# Surrogacy

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## Surrogacy

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### Abstract

Surrogacy is a promising treatment for infertility. It can potentially solve many intolerable difficulties that the infertile couples and their families face. Although initially frowned upon, evidence shows that the surrogacy arrangements are more acceptable now than when it was first introduced. Therefore, changes in the attitude in decision making about surrogacy can also be seen in some countries, but there are still indications of the degree of divergence between discourse and the actual practice of different forms of surrogacy around the world. Social, ethical and legal problems are subject to major debates and disagreements in natural or partial surrogacy or genetically unrelated full surrogacy. Genetic gestation surrogacy may largely free from social, legal and moral complications. It is a great choice of infertility treatment if the couple want their own genetic baby, but it still requires more thoughts and discussion. This chapter attempts to discuss the different notions related to surrogacy worldwide.

### Keywords

Surrogacy; Decision-making

### Introduction

Infertility affects 15 % of reproductive couples globally; around 50–80 million people worldwide may experience infertility. It is believed that approximately 10 % of global infertility occurs in developing countries. People in sub-Saharan Africa alone experience three times more infertility than other regions (WHO 2010).

Since the birth of the first test tube baby, Louise Brown in 1978, assisted reproductive technology (ART) has evoked great interest amongst the public. ART including egg or sperm donation or a surrogacy arrangement encourages infertile couples, giving a means of immense hope. But this new type of treatment for infertility has created legal and ethical debate among different societies and the followers of different religions all over the world. Major debate, disagreement, and controversy have arisen relating to natural or partial surrogacy or genetically unrelated full surrogacy. Genetic gestational surrogacy (when the sperm


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and ovum of a husband and wife/couple is fertilized by an in vitro fertilization [IVF] technique and the embryos are transferred to a surrogate host) is largely free of social, legal, and moral complications. It is a great choice of infertility treatment if a couple want their own genetic baby (Brinsden 2003). Nevertheless, the widespread use of such technologies is prohibited by some cultures.

Although the problem of infertility has not been totally eliminated, over the years scientists have been able to come up with better ways to help childless couples to fulfill their dreams of having a child. However, there are issues regarding the notion of surrogacy in different societies and cultures; these are evaluated in this chapter.

## Social Conditions of Infertile People

There is a very specific relationship between parents and children. There is an unconditional, firm belief that this newborn baby will always be important and lovable to parents – no matter what happens. It is believed that a child enriches the parents' life, and that quality of life will deteriorate when the desire for parenthood is not fulfilled – non-fulfillment can make people very unhappy. As a consequence, infertile couples experience great social distress and face an intolerable situation, especially those living in more traditional and conservative societies or who are from lower socioeconomic classes.

In some societies, childless couples are excluded from taking part in leading and important roles in family functions such as birthdays, weddings, and other events involving children. Infertile people are viewed in some countries as a burden to the socioeconomic well-being of a community due to a loss of continuity. In these communities, children confer social status, guarantee rights of property and inheritance, and provide continuity by maintaining the family name (Ombelet et al. 2008). Lack of a child in some cultures is considered a lack of old-age security. In these cultures, the child assists with labor and provides a reciprocal duty to parents in their old age (Lasker 2011). In some countries, having children is a social obligation, that is owed to the husband's family (Abbasi-Shavazi et al. 2008). In egalitarian societies, people want children as part of their life plan and they suffer when they cannot fulfill this wish. Because parenthood has deep social roots, the social and psychological consequences of involuntary childlessness are often severe and have a large impact on people's lives.

Although male infertility has been found to be the cause of failure to conceive in about 50 % of cases, the social burden falls disproportionately on women. In some societies, the social status of the women, her dignity, and self-esteem are closely related to her procreative potential in the family and society as a whole. Childbirth and child rearing are regarded as family commitments and not just biological and social functions.

In some cultures, infertile women often live in fear that their marriage will collapse. In fact, in some cultures personal status laws consider a wife's barrenness to be a major grounds for divorce, e.g., Islam. Islam also allows women to divorce if male infertility is proven. Morally, women usually do not take initiative of divorce on the grounds of infertility unless their marriage is truly unbearable (Inhorn 2006). In some cases, the husband or his family consider a second marriage as a solution. This second marriage, however, may be a great misfortune for the first wife and permits the man to be polygamous (WHO 2010). Childless women are frequently stigmatized, resulting in isolation, neglect, and domestic violence (Ombelet et al. 2008), all of which violate human dignity. Consequently, it is not surprising that many infertile couples may do whatever it takes to save their relationship, even if it means undertaking risky or expensive treatment. Due to the lack of insurance coverage for infertility treatments in some countries, these costs are heavy and even unbearable to poor people. Therefore, prevention and treatment of infertility are of particular significance around the world.

## Definition and Classification of Surrogacy

Surrogate literally means "substitute." The terms "surrogacy" or "surrogate mother" are usually

applied to the woman who carries and delivers a child on behalf of another couple. When the intended surrogate is inseminated with the semen of the husband of the couple, the procedure is known as straight surrogacy or traditional surrogacy. Gestational surrogacy is when a sperm and an ovum from a couple is fertilized by IVF and transferred to a surrogate; this is also called genetic gestational surrogacy. When a sperm or an ovum is donated by a third party, fertilized by IVF, and transferred to a surrogate, it is called gestational partial surrogacy. If both the sperm and ovum are donated by a third party, fertilized by IVF, and the resulting embryo is transferred to a surrogate, it is known as gestational full surrogacy. In gestational surrogacy, the surrogate mother is not genetically related and will be free from all responsibilities after delivery of the child (Brinsden 2003).

Surrogacy can be either commercial or altruistic. When the surrogate is paid for donating the egg/sperm or for gestation of the fetus, or both, it is called commercial surrogacy. If the surrogate is unpaid, it is regarded as an altruistic surrogacy.

## Indications for Surrogacy

The indications for surrogacy are congenital absence of the ovaries/testes/uterus; men with azoospermia; women who have had a hysterectomy for carcinoma or hemorrhage but who still have functioning ovaries; women who have suffered repeated miscarriages and for whom the chance of ever carrying a baby to term is remote; women who repeatedly fail to implant a normal healthy embryo in their uterus; or certain medical conditions, such as cancer or heart or renal disease, which might threaten the life of a woman (Brinsden 2003).

When couples are incapable of producing ova/sperm as a result of disease (e.g., cancer), injury or normal aging, a donor ovum/sperm may be fertilized in vitro and implanted in a surrogate's uterus, and they then gestate the baby to term. The couple may choose this type of surrogacy with the hope that the child will be at least half-related to them.

Surrogacy opens the way for post-menopausal women or women once considered hopelessly barren to have a child despite having no genetic link to it. This practice is also an option for single people or homosextual couples who wish to have a child and can enable women who may not want to become pregnant because of their busy schedule to become a mother (Zawawi 2012). However, it is important to make clear that the obsessional and symbolic desire to have a child by surrogacy arrangement should not morally be encouraged due to ethical issues discussed in this chapter.

## Historical Background of Surrogacy

Before the advent of modern ART, straight surrogacy (also known as traditional or natural surrogacy) was the only means of helping childless women to have a child, and it has been practiced since ancient times. One of the oldest examples of surrogacy is the story of Abraham, Sarah, and Hagar in the Bible. Sarah, Abraham's wife, was barren. In order to maintain his lineage, Abraham went to Hagar, a maid, who he later married. Hagar give birth a son, Ishmael. Sarah became jealous of Hagar and Hagar did not want to give the baby up to Sarah to raise with Abraham (Genesis 16). Another example of surrogacy in the Bible comes from Jacob and his wives, Rachel and Leah. While Leah gave birth to four sons, Rachel remained barren. She became jealous of Leah and gave Jacob her maidservant, Bilhah, to be a surrogate mother for her. Bilhah gave birth to two sons: Dan and Naphtali (Genesis 30:3). Another Biblical precedent for surrogacy is Mosaic Law, which provided for levirate marriage (a type of marriage in which the brother of a deceased man is obliged to marry his brother's widow, and the widow is obliged to marry her deceased husband's brother), an example of which was when Boaz, family member, impregnated his dead brother's widow Ruth to bear children on his behalf (Genesis 38).

Examples of surrogacy are also found in the ancient Indian scripture, the Mahabharata. According to the Mahabharata, Gandhari, the wife of king Dhritarashtra, conceived and the

pregnancy went on for nearly 2 years, after which she delivered a mass (mole). Lord Vyasa found that there were 101 cells that were normal in the mass. These cells were put in a nutrient medium and were grown in vitro to full term. Of these, 100 developed into male children and one into a female child. Hindu mythology presents many more examples of surrogacy.

The Code of Hammurabi (1780 BC) indicates the presence of surrogacy 1800 years before the birth of Christ, and it is likely that it was the first legal document relating to traditional surrogacy arrangements. The Code regulated and controlled the legal grounds of surrogacy, and was mainly used to advocate producing male offspring in Mesopotamia (Svitnev 2006). Surrogacy was also quite common in ancient Egypt – many pharaohs used their concubines to produce male heirs. However, even though the children delivered by these maids were treated as the pharaoh's children, their rights were somewhat reduced. They could assume the throne only if there were no other nobler and more legitimate contenders. Traditional surrogacy was also common in ancient Greece and Rome (Svitnev 2006).

Before the advent of ART, natural surrogacy was the only means of helping childless women to have children. Later, artificial insemination became a more acceptable means of achieving pregnancy than natural surrogacy. Now, surrogacy by IVF has become a successful treatment. In late 1976, the first reported baby, known as Baby M, was born by gestational surrogacy in the USA. In 1980, the first commercial surrogacy arrangement was made in the USA, with Elizabeth Kane being paid US$10,000 to act as a traditional surrogate. Later, she became an advocate against surrogacy, and wrote a book entitled *Birth Mother* expressing her experiences of emotional difficulties with children, family, and society. Currently, there are only two sources of very rough statistics on surrogacy, and these report numbers relating to gestational surrogacy only. Based on available statistics data from the US Centers for Disease Control and Prevention (CDC), there were a total of 45,870 live births from gestational surrogacy in 441 clinics in the USA during 2009. In addition, several thousand more babies are born each year as the result of a wide variety of surrogate arrangements worldwide. The numbers of surrogacies in Australia, Canada, and Brazil are at least as large as those reported in the USA.

## Surrogacy Around the World

Surrogacy is a promising treatment for infertile couples. When IVF is not possible, surrogacy may be an alternative choice for many couples. However, different opinions relating to surrogacy exist around the world. Some examples of this are discussed below.

Both partial gestational and commercial surrogacy are allowed in the USA and Canada. However, different US states have different regulations: ten states (Arkansas, Florida, Illinois, Nevada, New Hampshire, North Dakota, Texas, Utah, Virginia, and Washington) have laws allowing surrogacy under certain circumstances; seven states (New York, Michigan, Arizona, Nebraska, Kentucky, New Jersey, and Indiana) and Washington, DC, have laws that prohibit, penalize, or void surrogacy contracts. California is one of the most permissive surrogacy states, although there is no legislation relating to the practice (Perez 2010). Surrogacy is not allowed in South America.

Like the USA, Australia has different regulations in different states. In New South Wales, Western Australia, and the Australia Capital Territory, surrogacy is freely available. Surrogacy is not illegal in Victoria, South Australia, and Tasmania, but the strict controls regulating surrogacy and payments relating to it make it almost impossible to be carried out commercial surrogacy in these regions. But the altruistic surrogacy is legal throughout Australia.

Diversity is apparent within the 27 member states of the European Union. In Austria, Germany, France, Italy, and Switzerland, surrogacy is prohibited. Criminal sanctions are applied for non-compliance, ranging from heavy fines to imprisonment. According to German legislators, surrogacy should be prohibited because of the violation of bonus mores (morality). The UK, Belgium, The Netherlands, and Finland are the

only countries in Europe Union that allow surrogacy. In the UK, patients can be treated by gestational surrogacy for exceptional reasons after intensive investigation and counseling. Commercial surrogacy arrangements are illegal. Surrogacy UK, and COTS (Childlessness Overcome Through Surrogacy) are charitable and non-profit organizations involved in surrogacy in Britain. Treatment cannot take place outside the legal cover provided by the Human Fertilization and Embryology Act 1990 in the UK (Brinsden 2003). In Spain, surrogacy contracts are null and void but surrogacy per se is not prohibited. Spain is the European epicenter of reproductive tourism. Spanish egg donation is often done altruistically by Spanish women with or without monetary compensation (Inhorn et al. 2010).

Initially, Italy had developed one of the most cutting-edge ART industries in the world, earning the moniker of "the wild west" of assisted reproduction in Europe. However, in 2004 the Italian parliament banned all types of reproductive technologies (including contraception, abortion, IVF, third-party gamete donation, and surrogacy). The resulting Medically Assisted Reproduction Law is known as Law 40/2004. The moral justifications given for this new law are (1) the possibility of incest; (2) lineage; (3) problems with biological paternity; and (4) the risk of positive eugenics (creating a child with sought-after characteristics of a donor, e.g., blue eyes, blonde hair, IQ $>130$) (Inhorn et al. 2010).

In Greece, gestational surrogacy has only been allowed since 2002. If the commissioning mother is married, the written consent of her husband is required, and the intended patients must provide a medical attestation of her inability to gestate the child. In addition, both the prospective parent and the surrogate mother must reside in Greece (Svitnev 2006).

Commercial surrogacy is legal in most of the countries of the former Soviet Union (e.g., Armenia, Belarus, Georgia, Kazakhstan, Kirgizia, the Russian Federation, and Ukraine). Russia is considered as a sort of reproductive paradise. The Basic Law of the Russian Federation for Citizen's Health Protection states that each adult woman of childbearing age has the right to artificial fertilization and the implantation of an embryo (Svitnev 2006). There is no concept of the right to fatherhood in Russia, but single men applying for surrogacy to become fathers should be treated equally in accordance with the equal rights and freedoms of men as citizens, regardless of sex. Written informed consent of all parties is required for participation in the surrogacy procedure. Apart from that consent, neither adoption nor a court decision is required. Russia is also one of the very few countries in which posthumous surrogacy can be arranged.

Israel legalized surrogate motherhood in 1996. The surrogate can be paid only for legal and insurance expenses and can be compensated for her time, loss of income, and pain.

All type of surrogacy is allowed in South Africa. However, a child born as a result of an invalid agreement is deemed to be the child of the woman who gave birth to that child. A surrogate mother who is also a genetic parent of the child may terminate the surrogate motherhood agreement at any time by filing a written notice with the court (Svitnev 2006).

Though surrogacy in Asia is a gray area, a 2009 report by Reuters estimated that around 25,000 children have been born in China by means of commercial surrogacy arrangements. The "womb-for-rent" industry defies the country's strict childbirth laws. Reuters added that three young surrogate mothers were discovered by authorities in Guangzhou and forced to abort their fetuses (Svitnev 2006). In India, where commercial surrogacy has been popular since 1992, surrogacy is not yet directly mentioned in law. However, only Indian citizens aged 21–35 years can become surrogates. Korea operates ART without statute or guidelines (Svitnev 2006).

All of the Muslim countries except Iran and Lebanon issued bioethical decrees in 1980; these support assisted reproduction treatments but disapprove all types of third-party ART. Gamete donation and surrogacy are prohibited for three major reasons: (1) adultery; (2) the potential for incest among the offspring of unknown donors; and (3) genealogical lineage. The prohibition of gamete donation and surrogacy has been enacted either by law or by professional medical codes of

ethics in 62 Muslim countries throughout the world, e.g., Egypt, Sudan, Morocco, sub-Saharan Muslim countries, Kuwait, Qatar, Saudi Arabia, the United Arab Emirates, Bahrain, Syria, Turkey, Indonesia, Malaysia, Afghanistan, Pakistan, India, Bangladesh, etc. (Inhorn 2006). However in 1999, the Supreme Jurisprudent of the Shiite branch of Islam, Ayatollah Ali Hussein Khamanei, the handpicked successor to Iran's Ayatollah Khomeini, issued a verdict that permits donor technologies including surrogacy. This ruling is gaining acceptance within some of the Shiite population in Iran and part of Iraq, Lebanon, Bahrain, Syria, Saudi Arabia, Afghanistan, Pakistan, and India, etc. (Abbasi-Shavazi et al. 2008).

## Surrogacy and Religion

With globalization, researchers, doctors, and patients alike are moving around to different parts of the world. Thus, it is becoming common that physicians may have to provide medical services to patients with ethical precepts that are different from their own. Physicians need to be sensitive to this diversity and avoid a stereotyped approach to religious patients. Healthcare professionals and researchers should be aware of different religious backgrounds relating to surrogacy that may help clinicians and researchers to better understand and negotiate the dynamics of each physician–patient relationship before they make a judgment regarding medical practice. Therefore, we provide here a short review of the main religious traditions in the world and their general attitudes towards surrogacy.

The Catholic Church is strongly against all forms of assisted conception, particularly those associated with gamete donation and surrogacy (Zoloth and Henning 2010). However, among Catholic believers there are wide varieties of attitudes and ideas about surrogacy, showing a complex reality that varies in closeness to the Vatican's teachings. The Anglican Church is less rigid in its views and has not condemned the practice of surrogacy.

The value of procreation is depicted in Genesis 1:28 where God's first command to human beings is to "be fruitful and multiply." Therefore, third-party donation of gametes, including surrogacy, is allowed in the Jewish religion, which sees procreation as a duty of the Jewish man to have children. In the Jewish religion the child born as a result of surrogacy will belong to the father who gave the sperm and to the woman who gave birth (Schenker 1997, p. 113). According to Jewish Halakhic law, single Jewish women are preferred as a surrogate, both to avoid the implications of adultery for married surrogate women and to confer Jewishness, as Jewishness is seen to be conferred through the mother's side, particularly through the act of gestating and birthing the baby. However, most conservative rabbis prefer that non-Jewish donor sperm should be used in order to prevent adultery between a Jewish man and a Jewish woman and to prevent future genetic incest among the offspring of anonymous donors (Inhorn 2006).

Traditional Hindu literature, especially the Mahabharata, depicts Kunti, Madri, and Gandhari – three queens to ensure that there will be children and the Bharata family lineage will continue. Hindu bioethics not only permits but strongly encourages using ART to have a child, particularly when a couple has had difficulty conceiving and especially to have a son (Bhattacharyya 2006). The Mahabharata considers non-genetic and genetic children as morally and meaningfully equivalent. Therefore, ideas of family extend beyond the nuclear family of parents and children to include aunts, uncles, in-laws, adoptive relatives, grandparents, close friends, and even all of the members of the town in which an individual was raised. Since lineage does not depend on a genetic tie between parents and children, children need not be genetically related to their fathers to count as heirs in Hindu culture (Bhattacharyya 2006).

Some Buddhist schools encourage or at least accept ART because it aims to alleviate future suffering as a result of infertility. Therefore, Buddhists accept all types of ART including surrogacy as long as the technology brings benefits to the couple who wish to have a child and it does not

bring pain or suffering to any parties involved. Buddhism would find no conflict in applying and using modern technology. However, some Buddhist schools criticize ART for perpetuating the disillusioned attachment to life that sometimes motivates human beings to sensual desires. Although ART may remove the physical and bodily desires of sex from the reproductive process, the mental or emotional aspiration of the couple, child, or third party can be problematic. Some monastic texts, such as the Vinaya Ptaka, equate the desire for a child with the desire for wealth and economic security that leads humans astray from the path to enlightenment. In addition the Dhammapada declares that "one's body belongs to oneself or one's child belongs to oneself." A non-genetically related child can no more belong to a parent than a genetically related child. Some Buddhist thinkers may, therefore, eschew ART for exacerbating disillusioned notions about the parent–child relationship that might, arguably, be harmful to both parent and child (Numrich 2009).

Muslims are divided into two main schools of thought: Sunni and Shiite. The majority (90 %) of Muslims throughout the world are Sunni. In 1980, Sunni scholars permitted treatment using all types of ART but disallowed any form of third-party reproductive assistance, including surrogacy. Use of third-party gamete donation for reproduction is problematic as it violates the precepts of Islam concerning legitimacy, lineage, inheritance, and incest (Inhorn 2006). Another problem resulting from surrogate motherhood is who is the real mother? In the Qur'an, the definition of motherhood is that mothers are those who conceive and give birth to the baby (*walada hum*). The Arabic verb *walada hum* is used for the whole process of begetting, from conception to delivery. It does not only refer to the act of carrying (*haml*) and giving birth (*wad*'). Thus, this Qur'anic verse categorically denies any rights of motherhood to the genetic mother. Determining who the mother is in the case of genetic gestational surrogacy is a problem (Kabir and az-Zubair 2007).

Conversely, Shiite scholars do allow surrogate motherhood as a treatment for infertility, albeit only for legal couples. Shiite scholars consider the embryo to be different from sperm and so do not regard introducing the embryo into the womb of the surrogate mother to be the same as introducing the sperm of a man to whom she is not married. In fact, they regard the surrogacy arrangement as transferring an embryo or fetus from one womb to another and do not see any sin in this practice (Abbasi-Shavazi et al. 2008).

## Conclusion

The available literature shows that surrogacy decisions are based on the moral, religious, and philosophical principles of the society in which they are undertaken. Furthermore, the ethical and social implications are deeply intertwined with religious traditions and communities. Which countries prohibit surrogacy depends on what religion the majority of the population belongs to and what the precept on procreation is of that particular religion. The literature shows that artificial reproductive technology is allowed in every country but all types of third-party assisted reproduction is restricted in some countries and cultures on the basis of adultery, preservation of lineage, inheritance, potential incest among the half-siblings, and possible eugenics. Major debate, disagreement, controversy, and ethical and legal problems have arisen from natural or partial surrogacy or genetically unrelated full surrogacy. Genetic gestation surrogacy may bypass these problems. In a genetic gestational surrogacy arrangement, there is no chance of incest among the half-siblings as the genetic relationship is already known, and there is no fear of confusion of lineage of the child as the biological parents are already confirmed. In this arrangement, the surrogate mother does not actually engage in any act of adultery, as it does not involve any body contact of a sexual/adulterous nature; therefore, the punishment of adultery is not applicable. This is because it is belived by some groups that introducing a third party is presumably problematic as it introduces a third party into the sacred dyad of husband and wife relationship that may threaten the marital bond. Motherhood may be problematic in genetic gestational surrogacy in some

cultures; however, since neither the biological mother nor the surrogate has comprehensively fulfilled the definition of motherhood, according that culture, motherhood can be confer to genetic mother by weighing the public benefit and necessity within the marriage bond. As genetic gestational surrogacy is largely free of social, legal, and moral complications, it can be used to provide the highest form of happiness to couples for whom the concept of family was previously impossible.

## Competing Interests

The author declares that she has no competing interests. The author conceived the idea of the article and wrote the manuscript.

## Cross-References


- ▶ Genetic Gestational Surrogacy
- ▶ Infertility in Developing Country


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