emphasized by both (Islam et al., 2013). Moreover, both systems oppose turning surrogacy into a business and the exploitation of women. They emphasize that human dignity must not be violated for economic gain (United Nations, 1948, Arts. 1, 23; Qur'an, 17:70). These similarities turn into differences due to the divergent approaches in their interpretation.

International human rights law does not explicitly regulate surrogacy, but its core principles, particularly privacy and autonomy, indirectly support reproductive choices. This is especially evident through principles such as the right to privacy, which allow women to make autonomous decisions about their bodies (United Nations General Assembly, 1979, Art. 16), including reproductive choices. Although there are no direct references, these principles have been highlighted in different international documents such as the ICCPR and CEDAW (United Nations, n.d., Arts. 17, 23). For instance, in the United States, surrogacy is generally allowed under state laws, reflecting the emphasis on personal choice ("Surrogacy Laws by State," 2024). In contrast, in France, it is prohibited, citing public order concerns.

Compared with international human rights, the Islamic perspective questions the legitimacy of the reproductive process. Many Muslim scholars consider surrogacy unlawful to protect legitimate lineage, uphold women's dignity, and preserve the family structure. Even in Shi'a jurisprudence, which is more flexible in this regard, the use of surrogacy is generally limited to exceptional cases and

must meet specific Islamic conditions (Nadeem et al., 2022). The main difference between the two views is not about valuing dignity or reproductive rights. Rather, it lies in how they define dignity, what kind of reproduction is acceptable, and how they view the role of women in pregnancy. International human rights focus more on personal choice, while Islamic law sees these rights within a moral and family-based framework. This highlights that both frameworks value dignity and protection from exploitation. However, the practical implications for women's autonomy and reproductive decision-making vary significantly (Nadeem et al., 2022, pp. 12–13).

While international human rights law prioritizes autonomy, its silence on exploitation creates loopholes that Islamic law, despite its restrictions, attempts to close through moral safeguards. The core divergence between the two frameworks lies not in their commitment to dignity, but in how dignity is operationalized: international human rights prioritize autonomy, often at the expense of addressing exploitation, while Islamic law prioritizes moral protection, sometimes at the cost of women's reproductive agency.

Table 1. Normative Comparison of Surrogacy under Islamic Law and International Human Rights

Analytical aspect	Islamic Law (Fiqh)	International Human Rights
Normative Foundation	Preservation of lineage ( <i>nasab</i> ), family integrity, and moral order	Individual autonomy, privacy, and gender equality
View on Surrogacy	Generally prohibited in Sunni <i>fiqh</i> ; conditionally permitted in some Shi'a interpretations	Not explicitly regulated; indirectly discussed through reproductive rights and privacy
Human Dignity	Protected through prevention of exploitation and safeguarding family integrity	Linked to reproductive autonomy and freedom from discrimination
Women's Agency	Framed as protection from commodification rather than individual choice	Framed as personal choice, though constrained by exploitation concerns
Risk of Exploitation	Viewed as inherent due to commercialization and power asymmetry	Explicitly acknowledged, especially in transnational surrogacy

<b>Analytical aspect</b>	<b>Islamic Law (Fiqh)</b>	<b>International Human Rights</b>
Status of the Child	Lineage must be clearly determined; separation of genetic and gestational motherhood is problematic	Focus on best interests of the child and legal recognition
Normative Tension	Lineage protection versus women's reproductive autonomy	Autonomy versus protection against exploitation
Legal Certainty	Clear religious prohibition or conditional permission	Fragmented and contested across jurisdictions

As shown in Table 1, although both frameworks invoke human dignity, they prioritize different normative values, resulting in distinct regulatory outcomes.

## CONCLUSION

In conclusion, a comparative analysis of surrogacy from Islamic and international human rights perspectives has revealed significant points of convergence and divergence. While international human rights implicitly support surrogacy, emphasizing personal autonomy, the right to privacy, and gender equality, Islamic Fiqh, especially the Sunni perspective, rejects the surrogacy method due to concerns such as the legitimacy of lineage, potential exploitation, and the preservation of family structure. In contrast, Shi'a Fiqh has a more complicated approach and allows surrogacy in emergencies only.

Despite these differences, both frameworks emphasize preserving women's dignity and preventing exploitation. International human rights emphasize women's freedom in making decisions about reproduction. In contrast, Islamic law emphasizes preserving the moral and familial framework. This analysis assists in a deeper understanding of different approaches to surrogacy in cultural and legal frameworks, and calls for further research into reconciling these perspectives, especially in societies where both legal systems coexist. Future developments in reproductive technologies and legal frameworks will require

ongoing dialogue between these perspectives to ensure that the rights and dignity of all individuals involved are respected and upheld.

Ultimately, both systems aim to uphold human dignity, yet they differ in the path to achieve it. Bridging this divide requires ongoing dialogue that respects both universal and faith-based values. This study concludes that neither framework offers a fully adequate response to the ethical challenges of surrogacy. A dignity-centered approach requires moving beyond abstract protections toward legal frameworks that meaningfully address women's agency, power asymmetries, and socio-economic vulnerability.

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