

## Research on the Legalization of Surrogacy

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### Abstract

The emergence of human assisted reproductive technology has brought good news to mankind, and surrogacy is one of them, and it has also caused many social problems, and has caused a lot of criticism and blame. Although surrogacy has not been widely accepted and recognized at the moral and ethical level, it does not mean that the surrogate's ability to act is evil, and the complete prohibition of surrogacy is not a long-term solution. On the contrary, the law on surrogacy cannot be totally denied, nor can it take an evasive attitude to the problems caused by surrogacy. Certain legal measures should be taken to actively guide and legalize the limited surrogacy.

### Keywords

Surrogacy; Social problems; Legal measures

### 1. Related concepts of surrogacy

#### 1.1 The concept of surrogacy

The first related concept of "surrogacy" in our country did not clearly define the specific definition of surrogacy, and the interpretation of surrogacy at home and abroad is also different. This article believes that surrogacy refers to the fact that the pregnancy client cannot or is difficult to carry out the pregnancy due to some special reasons unilaterally or by both parties. The client and the surrogate mother enter into a surrogacy agreement on a voluntary and equal basis, under the premise of no sexual relations. With the help of human assisted reproductive technology, the surrogate mother completes the gestation process of the fetus, and is an act of handing over to the client to raise it after delivery.

#### 1.2 Features of Surrogacy

Technical. Surrogacy is different from traditional natural reproduction. As a derivative of human assisted reproductive technology, surrogacy also relies on medical technology. The fetus is actually a living body produced by modern medicine. From culturing embryos to transferring embryos, the process relies on modern medical technology and has technical characteristics.

Voluntary. The prerequisite of surrogacy must be based on both parties, that is, the client of surrogacy and the surrogate mother are on an equal and voluntary basis, and both express their true intentions to reach relevant agreements. It must be clear that in this process, the surrogate mother must have full civil capacity, and the choice of the practical behavior of surrogacy must be a choice made by her free will, knowing and expressing acceptance. Because of his freedom of will and his choice of behavior are voluntary. Therefore, surrogacy is voluntary.

Phased. Surrogacy does not just refer to the process of life gestation. In addition to the process of pregnant women giving birth, surrogacy also includes the previous processes of taking eggs and sperm, cultivating fertilized eggs, and embryo implantation. Therefore, the surrogate mother only completes the entire surrogacy process. One stage. The stage of surrogacy refers to the entire stage from the implantation of the embryo to the birth of the child.

#### 1.3 Types of surrogacy

Surrogacy is divided according to different standards, and there are many types. This article will classify surrogacy from two perspectives: whether to pay and whether there is a genetic association between the surrogate mother and the surrogate child.

### **1.3.1 Full surrogacy and partial surrogacy**

This classification is based on whether there is a genetic association between the surrogate mother and the surrogate child. Complete surrogacy means that there is no genetic connection between the surrogate baby and the surrogate mother. The surrogate mother uses her uterus as a carrier to carry out related pregnancy and childbirth. There are three main types of embryos implanted in full surrogacy: The first type is the embryo formed by the combination of sperm and egg of the client's husband and wife. The second category is an embryo formed by the combination of sperm or egg provided by one of the entrusting parties and the donated sperm or egg. The third is that the sperm and eggs are all embryos donated by others. Partial surrogacy can also become genetic surrogacy, and the surrogate mother and the surrogate child are genetically related. The surrogate mother uses her own eggs and the sperm of the husband or other donors of the client's husband and wife for surrogacy. Therefore, compared with full surrogacy, partial surrogacy can cause more ethical and moral controversy.

### **1.3.2 Commercial surrogacy and unpaid surrogacy**

According to whether surrogacy obtains relevant economic benefits, it can be divided into commercial surrogacy and unpaid surrogacy. Commercial surrogacy is also called paid surrogacy, which means that the surrogate mother has obtained some economic benefits through the act of surrogacy. The client of surrogacy pays high surrogacy fees to the surrogate mother, as well as related reasonable expenses, such as medical expenses and nutrition expenses for the surrogate mother. The surrogate mother of commercial surrogacy is not out of pure help, but a profitable surrogacy. However, unpaid surrogacy is not the same as commercial surrogacy, and unpaid surrogacy will not involve economic benefits. At the same time, unpaid surrogacy can also be divided into two types. One is that the surrogate mother is purely helping, and the client does not need to pay any fees. The other is that the surrogate entrusting party only needs to pay the surrogate mother the relevant reasonable expenses, such as medical expenses or nutrition expenses, etc., and no additional surrogacy expenses are required for the surrogate mother.

## **2. Feasibility analysis of the limited legalization of surrogacy in my country**

### **2.1 Legal aspect**

#### **2.1.1 The reality of open surrogacy**

In recent years, due to the increasing pressure of people's work and life, the infertility rate has continued to rise. Some infertile people have their own children through surrogacy. The demand side of surrogacy is not only infertile patients, but also same-sex couples and some elderly couples. Artificial insemination and test-tube babies were also questioned when they first appeared. With the development of society, the public has gradually accepted this human assisted reproductive technology, indicating that the emergence and development of human assisted reproductive technology is in accordance with the laws of nature. And surrogacy uses the same recognition of assisted reproductive technology, so the national ban on surrogacy across the board is not the best way. If the country does not introduce relevant legislation to regulate it from the legal level, the situation of underground surrogacy in today's society is likely to cause chaos in the social order, and the underground surrogacy industry will become more rampant. The total prohibition of the Ministry of Health cannot curb the desire of those who want to have a child. On the contrary, they will want to have their own children even more crazily and fiercely, which will lead them to adopt improper or even illegal behaviors. Therefore, the state should also pay attention to the needs of such people and face up to the relevant demands of the legalization of surrogacy. Therefore, this article believes that for surrogacy, limited open surrogacy is better than a one-size-fits-all ban on surrogacy. Facing the modern society with increasing demand for surrogacy, the law should focus on its value and functionality, limited and reasonable open surrogacy, and should be formulated at the same time. Special laws regulate it and establish an effective mechanism of checks and balances.

### **2.1.2 Principle of No Harm and No Prohibition**

Bodenheimer explained this principle, that is, the only reason why people have a reason to intervene in the freedom of movement of any of them individually or collectively is to protect themselves. To put it simply, it means that in human society, the only legitimate reason to interfere with the freedom of action of others is to prevent harm to others. At the same time, Article 51 of my country's Constitution stipulates that only when citizens exercise their freedoms and rights and harm the interests of the country, society, collectives, and other people, they should be restricted. Conversely, if people's own actions do not cause harm to others, but they have to ask the country's permission to implement such actions, this article believes that the cart is turning the cart before the horse.

The surrogacy behavior discussed in this article is also true. Surrogacy is based on the true intentions of both the surrogacy client and the surrogate mother, and is reached on an equal and voluntary basis. Therefore, the surrogacy behavior does not harm the third party other than both parties. The interests of the three. What we need to think about is whether reasonable open surrogacy is more conducive to promoting family harmony and happiness. The society's attitude towards surrogacy is also divided into two directions. Opponents of surrogacy believe that surrogacy is against ethics and morality. This is the main reason why they oppose surrogacy. However, the emergence of new things is bound to be accompanied by a lot of controversy, just like test tube baby and artificial insemination technology, when these two first appeared, there were also great voices of opposition. But with the development of the times and the advancement of human thinking, people have gradually accepted these technologies and have benefited many families. Surrogacy, as a kind of human assisted reproductive technology, also brings hope to infertility patients, and it should be gradually accepted by people. It cannot be directly regarded as a violation of ethics and morals. On the contrary, the state should focus on integrating surrogacy and legislation. Therefore, according to the principle of no harm and no prohibition, the law should not completely prohibit surrogacy.

## **2.2 Rights basis**

### **2.2.1 Surrogacy protects the physical rights of natural persons**

Professor Yang Lixin believes that: "Citizens maintain the personality rights of their bodies to completely control their limbs, organs, and other organizations." According to this view, the right holders' physical rights will give them the right to dispose of their bodies. In other words, the right of the body is not only the maintenance of the integrity and completeness of one's own body, but also the right to control the organs and other tissues of one's own body. For example, the blood donation behavior we often see is the domination of citizens over their bodies. And bone marrow donation and organ donation are also a dominant method. Therefore, this article believes that surrogacy should also be regarded as the right holder's free control of his own body, just like the behavior mentioned above.

### **2.2.2 Surrogacy protects the reproductive rights of natural persons**

My country submitted a report to the International Conference on Population and Development in 1984, stating that it will respect and respect the birth rights of its citizens, including the birth spacing, number of births, and contraceptive measures. It can be seen that the right of reproduction is the basic right of our people. The law and life give people the right to reproduce, which should be protected. At the same time, it also shows that people also have the right to choose whether to have children and which method of reproduction to adopt. Natural persons have the right to choose to have children through sexual acts, and they have the right to choose through human assistance. Reproductive technology gives birth to children, and surrogacy is a kind of human assisted reproductive technology. Under the premise of not violating laws and morals, natural persons choosing to use surrogacy should not be prohibited by law, and the law should not deprive those who cannot conceive a life to have their own children's right. Therefore, it can be seen that the act of completely prohibiting surrogacy by law is actually an infringement of reproductive rights. My country should not completely prohibit surrogacy, and should reasonably open up surrogacy and regulate it.

### **3. Legal Regulation of the Limited Legalization of Surrogacy in my country**

#### **3.1 Clarify the subject qualifications of both parties in limited surrogacy**

First of all, it needs to be clarified that surrogacy is an act of surrogate mothers who use their own advantages to help the client complete. It should not be commercial and not for profit. Secondly, the surrogate mother and the entrusting party belong to an equal subject status, not an employment relationship. The surrogate client and the surrogate mother should meet the following basic conditions. The surrogacy commissioner must first be of Chinese nationality, and secondly, one of the commissioners must be infertile, that is, unable to produce sperm or eggs normally; or both parties are incapable of fertility. The surrogate mother should have unsafe civil capacity, belong to Chinese nationality, meet the legal age for marriage, and be in good physical condition without genetic diseases.

#### **3.2 Prohibit paid surrogacy, open unpaid surrogacy**

Most people who oppose surrogacy believe that surrogacy is an objective instrumentalization of women, turning women's organs into profit, and it is an infringement of women's dignity. Paid surrogacy should be prohibited and unpaid surrogacy should be reasonably opened. This can eliminate the interference related to economic interests. Therefore, at this time, unpaid surrogacy should not be regarded as the sale of uterus. If the surrogate mother is voluntary and her dignity has not been violated, the surrogacy should be Behaviors deemed to be helpful.

#### **3.3 Prohibition of surrogacy among relatives and open surrogacy among non-relatives**

Surrogacy between relatives is against ethics. For example, mother-in-law surrogates daughter-in-law and mother-in-law surrogates daughter-in-law. This behavior will cause confusion in ethical order and easily cause disputes between relatives, so it should be prohibited by law. On the contrary, if it is not for surrogacy between relatives, mutual blindness can be achieved very well, and it can also effectively avoid chaos in ethical order.

#### **3.4 Partial surrogacy is prohibited and full surrogacy is open**

The surrogate mother in complete surrogacy only needs to be responsible for using her own uterus to conceive. Therefore, there is no genetic connection between the surrogate mother and the surrogate child, and there is little emotional relationship. Therefore, in a certain sense, it can be effective Evasion of disputes over the ownership of parental rights of surrogate children deserves legal support. However, for some surrogates, there is a genetic link between the surrogate mother and the surrogate child. At the same time, the boundaries of extramarital sex are now blurred in legislation. Therefore, some surrogates are prone to disputes over parental rights and are also vulnerable to third parties. As a means of use, it causes chaos in the moral order, so it should be prohibited.

### **4. Summary**

In summary,with the laws social development and human development,a one-size-fits-all ban on surrogacy cannot suppress people's strong demand, and is likely to cause chaos in the market order. The law should be adapted to the social environment, and the limited legalization of surrogacy is also a trend. Our current task should use legal means to control the possible impact of surrogacy within a controllable range, and regulate its legislation so that surrogacy can reach A standardized and orderly state can truly achieve social stability and harmony.

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