

Surrogacy: Human Values and Professional Ethics

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ABSTRACT

Motherhood is an instinct--driven physiological phenomenon. The instinct of motherhood is the most powerful desire that exists in all living creatures, including all animals and humans. According to ancient Indian philosophy, the biological purpose of life is to propagate one's own traits (genes), and all living creatures are here in a transition phase to pass on their own traits (genes) to the next generation. Propagation is the ultimate purpose of any species; therefore, the birth of an offspring is always dependent on the factors that lead to high chances of survival for the offspring. For example, birds migrate thousands of kilometers to find a suitable place where the environment can support the high chances of survival of their offspring. Infertility is generally known as a social stigma in India. It is hypothesized that the agony and trauma of infertility are best felt and described by the infertile couples themselves. Though infertility does not claim the life of an individual, it inflicts a devastating influence on the life of an individual for not fulfilling the biological role of parenthood, for no fault of his or her own. It is also known that, in general, Indian society has a very stable family structure, a strong desire for children, and particularly for sons to carry forth the lineage, or Vansh. Infertility can now be treated using new medical technologies collectively called assisted reproductive technology (ART), such as in vitro fertilization (IVF) or intracytoplasmic sperm injection (ICSI), etc. There are different types of infertility, and in some cases, it would be physically or medically impossible or undesirable to carry a baby to term. Hence, to fulfill the desire of such infertile couples to have a child, surrogacy comes as an important option.

Keywords: Reproductive Techniques, Surrogacy, Stigma, Motherhood, Infertility, Pregnancy Offspring, Jurisdictions

Introduction:

Surrogacy is a method or agreement whereby a woman agrees to carry a pregnancy for another person or persons who will become the newborn child's parent after birth. Intended parents may seek a surrogacy arrangement when pregnancy is medically impossible, pregnancy risks present an unacceptable danger to the mother's health, or a man or male couple wish to have a child. Monetary compensation may or may not be involved in these arrangements. If the surrogate receives money for the surrogacy, the arrangement is considered commercial surrogacy; if she receives no compensation beyond reimbursement of medical and other reasonable expenses, it is referred to as altruistic. The legality and costs of surrogacy vary widely between jurisdictions, sometimes resulting in interstate or international surrogacy arrangements. There are laws in some countries that restrict and regulate surrogacy and the consequences of surrogacy. Some couples or individuals wanting a child in this manner but who live

in a jurisdiction that does not permit surrogacy may travel to another jurisdiction that permits it.

Types of surrogacy: The fertilization of the egg may take place in a number of ways, each of which has implications for the genetic relationship of the resulting child with the surrogate and the future parents. There are two main types of surrogacy: gestational surrogacy and traditional surrogacy. In the United States, gestational surrogacy is more common than traditional surrogacy and is considered less legally complex.

Traditional surrogacy (also known as partial, genetic, or straight surrogacy) involves the natural or artificial insemination of a surrogate. If the intended father's sperm is used in the insemination, then the resulting child is genetically related to the intended father and to the surrogate. If donor sperm is used, the resulting child is not genetically related to either intended parent but is genetically related to the surrogate. In some cases, an insemination may be

performed privately by the parties without the intervention of a doctor or physician. In some jurisdictions, the 'commissioning parents' using donor sperm need to go through an adoption process in order to have legal rights with respect to the resulting child. Many fertility centers that provide surrogacy assist the parties through the process.

Gestational surrogacy

Gestational surrogacy (also known as host or full surrogacy) was first achieved in April 1986. It takes place when an embryo created by in vitro fertilization (IVF) technology is implanted in a surrogate, sometimes called a gestational carrier. Gestational surrogacy may take a number of forms, but in each form, the resulting child is genetically unrelated to the surrogate; the embryo is created using the intended father's sperm and the intended mother's eggs. The resulting child is genetically related to both intended parents. The embryo is created using the intended father's sperm and a donor egg, where the donor is not the surrogate. The resulting child is genetically related to the intended father. The embryo is created using the intended mother's egg and donor sperm. The resulting child is genetically related to the intended mother. A donor embryo is implanted in a surrogate. Such an embryo may be available when others undergoing IVF have embryos left over, which they donate to others. The resulting child is genetically unrelated to the intended parent.

Review of literature:

Having another woman bear a child for a couple to raise, usually with the male half of the couple as the genetic father, is referred to in antiquity. Babylonian law and custom allowed this practice, and an infertile woman could use the practice to avoid a divorce, which would otherwise be inevitable.

There has never been a time when surrogacy has generated so many headlines or research articles. Barely a week goes by without another celebrity parent welcoming a baby born from surrogacy; there is news from somewhere where attempts to regulate the practice (positively or negatively) are being considered or attempted (see, for example, Au, 2023; Errigo, 2023; Page, 2023) or, unfortunately, a scandal has broken (Lynam, 2018; Neofytou, 2023; Thu, 2023).

At the same time, the practice of surrogacy is now regularly the subject of academic study, both theoretical and (increasingly) empirical, by sociologists, psychologists, legal scholars, anthropologists and others.

It is common practice among those discussing surrogacy to refer to 'altruistic' or 'commercial' surrogacy. However, the reality is that no such binary distinction exists. As noted by the Law Commission of England and Wales and the Scottish Law Commission in their recent joint consultation on the UK's surrogacy laws, the terms unhelpfully mean different things to different people and in different contexts (Law Commission of England and Wales, Scottish Law Commission, 2019, para. 2.14). Variations in the types of payment allowed and to whom, as well as service models or activities undertaken by third parties in support of surrogacy arrangements in conjunction with the type of contractual framework permitted, all affect whether an arrangement could be deemed 'altruistic' or 'commercial' (see Horsey, 2018, pp. 16–19).

As König and colleagues have argued (König et al., 2022), it should be noted that there is no singular mode of surrogacy and that surrogacy arrangements take many forms; thus, we should think of 'surrogacies' when discussing diverse practices and experiences. In addition, even in commercial surrogacy jurisdictions, the motivations of surrogates (even if they are personally compensated) can be altruistic. Altruism and payment are not necessarily mutually exclusive (see, for example, Alghrani and Griffiths, 2017; Ferolino et al., 2020; Mahmoud, 2023; Riddle, 2021; Smietana, 2017). Nevertheless, payment to surrogates, or 'reimbursement that goes beyond reasonable and itemized expenses incurred as a direct result of the surrogacy arrangement', can be one indicator of commercial surrogacy, as identified in the report of the UN Special Rapporteur on the sale and sexual exploitation of children (de Boer-Buquicchio, 2018, para. 39).

Some commercial surrogacy destinations seek to put safeguards in place to protect all parties. A recent example can be seen in New York's Child-Parent Security Act: Gestational Surrogacy

Agreements, Acknowledgment of Parentage, and Orders of Parentage 2021, which legalized gestational surrogacy and provides a simple path to establish legal parental rights for intended parents in the context of licensed surrogacy agencies and alongside a 'Gestational Surrogates' Bill of Rights'. However, a commercial approach to surrogacy, particularly when it takes place in low- or middle-income countries, can raise ethical concerns because of the dual risk that profit-making entities will act primarily to further their own advantage and that paying a woman to have a child renders her vulnerable to exploitation by wealthier and more powerful intended parents or third parties (de Boer-Buquicchio, 2018; Bowers et al., 2022). Furthermore, there is often a wide disparity between agency and other fees and the amount that surrogates are paid; in many cases, what the surrogate receives is a small fraction of the total that intended parents spend.

Many developments in medicine, social customs, and legal proceedings worldwide paved the way for modern surrogacy.

1936: In the U.S., pharmaceutical companies Schering-Kahlbaum and Parke-Davis started the pharmaceutical production of estrogen.

1944: Harvard Medical School professor John Rock became the first person to fertilize human ova outside the uterus.

1953: Researchers successfully performed the first cryopreservation of sperm.

1971: The first commercial sperm bank opened in New York. 1978: Louise Brown, the first "test-tube baby," was born in England, the product of the first successful IVF procedure.

1980: Michigan lawyer Noel Keane wrote the first surrogacy contract. He continued his work with surrogacy through his Infertility Center, through which he created the contract leading to the Baby M case.

1985: A woman carried the first successful gestational surrogate pregnancy.

1986: Melissa Stern, otherwise known as "Baby M," was born in the U.S. The surrogate and biological mother, Mary Beth Whitehead, refused to cede custody of Melissa to the couple with whom she made

the surrogacy agreement. The courts of New Jersey found that Whitehead was the child's legal mother and declared contracts for surrogate motherhood illegal and invalid. However, the court found it in the best interest of the infant to award custody of Melissa to the child's biological father, William Stern, and his wife, Elizabeth Stern, rather than to Whitehead, the surrogate mother.

1990: In California, gestational carrier Anna Johnson refused to give up the baby to her intended parents, Mark and Crispina Calvert. The couple sued her for custody (Calvert v. Johnson), and the court upheld their parental rights. In doing so, it legally defined the true mother as the woman who, according to the surrogacy agreement, intends to create and raise a child.

2009: The Chinese government increased enforcement of the gestational-surrogacy ban, and Chinese women began coming forth with complaints of forced abortions. Surrogacy has the potential for various kinds of clashes between surrogate mothers and their intended parents.

Legal issues: Surrogacy is controversial around the world, raising difficult moral, social, and legal issues. As a result, the legal situation varies considerably. Many countries do not have laws that specifically deal with surrogacy. Some countries ban surrogacy outright, while others ban commercial surrogacy but allow altruistic surrogacy (in which the surrogate is not financially compensated). Some countries allow commercial surrogacy with few restrictions. Some jurisdictions extend a ban on surrogacy to international surrogacy. In some jurisdictions, rules applicable to adoptions apply, and in others, the practice is unregulated.

As of 2013, places where a woman could legally be paid to carry another's child through IVF and embryo transfer included India, Georgia, Russia, Thailand, Ukraine, and a few U.S. states. Laws dealing with surrogacy must deal with the enforceability of surrogacy agreements. In some jurisdictions, they are void or prohibited and some jurisdictions distinguish between commercial and altruistic surrogacy. The different issues raised by traditional and gestational surrogacy mechanisms for the legal recognition of the

intended parents as the legal parents, either by pre-birth orders or by post-birth adoption: Although laws differ widely from one jurisdiction to another, some generalizations are possible.

Even in jurisdictions that do not recognize surrogacy arrangements, if the genetic parents and the birth mother proceed without any intervention from the government and have no changes of heart along the way, they will likely be able to achieve the effects of surrogacy by having the surrogate mother give birth and then give the child up for private adoption to the intended parents. If the jurisdiction specifically prohibits surrogacy, however, and authorities find out about the arrangement, there may be financial and legal consequences for the parties involved. One jurisdiction (Quebec) prevented the genetic mother's adoption of the child, even though that left the child with no legal mother.

Ethical issues:

Ethical issues that have been raised with regards to surrogacy include the following:

To what extent should society be concerned about exploitation, commodification, and/or coercion when women are paid to be pregnant and deliver babies, especially in cases where there are large wealth and power differentials between intended parents and surrogates?

To what extent is it right for society to permit women to make contracts about the use of their bodies?

To what extent is it a woman's human right to make contracts regarding the use of her body?

Is contracting for surrogacy more like contracting for employment or labor, or more like an abusive or exploitative contractual relationship, for example, where one party donates a kidney or otherwise gives up a fundamental right?

Which, if any, of these kinds of contracts should be enforceable? Should the state be able to force a woman to carry out a "specific performance" of her contract if that requires her to give birth to an embryo she would like to abort or to abort an embryo she would like to carry to term?

What does motherhood mean? What is the

relationship between genetic motherhood, gestational motherhood, and social motherhood? Is it possible to socially or legally conceive of multiple modes of motherhood and/or the recognition of multiple mothers? Should a child born via surrogacy have the right to know the identity of any or all of the people involved in that child's conception and delivery?

Psychological concerns:

The feelings toward pregnancy and the relationship with family and relatives. The complications of pregnancy and the religious and financial problems of surrogacy. Coercion to have no feeling to baby (feelings toward pregnancy) (experiences acquired in pregnancy). It seems that the separation from the newborn and handing the child over to the commissioning couple will be a distressing and painful experience for a surrogate mother. However, there is inconsistent and conflicting evidence about the emotional effects of the uterus donation process on surrogate mothers. For example, in a study by Ciccarelli, fourteen surrogate mothers were asked to report their feelings or concerns about relinquishing the child. One mother reported emotional distress over the relinquishment, and two others reported a strong instinctual urge to bond with the child. The remaining eleven did not feel bonded with the child, which may seem to indicate that for the majority of surrogates, the issue of having to relinquish the child did not appear to be a problem. Ber concluded that pregnancy can be painful for surrogate mothers as much as for infertile mothers. Some evidence shows that baby transfer may lead to considerable distress and emotional problems in the uterus of donor mothers. On the other hand, there is a concern that a lack of maternal attachment to the baby during the surrogacy process may be challenging for the health of both the mother and the baby.

The important bond between mother and child, which derives from both biological and cognitive/psychological aspects of human nature, begins during pregnancy and continues after birth. Surrogacy ruptures this significant bond. The study accomplished in England by Jadva showed that all of the surrogate mothers in the postpartum period, with no doubt, delivered the babies according to previous

agreements. The follow-up of those women showed that 32% of women had emotional and psychological problems for several weeks after losing the babies. After a few months, this rate decreased to 15% and continued until 1 year, only in 6% of cases.

Fear of husband reactions in marital relationships is the first code of the second sub-theme (relationships with family, relatives, and commissioning couples) of the first main theme (experiences acquired in pregnancy). In the present study, most of the women were concerned about their sexual relationships during pregnancy and the disruption of family relationships. There were a few surrogate mothers who complained about an insignificant decrease in libido. Jadva, in a study on the marital satisfaction of women, found that 16% of the surrogate mothers had low marital satisfaction, 4% had severe problems in their marital relationship with their spouse, and 80% had moderate or high marital satisfaction.

One of the significant issues affecting the emotional health of surrogate mothers is the attitude of friends, colleagues, and the general public towards surrogacy. Lack of social support due to the negative attitude of people can make surrogate mothers psychologically vulnerable. Surrogate mothers may encounter annoying reactions from people. Jadva et al., in a study on the experience of surrogate mothers in raising the issue with their families, showed that in 7% of the cases, the family reaction was negative, in 48% it was positive, and in 46% it was neutral or mixed of negative and positive. The follow-up study showed that family feelings toward this issue were positive in 76% of cases, and only 3% of the cases had a negative feeling one year after child delivery. Also, Blise believes that there is a risk that surrogate mothers will be humiliated by their families or friends, which will affect their psychological health. A study has followed a cohort of 32 surrogacy, 32 egg donation, and 54 natural conception families through to age seven, reporting the impact of surrogacy on the families and children at ages one, two, and seven.

At age one, parents through surrogacy showed greater psychological well-being and adaptation to parenthood than those who conceived naturally; there were no differences in infant temperament. At age two,

parents through surrogacy showed more positive mother-child relationships and less parenting stress on the part of fathers than their natural conception counterparts; there were no differences in child development between these two groups. At age seven, the surrogacy and egg donation families showed less positive mother-child interaction than the natural conception families, but there were no differences in maternal positive or negative attitudes or child adjustment. The researchers concluded that the surrogacy families continued to function well.

Conclusion:

The practice of surrogacy is not going to stop. Nor should it, when it is known that models of good practice exist in which surrogacy can be demonstrated to be a legitimate form of family building. There are some who will never sway from the belief that surrogacy is inconsistent with human dignity and exemplifies the commodification of reproductive capacities in women and children. However, this is an ideological position and is not borne out by empirical studies conducted in regulated surrogacy environments, either altruistic, or some commercial ones. It is necessary to mention here that the couple's insistence does not agree with what science believes. It does not matter to which religion the surrogate belongs, as the child is genetically part of the couple. Religion is interpreted according to conditions, education, time, and circumstances. Surrogacy is a social act of the highest level of service, which is scientific and brims with goodwill. A person's opinion based on a lack of information should not harm others. Like medicine is prescribed for the treatment of a disorder, in the same way, surrogacy is also a method of treatment. To give a womb for rent means to nurture the fertilized egg of another couple in your womb and give birth to the child with a specific intention, the intention here being either money, service, or altruistic reasons. Surrogacy is the union of science, society, services, and people that make it a reality. Surrogacy leads to a win-win situation for both the infertile couple and the surrogate mother. The infertile couple is able to fulfill their most important desire, and the surrogate mother receives a suitable reward.

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