

Ethical Issues in Surrogate Motherhood

Alka B. Patil*, Ashalata Bafna, Nilay Patel*****

Author's Affiliation:

*Professor & HOD

**Assistant Professor

***Resident, Obst & Gynec,
ACPM Medical College,
Dhule.

Reprint Request: Alka B.

Patil, Professor & HOD,
Department of Obst &
Gynec, ACPM Medical
College & Hospital, Dhule,
Maharashtra, India

E-mail:
alkapatil@rediffmail.com

Abstract

Surrogacy refers to a contract in which a woman carries a pregnancy "for" another couple. In this article, situations are discussed when surrogacy is resorted. Criteria for selection of surrogate mother are highlighted. Although surrogacy arrangement appears to be beneficial for all parties concerned, there are certain delicate issues which need to be addressed in order to protect the rights of the surrogate mother and the intended parents. With the advent of ART, Surrogacy has emerged as a significant social problem, posing legal, ethical, social, and psychological dilemmas.

Keywords: Surrogacy; Commercial; Altruistic; Gestational; Biological.

Ethics is an essential dimension of the obstetrics practice. Ethics is the disciplined study of morality. Ethical principles and virtues should be applied by all the physicians, regardless of their personal, religious and spiritual beliefs. Thus, medical ethics are transnational, transcultural and transreligious. Ethics are professional standards. Ethics may be extended to professional responsibility, morality, etiquette, values and attitudes. Ethics tends to be focused on moral goods rather than natural goods. Obstetricians should have their own professional ethical values, ethics core value and ethics family values. While morality in behavior may be concerned with one's personal convictions and legality the result of what the society considers acceptable, ethicality is often decided by professional consensus. Thus, there is a thin line between what is 'ethical' and what is 'legal' [1].

Advancing technology is probably the single most influential factor in our lives. In medicine alone, the strides towards better technology, newer drugs to combat diseases and procedures for diagnosis are unparalleled. But great advances sometimes bring new and difficult problems. The changes in values and perceptions brought about by technologic developments have often resulted in conflicts of opinion and judgment. The medical profession is subject to all the puzzlements and dilemmas. Among the topics causing an upheaval today is surrogate

motherhood. Surrogate motherhood has the potential of becoming an attractive proposition to infertile couples [2]. Developments in this field are ahead of legal decisions. Public opinion is also changing. What was not acceptable a decade ago is now regarded as natural event [3]. With the advent of ART, Surrogacy has emerged as a significant social problem, posing legal, ethical, social, and psychological dilemmas [4].

The ever-rising prevalence of infertility all over the world has led to advancement of assisted reproductive techniques (ART). Herein, surrogacy comes as an alternative when the infertile woman or couple is not able to reproduce. Surrogacy is an arrangement where a surrogate mother bears and delivers a child for another couple or person. In gestational surrogacy, an embryo, which is fertilized by *in vitro* fertilization, is implanted into the uterus of the surrogate mother who carries and delivers the baby. In traditional surrogacy, the surrogate mother is impregnated with the sperms of the intended father artificially, thus making her both genetic and gestational mother. Surrogacy may be commercial or altruistic, depending upon whether the surrogate receives financial reward for her pregnancy [5].

In 2005, ICMR issued guidelines for accreditation, supervision, and regulation of ART clinics in India, these guidelines are repeatedly violated. Frustration of cross border childless couples is easily

understandable who not only have to cope up with language barrier, but sometimes have to fight a long legal battle to get their child. Cross border surrogacy leads to problems in citizenship, nationality, motherhood, parentage, and rights of a child.

The poor, illiterate women of rural background have no right on decision regarding their own body and life. There is no provision of insurance or post-pregnancy medical and psychiatric support for them. There are a number of moral and ethical issues regarding surrogacy, which has become more of a commercial racket, and there is an urgent need for framing and implementation of laws for the parents and the surrogate mother [5].

Criteria for Selection of Surrogate Mother

The age of the surrogate mother should be 21-35 years [5].

Be medically and psychologically fit [6].

Surrogate mother be married and be a mother of at least one healthy child [6].

Surrogate mother would not be allowed to undergo embryo transfer more than 3 times for the same couple.

The consent of her spouse would be required before she may act as surrogate to prevent any legal or marital dispute.

A surrogate should be screened for STD, communicable diseases.

A surrogate should not have received blood transfusion in last 6 month as these may have an adverse bearing on the pregnancy outcome [5].

Abstain from cigarettes, alcohol and other drugs during pregnancies. Agree to give up her parental rights after the baby is born [6].

The contracting couple adopts the baby soon after delivery so that they become legal parents of child.

All the expenses including insurance of surrogate medical bill and other reasonable expenses related to pregnancy and childbirth should be borne by intended parents. The surrogate mother may also receive monetary compensation from the couple or individual as the case may be for agreeing to act as such surrogate.

The surrogacy arrangement should also provide for financial support for the surrogate child in case the commissioning couple dies before delivery of the child, or divorce between the intended parents and subsequent willingness of none to take delivery of the child so as to avoid injustice to the child. A surrogate mother should not have any parental rights

over the child. Guidelines dealing with legitimacy of the child born through ART state that the child shall be presumed to be the legitimate child of the married/unmarried couple/single parent with all the attendant rights of parentage, support, and inheritance.

Confidentiality should always be maintained, and the right to privacy of the donor as well as surrogate mother should be protected. Sex-selective surrogacy should be prohibited, and abortions should be governed by the Medical Termination of Pregnancy Act 1971[5].

Surrogacy is Resorted to

1. When the woman has no uterus or has other congenital disorders, making the carrying of pregnancy impossible. (6)
2. Women with irreparably damaged uterus due to tuberculous endometritis or Asherman's syndrome [4].
3. Hysterectomy done for Haemorrhage, rupture uterus [3].
4. When the woman has severe pelvic disease, not amenable to be remedied [6].
5. Recurrent Pregnancy Loss [3].
6. Unsuccessful Embryo Transfer [4].
7. Where woman had a condition making pregnancy medically undesirable.
8. When a woman does not want to undergo the inconvenience of carrying the baby in utero for the pursuit of career or other reasons [6].

Many believe that surrogacy's essence is not science, but commerce. On the surface, surrogate motherhood appears to be an ideal and readily workable solution for the childless couple. Closer examination, however, reveals myriad ethical issues. In most adoptions the biologic father is either unknown or unavailable. In surrogacy the father deliberately arranges for the birth of his child and will have an emotional and a biologic bond and a responsibility to the child. It would be unfair to him and to the child to exclude him from the child's life should the biologic mother change her mind about giving up the child following birth.

Is it ethical to separate the decision to create children from the desire to have them? A child should be desired for its own sake, and not as a means of attaining some other end. Instead of viewing them as unique individuals to be desired in their own right, we may come to view them as commodities [2].

Most arrangements involving surrogate mothers

may work out fine, but what happens when the child is born deformed or with an abnormality? Similarly, what happens if the biologic father dies before the birth; or if the child turns out to be children - twins or triplets? Another problem, which has gained a lot of attention recently, is that surrogates can become unexpectedly attached to the child they carried. As the pregnancy advances, the surrogate mother may find it increasingly difficult to remain detached from "their" child and relinquishing the child after birth may be considerably more disheartening and disappointing than originally anticipated. The woman will have to realize that all contacts with the child will have to be curtailed.

An even more complex issue is the extent of the surrogate mother's autonomy during the pregnancy versus the extent and nature of the right of control of her and the fetus by the biologic husband and his wife. What happens, for example, if after agreeing to abstain from using alcohol during pregnancy, the surrogate imbibes regularly? Could a court order be obtained to stop such consumption? What if the surrogate did not reveal her propensity to consume alcohol or to take unprescribed drugs and the child is born with a genetic deformity which is determined to be a direct consequence of such actions? Could the surrogate be issued for negligence [2]?

Why do Childless Couples Favour Surrogacy?

Their view is that it satisfies the desires and perceived needs of a number of women, including those who are unable to carry a child to term and who cannot, for whatever reason, adopt a baby. For them, access to the services of a surrogate mother will become increasingly important as the number of babies available for adoption continues to decline. It is this social-service factor that perhaps legitimizes surrogacy - the fact that the surrogate receives payment for services rendered does not detract from its social value in any way. In most cases, the services of a surrogate will only be sought after all viable possibilities have been exhausted. As well, the children born under these circumstances, far from being devalued, will be especially loved.

Like any adopted person, the child has the right to know as much as possible about his or her background. It might not look appealing, but it does promise children the right to know those with whom they share a biologic connection. Banning surrogacy would probably force the practice underground, or cause desperate couples to seek help elsewhere [2].

The medical informed consent model fails to consider that downstream social risks and impacts.

Simply expressing the biological risks may not be sufficient to attain defensible consent. Examples include surrogates' risk of social shunning; it is possible that a surrogate's community, spouse or family may object to her carrying the child of a man other than her husband. An expression of autonomy includes the right to exercise that autonomy to allow one's own exploitation. Social risks and emotional risks can be as damaging as physical ones; communication of all kinds of risk, not just the biological, is required [7].

Quality of Surrogate Care

While it is likely that different clinics embrace different models of care, it remains uncertain to what extent a surrogate's health is maintained beyond her gestational role. It is reasonable to expect the client to fund the nutritional requirements of the surrogate, as her physical health relates directly to the health of the child she gestates. But her needs probably extend beyond the physical. What of her social and mental health? If her role as a surrogate requires her to change her diet and perhaps alter her daily physical activities, it is possible that these changes impart an emotional impact. Moreover, her regular domestic familial duties may be affected by her role as a surrogate; the extent to which the stresses of these dual roles are dealt with by the client and clinician constitute an ethical question.

Limits of Surrogate Care

While the surrogate's medical health is important during pregnancy, there is a moral argument for assuring that care extends beyond the delivery. Given the likelihood of postpartum injury (or depression), it remains uncertain who is ultimately responsible for assuring that a surrogate is given sufficient care to recover from such conditions. Postpartum injury is the direct result of a process begun by clinician for the purpose of achieving a biological product for the client. It can be argued that since such injury is a foreseeable consequence of the overall process, then both avoiding and repairing such injury is the logical responsibility of all agents involved, and not just of the surrogate herself [7].

Multiple Embryo Transfers and Abortion

The extent to which a surrogate is encouraged to accept multiple embryos, to maximise the probability of a successful implantation and thus reduce costs to the client, is a factor influencing both the autonomy of the surrogate and the nature of her informed

consent. Related is the possibility for a selective reduction abortion, done for several medically defensible reasons. It remains unknown whether surrogates from conservative cultures are either aware or culturally responsive to this likelihood. A multiple pregnancy is attractive as a cost saving measure, since more transfers raise the chance of a pregnancy and reduces the number of attempts needed to become pregnant.

If financial need is the basis for surrogates' eagerness to participate, is it then ethical to use this need to encourage participation? Conversely, is it ethical to deny an impoverished prospective surrogate the opportunity to lift her family out of poverty simply because one decides that financial need is an inappropriate lever [7].

To deny that the surrogate is the mother of the child amounts to viewing the relationship as one of ownership, the surrogate as a "human incubator" and the child as the "product" who bears no relationship to her other than its partly being the result of her physical labour. But because emotional ties are central to the parent-child relationship, they cannot be so easily ignored. New parental bonds can be created, but their creation does not eliminate or cancel an already existing bond [8].

Prenatal Adoption

Surrogate is or becomes a mother, but denies that she has any parental rights or responsibilities. What is being bought by the commissioning couple is not the child itself, but the "preconception termination of the mother's parental rights" [9]. From the moment of conception the fetus/child would therefore have two real mothers (-to-be), but only one legal mother (-to-be). In this sense the contract does not require the surrogate to deny that she is or becomes a mother. They acknowledge that the child may have more than one set of parents, but think that it is in the child's best interests if a primary family is chosen before its birth.

The attempt to separate biological and moral relationships ignores the fact that the surrogate has, by virtue of her being the gestational mother, certain moral responsibilities to the fetus, and that these can only be affirmed by any legal contract she may enter into. The surrogate cannot choose not to be morally responsible for the fetus while it remains in her womb. In this sense, biology certainly is destiny [8].

Surrogates undergo risks during pregnancy, similar to those of any other pregnant woman (miscarriage, ectopic pregnancy, common pregnancy complications), which may be increased by the risk

of multiple pregnancy when IVF is used to create the embryo(s). Psychological reactions may complicate this further with depression on surrendering the child, grief, and even refusal to release the child.

There has been only short follow up and psychological study of children born by surrogacy, and of the families involved, including the impact on any natural child (ren) the surrogate may have. Potential harms for the offspring include the sequelae and complications of multiple pregnancy on surviving children, as well as the issues of gamete donation (anonymity or openness) on the psychological wellbeing of the child. Appropriate counseling of all parties is again essential to ensure all parties are aware of their responsibilities as well as of their rights in the agreement they undertake, recognizing that the welfare of the future child is in the equation.

Surrogacy is a method of ART reserved solely for medical indications. It is unacceptable in principle for social reasons.

The autonomy of the surrogate mother should be respected at all stages, including any decision about her pregnancy that may conflict with the commissioning couple's interest. The commissioning couple and potential surrogate must have full and separate independent counseling prior to their agreement. Such counseling should be factual, respectful of the woman's view, and non-coercive. Research about coercion and harm to collateral individuals, such as existing children of the surrogate, must be conducted to understand the harm or benefits of this reproductive model [9].

Discussion

Who the social parents of the child would be? What is being paid for or transferred is therefore not motherhood, nor preconception termination of parental rights, but the right and responsibility to rear the child.

Thinking of contract pregnancies as "commissioned adoptions" requires that both parties acknowledge the surrogate's motherhood. The only way in which a surrogate mother can take her moral obligations towards the child seriously is by making sure well before conception that the intending parents are both willing and capable of caring for the child. For these reasons altruistic surrogacy is morally preferable to commercial surrogacy. In other words, the moral acceptability of surrogacy does not turn on whether money is

exchanged in return for parental rights or child-bearing services, but on the nature of the relationship between the commissioning parents and the surrogate mother.

To be a parent, one must possess some of the defining features of parenthood, such as a gestational, genetic, intentional or social relationship, but all of these features need not be common to all parents.

It seems ironical that people are engaging in the practice of surrogacy when nearly 12 million Indian children are orphans. Adoption of a child in India is a complicated and a lengthy procedure for those childless couples who want to give a home to these children. Even 60 years of Independence have not given a comprehensive adoption law applicable to all its citizens, irrespective of the religion or the country they live in. As a result, they resort to the options of IVF or surrogacy.

There is a strong need to modify and make the adoption procedure simple for all. This will bring down the rates of surrogacy. Altruistic and not commercial surrogacy should be promoted. Laws should be framed and implemented to cover the grey areas and to protect the rights of women and children.

Successful development of reproductive technologies, legislative change and shift in intended parent's attitude and professional practices has made surrogacy potentially a more acceptable form of family creation with positive benefits to the infertile couple, the surrogate and most importantly the child.

References

1. The Ethics and Rule in Obst. and Gynecology Rule of Ethics for Obstetrician and Gynecologist, Pairoj Witoonpanich, The Journal of Obst. and Gynecology, Oct 2011; 19: 155-157.
2. Shabir Bhimji, Womb for rent: ethical aspects of surrogate motherhood CMAJ December 15, 1987; 137:1332-1335.
3. Jeffcoates Infertility and Assisted Reproductive Techniques, Pratapkumar, Narendra Malhotra Jaypee Brothers Dehli Seventh Edition 2008.
4. Ajitvirkud Assisted Reproductive Technique AjitVirkud Modern Gynaecology APC Publication first edition.
5. Pikee Saxena, Archana Mishra, and Sonia Malik'Surrogacy: Ethical and Legal Issues Indian J Community Med. 2012 Oct-Dec; 37(4): 211-213.
6. CM Francis, Assisted Reproductive Techniques CM Francis Medical Ethics Jaypee Second Edition.
7. Raywat Deonandan,1 Samantha Green, 2 Amanda van Beinum3 Ethical concerns for maternal surrogacy and reproductive tourism Journal of Medical Ethics, 2012; 38: 742-745.
8. Liezl van Zyl, Anton van Niekerk Interpretations, perspectives and intentions in surrogate motherhood J Med Ethics, 2000; 26: 404-409. doi:10.1136/jme.26.5.404
9. Ethical Issues in Obstetrics & Gynaecology By FIGO Committee, www.FIGO.org October 2012.