

Commentary

Proposed ethical guidelines and legislative framework for permitting gestational surrogacy in Singapore

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Abstract

Gestational surrogacy is currently banned in Singapore but is much debated. Some ethical guidelines and legislation for permitting gestational surrogacy in Singapore are proposed and discussed including: (i) review and approval of gestational surrogacy by the Ministry of Health on a case-by-case basis; (ii) stringent guidelines for gonadotrophin stimulation, IVF and ICSI procedures in 'traditional' surrogacy; (iii) restriction of gestational surrogates to parous married women with stable family relationships; (iv) exclusion of foreign women from acting as gestational surrogates, except for close relatives of the recipient couple; (v) reimbursement and/or compensation of gestational surrogates based on the direct expenses model; (vi) exclusion of medical professionals from surrogate recruitment and reimbursement; (vii) the surrogacy contract must make it legally binding for the prospective recipient couple to accept the child, even if it is born with congenital deformities; (viii) stringent guidelines for combining surrogacy with egg donation from a third woman, who is neither the social nor gestational mother. Policymakers in Singapore should conduct a public referendum on the legalization of gestational surrogacy and actively consult the views of healthcare professionals, religious and community leaders, as well as the general public, before reaching any decision.

Keywords: *ethics, infertility, motherhood, pregnancy, surrogacy*

Introduction

Gestational surrogacy is currently banned in Singapore. According to Section 4.11.2 of the Directives for Private Healthcare Institutions Providing Assisted Reproduction Services (2006): "The following activities shall not be carried out in any Assisted Reproduction Centre: ... (ii) Surrogacy (surrogacy is where a woman is artificially impregnated, whether for monetary consideration or not, with the intention that the child is to be the social child of some other person or couple)". There is, however, no mention of gestational surrogacy in the Human Cloning and Other Prohibited Practices Bill (2004) promulgated by the Singapore Parliament in 2004. Consequently, childless women in Singapore who are medically unable to become pregnant or bodily unfit to carry a pregnancy to term have only two options to start a family: seek either child adoption or a gestational surrogate abroad. The latter has attracted much attention by the media, with tabloid reports of Singaporean couples of Chinese ethnicity travelling to India in search of gestational surrogates (The Times of India, 2005). This, in turn, has sparked new debate about whether to legalize gestational surrogacy in Singapore, which has aroused much interest as well as controversy among the general public (Radio Singapore International, 2005).

If it is inevitable that some Singapore residents are going to engage in surrogacy (i.e. through reproductive tourism), it may be better to regulate it rather than pretend that it does not happen. In fact, the Singapore government has already displayed such a pragmatic approach towards the legalization of casino gambling

and prostitution in Singapore under strict regulations, and there is no reason to believe that they would not follow suit with regards to gestational surrogacy for childless couples. Moreover, government policymakers here in Singapore are acutely concerned by the steep decline in birth rates in recent years (Singapore Department of Statistics, 2002), which could impinge on future economic growth and national survival of the country. Legalizing gestational surrogacy may therefore be a small step in the right direction to arrest this worrying demographic trend. Nevertheless, given the small percentage of infertility patients that would require gestational surrogacy for starting a family, it is very unlikely that allowing surrogacy would have any significant effect on overall population growth, in either the short or the long term. Some ethical guidelines and legislation for permitting gestational surrogacy in Singapore are therefore proposed and discussed.

Proposals

Review and approval of gestational surrogacy by the Ministry of Health on a case-by-case basis

Certainly, there are strong ethical and moral justifications in permitting gestational surrogacy for women who are either

medically unable to become pregnant or bodily unfit to carry a pregnancy to term (Shenfield *et al.*, 2005). The various indications for surrogacy include post-hysterectomy or congenitally absent uterus (i.e. Rokitansky syndrome), as well as recurrent abortions, repeated IVF failures, advanced maternal age and deteriorating maternal diseases (Raziel *et al.*, 2005). Nevertheless, the Ministry of Health in Singapore should proceed with extreme caution in allowing all patients that fit this bill to utilize gestational surrogates for starting a family. In particular, it would be ironic for middle-aged and post-menopausal career women to seek gestational surrogates if they could have borne children of their own at a younger age had they not deliberately delayed marriage and motherhood. Hence, allowing this group of otherwise healthy patients to have easy and ready access to gestational surrogacy might in fact promote a selfish and convenient lifestyle choice that is anathema to the 'Asian family values' vigorously promoted by Singapore government policymakers themselves (Lim, 1990). For example, the younger generation of Singaporean women might be encouraged to delay marriage and motherhood in pursuit of educational and career commitments if they realize that they can easily and conveniently opt to start a family later with gestational surrogates.

Rapid advances in oocyte cryopreservation technology (Koutlaki *et al.*, 2006) may result in women opting to freeze their eggs at a young age and then subsequently utilizing gestational surrogates to start a family later, since there are increased risks of medical complications associated with pregnancy in older women (Michalas *et al.*, 1996; Newburn-Cook and Onyskiw, 2005). Moreover, health regulations in Singapore explicitly forbid women above 45 years of age from receiving any form of clinical assisted reproduction treatment, even if she is utilizing her own frozen eggs (Section 4.2.1 of the Directives for Private Healthcare Institutions Providing Assisted Reproduction Services, 2006).

Hence, to forestall this 'slippery slope' of gestational surrogacy backsliding into a selfish and convenient lifestyle option, rather than medical necessity to have children, the Ministry of Health in Singapore should review and approve gestational surrogacy on a case-by-case basis for each and every individual patient. Certainly, it can be argued that bureaucracy and procedures may make the waiting time too long for this to be practical. Nevertheless, it must be noted that Singapore is a small city state (population about 4 million, land area about 700 km²) with a highly efficient civil service. Given the extremely low percentage of infertility patients requiring surrogacy within this tiny country, it is very unlikely that there would be a long waiting list and backlog of cases.

Stringent guidelines for the judicious use of gonadotrophin stimulation, IVF and ICSI procedures in traditional surrogacy

When the recipient woman (social mother) is not utilizing her own oocytes in surrogacy (i.e. post- or peri-menopausal older women with diminished ovarian reserve), such an arrangement is often referred to as traditional surrogacy. In this case, there should be stringent guidelines for the judicious use of gonadotrophin stimulation, IVF and intracytoplasmic sperm injection (ICSI) procedures on otherwise healthy and

fertile surrogates. The use of recombinant gonadotrophins in ovarian stimulation (i.e. FSH) is associated with increased risks of the debilitating and potentially life-threatening ovarian hyperstimulation syndrome (Budev *et al.*, 2005), as well as with high medical fees (Gleicher *et al.*, 2003). IVF and ICSI, also, are expensive and invasive medical procedures that require surgical retrieval of oocytes (El-Shawarby *et al.*, 2004). Hence, the pertinent question that arises is whether it is ethically justifiable to subject an otherwise healthy and fertile surrogate to these expensive, risky and invasive medical procedures that were originally devised for sub-fertile women. Should not intrauterine insemination (IUI) with a healthy and fertile surrogate using the male partner's spermatozoa be sufficient to do the job (Comhaire *et al.*, 1995)? It must be noted that fertility doctors, particularly those in private practice, face the temptation of earning additional medical fees by prescribing such technically complex and expensive procedures instead of going for much cheaper IUI treatment, thereby exposing healthy and fertile surrogates to unnecessary medical risks. Hence, the Ministry of Health in Singapore should set stringent guidelines for the judicious use of gonadotrophin stimulation, IVF and ICSI procedures in traditional surrogacy.

Restriction of gestational surrogates to married women with children in stable family relationships

Evolutionary pressure has probably led to the development of strong maternal instinct in humans to protect and nurture their newborn infants. In fact the bond between mother and baby is probably the most strongly expressed of all human emotions, universally celebrated in art, culture and religion. Not surprisingly, there have been many reported instances of gestational surrogates refusing to give up custody of their newborn infants due to their overridingly strong maternal instinct. This has often led to complex and long-drawn legal tussles within the courtroom (Rothenberg, 1988), as well as numerous instances of gestational surrogates absconding with their newborn infants (Gallagher, 1987).

To reduce the possibility of such unhappy occurrences, it is proposed that the Ministry of Health in Singapore should restrict gestational surrogates to married women with children in stable family relationships. In particular, single women with no children of their own should be banned from acting as gestational surrogates under all circumstances. The rationale is that married women with children would have already experienced pregnancy, childbirth and the strong emotional bonding that subsequently develops between mother and newborn baby. Hence, they would be in a far better position to make an informed choice upon volunteering to act as gestational surrogates. Moreover, it would be much easier for a married woman with stable family relationships to cope with any emotional trauma of giving up her newborn infant. She can always find emotional support and solace from her family members, and is unlikely to simply abscond with her newly born infant. It would also be much more difficult for a married woman to fight for legal custody of the infant without the support of her family members. She must consider the feelings and views of her husband and other children prior to being engaged in any legal tussle for custody.

Exclusion of foreign women from acting as gestational surrogates, except for close relatives of the recipient couple

Another proposal to further reduce the likelihood of gestational surrogates absconding with their newborn infants, or being engaged in legal disputes for custody, may be to exclude foreign women from acting as gestational surrogates, except for close relatives and family members of the recipient couple. The rationale is that surrogacy arrangement and contracts that are legally recognized in one country may be unlawful and invalid in another country. Utilizing a foreign gestational surrogate may also carry the risk of offending sociocultural and religious sensitivities of her home country, which in turn could spark international diplomatic embarrassment between Singapore and her neighbours. For example, the immediate next-door neighbours of Singapore are Malaysia and Indonesia, two Muslim-majority countries with legal codes that are heavily influenced by Islamic religious jurisprudence, Sharia law. Most reputable Islamic scholars do not approve of surrogacy, on the basis of motherhood because only the woman who delivers the child can be considered to be the natural and legitimate mother (Husain, 2000; Schenker, 2005). Nevertheless, there are a minority of Islamic scholars (i.e. in Iran) who would permit surrogacy only among co-wives of a polygamous marriage (Inhorn, 2006). Hence surrogacy is likely to remain unlawful in Malaysia and Indonesia in the foreseeable future. In another close neighbour, the Philippines which is overwhelmingly Roman Catholic, surrogacy is also unlawful and is strongly disapproved by the general public, since it is against the teachings of the Catholic Church (McCormick, 1992; Berkman, 2003).

Hence, it would be particularly easy and convenient for a foreign gestational surrogate to abscond back to her home country with either the unborn or the newborn child. This, in turn, could develop into a complex and long-drawn legal tussle for custody across international borders. Moreover, it may be particularly difficult to trace the whereabouts of the run-away surrogate mother and her newborn infant within a foreign country. The Ministry of Health in Singapore should therefore restrict gestational surrogates to Singaporean citizens and permanent residents. Perhaps an exception can be made for foreign women who are close relatives and family members of the prospective recipient couple. Surrogacy arrangements between kin and family are much less likely to end up in abscondment and legal custody disputes.

Another pertinent concern is the exploitation of economically disadvantaged foreign women from poorer countries. If monetary reimbursement/compensation for gestational surrogacy in Singapore is lucrative enough, this may serve as undue inducement to poorer women from neighbouring developing countries. It must be noted that differences in currency exchange rates, purchasing power parity and living standards can easily magnify a small sum of money in Singapore to an inordinately large amount in poorer neighbouring countries. Indeed, the strong Singapore dollar is universally respected within the Asia-Pacific region. Moreover, there is a large pool of non-resident foreign workers and students currently in Singapore, many of whom are in need of money, either for their own living expenses and tuition fees or to send home to their families. They may therefore represent a prime target for recruitment, if commercialized gestational surrogacy arrangement is approved and legalized in Singapore.

Reimbursement and/or compensation of gestational surrogates should be based on the direct expenses model

Based on the socio-cultural context of present-day Singaporean society, commercialized surrogacy arrangement is likely to be morally and ethically repugnant to the overwhelming majority of the population who are steeped in traditional Asian family values, as well as anathema to the spirit and essence of various pro-family and pro-community policies vigorously pursued by the Singapore government. Nevertheless, monetary reimbursement/compensation for gestational surrogacy may still be legally and ethically justifiable to both government policymakers and the general public provided it is strictly based on the direct expenses model (Shenfield *et al.*, 2005). The rationale is that if a healthy and fertile woman is genuinely altruistically motivated to help a childless couple start a family, there should be no reason why she should suffer any financial loss from acting as a gestational surrogate, such as for the additional nutrition expenses required during pregnancy, medical fees, travelling expenses, potential loss of earnings during confinement and unpaid maternity leave. Nevertheless, it is imperative that the exact amount of monetary reimbursement/compensation given to gestational surrogates be well audited to prevent abuse or additional under-the-table payments that may serve as undue inducement. This may be achieved through proper record keeping and documentation of bills, receipts, pay-cheques and bank statements. Perhaps the Ministry of Health in Singapore should assign and deploy healthcare social workers for this task.

Exclusion of medical professionals providing fertility treatment from the recruitment, counselling and reimbursement of gestational surrogates

Due to potential conflict of interests, the role of medical professionals should be strictly limited to providing fertility treatment in gestational surrogacy, and they should take no part in the recruitment, counselling and reimbursement of gestational surrogates. It must be noted that fertility treatment in private practice is an overwhelmingly profit-driven enterprise. To attract more patients, fertility clinics and doctors may actively and aggressively recruit women for their gestational surrogacy programme. There is a risk that the welfare of the fee-paying recipient couple may be placed above that of the gestational surrogate, which is against the established practice of medical deontology. The ability of medical professionals to provide sound advice and informative counselling to gestational surrogates may be severely compromised by their commitment to the fee-paying recipient couple. If medical professionals are directly involved in reimbursement/compensation of direct expense, there is a risk of creative accounting being utilized to increase the sum of money given to gestational surrogates to serve as an undue inducement.

Hence, the underlying principle is the separation of the provision of fertility treatment from the recruitment, counselling and reimbursement of gestational surrogates. This is somewhat analogous to the principle of checks and balances in governmental power, whereby the executive,

legislative and judiciary branches of government are kept separate and independent to prevent abuse and corruption. In fact, this principle of separation is already being practiced in some countries with respect to organ donation, whereby transplantation surgeons play no part in the procurement and allocation of donated organs for their own patients (Samuels, 2004; Dimond, 2005). Their role is strictly limited to provide medical services, i.e. transplantation surgery. More importantly, separating the provision of fertility treatment from the recruitment, counselling and reimbursement of gestational surrogates would encourage a higher degree of medical professionalism because fertility clinics and doctors will have to compete for patients solely on the cost and quality of fertility treatment that they can provide, rather than on their business and networking skills in recruiting gestational surrogates for their patients.

Hence, it is proposed that the Ministry of Health in Singapore should set up a specialized department or agency for the ethical recruitment, counselling and reimbursement of gestational surrogates, which would function independently of medical professionals providing fertility treatment. Perhaps, the National Gamete Donation Trust (NGDT) in the UK could provide such a good example of an independently functioning agency (The National Gamete Donation Trust, 2006).

Legally binding surrogacy contract for the prospective recipient couple to accept the child even if born with congenital deformities

Under Singapore law, as in many countries, the woman who gives birth to the child is considered as the legal and natural mother. Hence, surrogacy arrangement in many countries often utilizes adoption as a legal device for transferring custody of the newborn infant to the prospective recipient couple. There is a risk that if the infant is born with congenital abnormalities, the prospective recipient couple might refuse to proceed with adoption, resulting in a legal limbo. The child may then have to be brought up in a government-run orphanage, resulting in unwarranted burden and costs to the state.

The Ministry of Health in Singapore should therefore ensure that the surrogacy contract makes it legally binding for the prospective recipient couple to adopt the child, even if it is born with congenital deformities. Additionally, the surrogacy contract should also make it clear whether the prospective recipient couple has the right to ask the surrogate to abort the unborn child if prenatal diagnosis (i.e. ultrasound, amniocentesis) were to reveal the presence of congenital abnormalities.

Stringent guidelines for combining surrogacy with egg donation from a third woman who is neither the social nor gestational mother.

Another major ethical concern is the combination of surrogacy with donor eggs from a third woman who is neither the social nor the gestational mother. In this

case, the pertinent question that arises is: why not utilize the endogenous oocytes of the surrogate mother if the recipient social mother is unable to produce any viable oocytes of her own? Are the genes of the surrogate mother somehow inferior? Hence, there is a possibility that the prospective recipient couple may be shopping for quality or designer genes, which could in turn lead to accusations of treating human babies as purchasable commodities that can be bought off the shelf. Moreover, it must be noted that utilizing donor eggs from a third party in surrogacy would involve unnecessary exposure of the donor to medical risks from ovarian hyperstimulation and invasive surgical procedures if endogenous oocytes of the gestational surrogate could be utilized instead.

Hence, the Ministry of Health in Singapore should generally disallow the combination of surrogacy with donor eggs from a third party except under certain circumstances, for example to maintain genetic relatedness to the recipient social mother via egg donation from maternal blood relatives or if the surrogate has a different ethnicity to the social mother. In the latter case, this would probably involve exploitation of poorer foreign women from developing countries, which has already been discussed previously.

Conclusions

Undoubtedly, permitting gestational surrogacy would open up a Pandora's box of unresolved legal and ethical issues within Singaporean medical practice. It is recommended that the Ministry of Health conduct a public referendum for the legalization of gestational surrogacy in Singapore based on these proposals and actively consult the views of healthcare professionals and religious and community leaders, as well as various sections of the general public, before reaching any decision. In any case, even if gestational surrogacy is finally approved and legalized in Singapore, this is likely to be restricted only to married heterosexual couples. It is very unlikely that single women or gay/lesbian couples will be permitted to utilize gestational surrogates given the highly conservative nature of Singapore society. Currently, the Directives for Private Healthcare Institutions Providing Assisted Reproduction Services (2006), explicitly states that only married couples can have access to any form of fertility treatment (Section 4.1.2).

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