

# Research on Ethical and Legal Issues Arising from Surrogacy

Xiaofang Li

School of Anhui University of Finance and Economics, Anhui, 230000, China

## Abstract

**Surrogacy is a new term that has appeared in recent years. We are not unfamiliar with surrogacy, because since the emergence of surrogacy, it has caused us extensive discussions. As a country that pays attention to ethics, the emergence of surrogacy has a great impact on our ethics and morality. A new challenge, how should we view the new thing of surrogacy, this article first starts with the classification of surrogacy, and then discusses the ethical and legal challenges that surrogacy brings to our country, and finally gives our country can adopt. Some practices to better protect the rights of our citizens and maintain social stability.**

## Keywords

**Surrogacy; Legal; Ethics.**

## 1. Types of Surrogacy

### 1.1. Paid Surrogacy and Unpaid Surrogacy

Surrogacy refers to the act of a woman with full capacity for civil conduct accepting the entrustment of others to use artificial reproductive technology to bear children. Surrogacy is mainly classified into the following categories. Women provide surrogacy services for others, which are divided into paid surrogacy and unpaid surrogacy according to whether they receive additional remuneration; genotype surrogacy is divided according to whether the surrogate woman has a genetic blood relationship with the baby born. with gestational surrogacy. Unpaid surrogacy means that women do not help others to conceive for economic purposes. Generally, it is based on certain identity conditions. Usually, it refers to surrogacy between sisters or the mother provides surrogacy for her daughter. This kind of surrogacy is obviously prone to a series of ethics. The problem will bring a series of challenges to the existing laws in our country; Paid surrogacy refers to paying a certain amount of money to the person who asks for surrogacy through surrogacy. Paid surrogacy can be subdivided into reasonable surrogacy and real surrogacy. Reasonable paid surrogacy means that the surrogate mother does not seek benefits through surrogacy, but only collects necessary expenses during pregnancy, including medical expenses for inspection during pregnancy, nutrition during pregnancy, and lost work expenses. In this case, the surrogate mother Instead of using surrogacy as a means of obtaining financial rewards, real paid surrogacy, as the name suggests, is that in addition to the surrogate mother getting reasonable remuneration through surrogacy, the person who entrusts surrogacy also needs to pay extra high remuneration to the surrogate mother. means of making money.

### 1.2. Genotypic Surrogacy and Gestational Surrogacy

The distinction between gestational surrogacy and genotype surrogacy is based on the blood relationship between the child born by the surrogate and the surrogate mother. Genotype surrogacy means that the mother who provides the surrogate has a blood relationship with the baby produced by surrogacy. In this case, the egg Provided by the surrogate mother, the party entrusting the surrogacy provides the sperm. The egg and the sperm form an embryo in the body of the surrogate mother in a certain way. The surrogate mother has no blood relationship with the child she gave birth to. Does the absence of blood relationship mean that The surrogate

mother does not have any legal relationship with the child? At present, there are no clear legal regulations, which shows that genotype surrogacy will generate greater legal risks and ethical issues.

## **2. The Reasons for the Emergence of Surrogacy**

### **2.1. Aging and Low Fertility**

According to the data of the seventh census released by the State Council in 2021, as of November 1, 2020, China has 260 million people aged 60 and above, and in the classification of aging China belongs to mild aging, and the classification of mild aging is that the population aged 60 accounts for between 10% and 20% of the total population, because the population over the age of 60 accounts for 18.7% of the total population in China, indicating that we are in the stage of mild aging. Statistics show that the fertility rate of China's population has been declining since 1971. Although it is related to the implementation of family planning in China, this is not the main reason. China adjusted its fertility policy in 2013, 2016 and 2021. From "separate two children", "universal two children", to "opening up three children", the fertility policy has been adjusted but the fertility rate has not shown an upward trend. In 2021, the birth rate of China's population will only be 7.52%. The lowest birth rate in China, and the declining fertility rate is mainly because people of the right marriage age in China refuse to get married, and a series of economic pressures after having children are related to the employment pressure of women.

### **2.2. Serious Loss of Independence**

According to the statistics of the Chinese Academy of Social Sciences, in 2010, the cumulative death rate of only-child deaths in China's only-child families reached 1.003 million. The annual growth rate, according to this growth trend, is expected to reach 12 million in China by 2050. The parents of many families who have lost the only one are too old to have children. Chinese based on the urgent need to have offspring, this group of people has become an important part of those seeking surrogacy.

### **2.3. The Increase in the Number of Infertile People**

The data released by the Bureau of Statistics in 2021 shows that the age of the married people in China is increasing every year, and the infertility rate of couples of childbearing age in China has reached 12%-18%, among which patients aged 25-35 years old it is growing rapidly, and in the case of infertility, the next generation can only be conceived through in vitro fertilization or surrogacy.

## **3. Ethical Conflicts Caused by Surrogacy**

### **3.1. Surrogate Mothers Complicate Family Relationships**

China is a country with a history of 5,000 years. Today, the emergence of surrogacy has also caused a series of ethical issues to impact the traditional ethics and morality of the Chinese nation. Ancient China was a clan society, which formed bonds by blood relationship. The family relationship in ancient China was based on blood relationship. The relationship is established as a bond. In our country, if the relationship between the surrogate mother and the child is not handled well, the child will face a complex social and ethical relationship as soon as it is born. The relationship between the surrogate client, the relationship between the surrogate mother and the surrogate child, and in the case of the above-mentioned general unpaid surrogacy, where the surrogate mother and the child born by surrogacy are close relatives, the ethical relationship is not conflicts are also challenging our moral bottom line. Surrogate mothers and children are close relatives, whether children have the right to know, and how to call them in

the future. These are all practical issues that will arise. In addition, the emergence of surrogate mothers will also have a certain impact on the harmony of the family. In real life, we have seen many such cases. The surrogate client and the surrogate mother are entangled. The difficulty of the surrogate mother will make the original In a peaceful and harmonious family, conflicts arise, and the child conceives in October and then gives birth. If the surrogate mother cannot abandon the child after giving birth, the social problems caused by the disputes in this case are also very serious, and the ethical issue will become a legal issue.

### **3.2. Surrogacy Makes the Uterus Instrumental**

Some ethics experts believe that the current weakening of women's awareness of pregnancy is due to the advancement of economy and technology. This is not to deny the power of economy and technology. The fundamental starting point is that China is a traditional society that pays more attention to ethics. The emergence of surrogacy is related to The traditional values of our country are not so compatible, and secondly, surrogacy is linked to money, which makes surrogacy considered a simple reproductive technology, which will lead to deeper ethical issues. In the process of developing feelings, this situation poses a considerable threat to family harmony, which is contrary to our country's monogamy system. There are some feminists who believe that women's surrogacy is renting out their wombs and seeing their wombs as a tool to continue offspring. This practice does not respect women and degrades women's social status. To some extent, surrogacy It is a kind of commercial behavior, but this kind of commercial behavior is not easily supported by the public. The mainstream view does not agree with this method, and may even think that this kind of behavior is illegal.

### **3.3. Surrogacy and Infant Commercialization**

Many people now combine surrogacy with the sale of children. In fact, surrogacy is quite different from the sale of children. The sale of children is clearly prohibited by law, and if there is any sale of children, it will be punished very seriously. In contrast to surrogacy, there is no clear legal prohibition of surrogacy in China, and the status quo is still in a gray area of legal provisions . The main difference between surrogacy and the sale of children is that in the sale of children, after the transaction between the buyer and the seller, the buyer has the right to arbitrarily dispose of the child. This situation is more similar to treating children as commodities, and the rights of children cannot be obtained. due protection. However, surrogacy is different. The rights of the child conceived in surrogacy can still be guaranteed. The surrogate mother transfers the rights and obligations of the child to the surrogate client through a surrogacy agreement , and the child is still a subject protected by law. , and through the division of surrogacy, surrogacy is divided into paid surrogacy and unpaid surrogacy. In unpaid surrogacy, the surrogate mother does not receive additional benefits, in other words, she does not use surrogacy to earn money, so surrogacy Does not necessarily lead to commercialization of infants.

## **4. Legal Issues Arising from Surrogacy**

### **4.1. The Validity of the Surrogacy Contract**

The Civil Code of our country clearly stipulates that an invalid contract means that although the contract has been established, it violates the validity and mandatory provisions of the law, administrative law in content and form due to the lack of effective elements for the contract to take effect. There is no clear law in China to explain the validity of the surrogacy contract. Although surrogacy violates traditional Chinese family ethics, the surrogacy contract objectively meets the requirements for the establishment of the contract, and there is currently no relevant law that clearly states the surrogacy contract. The issue of validity, which sometimes violates the regulations of the Ministry of Health of our country, it is difficult to use

existing laws to solve the problems that arise. Therefore, in this case, different courts have different judgments, especially when it comes to children. On the one hand, because the issue of human rights is involved in the surrogacy contract, it is difficult for the court to enforce the human rights in accordance with the mandatory provisions in the contract law. In this case, as a product of an era, our country currently lacks a clear This is not conducive to social stability, so the country should formulate laws in this regard as soon as possible to regulate surrogacy and surrogacy contracts.

#### **4.2. Disputes over Property Rights**

The question of whether the child born by surrogacy has the right to inherit the property of the client and the surrogate mother, how to identify the relationship between the child born by surrogacy and the client and the surrogate mother, and whether it can be formulated as a surrogate child and a surrogate after surrogacy The surrogate is the legal relationship between parents and children in the legal sense. After the child is born, whether the surrogate mother's rights and obligations to the child are directly terminated or the contract can stipulate the time for the termination of rights and obligations, and whether the child born by surrogacy has the right to inherit The property of both the surrogate mother and the entrusting surrogate is not clearly defined in Chinese law.

#### **4.3. Conflict between Surrogacy and the Country's Own Laws**

Commercial surrogacy is, to a certain extent, the surrogate mother's selling of her own womb. Children born under this surrogacy model are traded as commodities, which will violate the child's right to life and health. This behavior is essentially similar It is against the spirit of our country's laws for child abduction and trafficking. At the same time, our laws clearly stipulate that every family should enjoy the right to have children. This method can effectively guarantee their reproductive rights. If the state does not allow them to adopt reasonable means, it will be detrimental to the protection of their basic rights and the stability of the society, so a conflict will form between the two.

#### **4.4. Disputes over Custody Rights and Obligations**

The current law of our country stipulates that the parent's obligation to support the child is based on the blood relationship or the imaginary blood relationship as the premise of the parent's obligation to support the child, but there is no clear legal provision for the child born by surrogacy, so this will produce a series of questions, whether the child born by surrogacy has the obligation of maintenance to his adoptive parents, when the adoptive parent who raised the child born by surrogacy dies in an accident, does the mother of the surrogacy have the right to continue to support the child born by surrogacy, these issues are not clearly stipulated in our laws. If there is a dispute in this area, how should the court handle it? This is an issue we have to think about.

### **5. Construction of China's Surrogacy System**

#### **5.1. Prohibition of Commercial Surrogacy**

Commercial surrogacy has had a great impact on our country's laws. This surrogacy model is similar to the surrogate mother's uterus clearly marked, and the children born by surrogacy have become commercialized. This behavior is not only in line with China's traditional social ethics. Violating the violation also has great legal risks. Some institutions specializing in surrogacy intermediaries, in order to seek high profits, lure some women to engage in the surrogacy industry and form an industrial chain of surrogacy. Even in this case, it is more likely to lead to the sale of children and the sale of organs, which are serious violations of the law.

Commercial surrogacy is prohibited in both countries that allow surrogacy and countries that have limited access to surrogacy.

## 5.2. Formulate Relevant Laws to Limit Legal Surrogacy Situations

As a compulsory means, the law is conducive to safeguarding people's freedom, but on the other hand, the law will also play a role in restricting civil liberties. China has not yet clearly stipulated by law on surrogacy, so it is necessary to formulate relevant laws to promote surrogacy. Standardized development. On the one hand, existing regulations can be amended. my country's "Administrative Measures for Human Assisted Reproductive Technology" stipulates that medical institutions and medical personnel are prohibited from performing surrogacy operations. The author believes that this regulation can be revised. Fourth, this regulation is too broad. The provisions of the "Administrative Measures" refer to the prohibition of medical institutions. and other medical staff to perform surrogacy surgery, then others can perform it? In other words, medical institutions and their medical staff have prohibited others from doing this work. Therefore, the "Administrative Measures" should be revised to stipulate that those who have obtained relevant qualifications and the staff of medical institutions can engage in surrogacy operations that meet the conditions of surrogacy. On the other hand, the law should make it clear that children who have passed surrogacy have the same status as legitimate children and illegitimate children in our country. Set some basic principles to protect the rights of surrogate children, set up special chapters in the law to explain the illegality of commercial surrogacy , and at the same time give the legal status of family surrogacy that conforms to the acquisition of children through surrogacy , clearly The rights and obligations of all parties make specific provisions on how to bear the responsibility of each party and how to determine the loss when some conditions occur in the process of surrogacy , such as fetal malformation, sequelae of the surrogate or termination of pregnancy.

## 5.3. Compliant Operation of Surrogacy

First of all, the main body of surrogacy supervision should be clarified, and it should be clearly stipulated by law that the Health and Health Commission is responsible for matters related to surrogacy, which can be handed over by the Health and Health Commission to the provincial health and Health Commission for specific implementation; secondly, clarify the regulatory rules. . The department in charge of supervision should formulate specific implementation rules for surrogacy, standardize surrogacy applications and surrogacy agreements, and make detailed regulations on the process of surrogacy applications . Third, standardize the regulatory procedures. The application for surrogacy should be jointly applied by both husband and wife and submitted in writing. If the application is approved, the person in charge of the Health and Health Commission will organize a random selection of volunteers who are willing to carry out surrogacy. The surrogacy application should include the infertility certificate of the applicant for surrogacy . If it is a family who has lost an only child, the corresponding certificate should be provided, as well as the reproductive status, age, and economic situation. For the application received, the supervision agency should strictly control it, make a decision on whether to allow surrogacy , and finally report it to the National Health and Health Commission for recordation. Various agencies should also cooperate with each other, and crack down on illegal surrogacy if found. From time to time, various departments jointly carry out centralized rectification of the phenomenon of black market surrogacy, and illegal surrogacy is strictly prohibited

## 5.4. Standardize Operations and Carry out Surrogacy in an Orderly Manner

The selection of surrogacy institutions should be selected by the National Health and Health Commission to select medical institutions with higher qualifications, and conduct overall management of these medical institutions. Finally , the entrusting parties who meet the surrogacy application through reasonable review procedures should select these hospitals.

After the previous procedures are completed, the surrogacy operation is performed, and in order to ensure the rights of all parties, the medical institution should record the whole process during the surrogacy process. Secondly, the legal consequences of surrogacy are clearly explained. If the surrogacy agency, client, and medical staff perform illegal surrogacy operations, they should be punished as necessary. Once verified, the medical institution should be fined according to the degree of violation, and the medical institution may be fined and revoked. If the business license is violated seriously, the legal responsibility can be pursued. Finally, improve the pre-requisites for surrogacy applications, and set up a special review team to review the relevant circumstances of surrogacy applicants to see if they meet the conditions for surrogacy applications.

### 5.5. Strengthen Supporting Facilities to Help Free Surrogacy

In the case of being able to apply for surrogacy, the following two supporting facilities should be improved: First, establish an egg bank, conduct physical examinations on volunteers who are eligible and willing to donate eggs for free, and do not disclose the information of the volunteers after the egg retrieval is completed, and strictly protect the relevant information of volunteers. Second, establish a volunteer pool for those who are willing to provide surrogacy. Volunteers who provide surrogacy should be younger than 40 years old, have qualified health checks, and are willing to provide unpaid surrogacy services. In addition, regular health checks are carried out on volunteers. If the volunteers are physically damaged due to surrogacy, timely corresponding treatment is provided, regular physical examinations are arranged later, and the rights that surrogates should enjoy are reasonably guaranteed.

## 6. Conclusion

Surrogacy is actually a means for human beings to use scientific and technological means to realize their reproductive rights. Surrogacy enables human life to continue. Through surrogacy, this technical means can bring hope and good news to infertile and infertile families and families who have lost their only child. The ensuing ethical and legal issues brought about by surrogacy also make us look at the topic of surrogacy more cautiously. At present, our country has no clear legal provisions on surrogacy, but surrogacy should not be completely banned. With the further improvement of national laws and regulations, it is very necessary to correctly guide the phenomenon of surrogacy. The legalization of qualified surrogacy and Standardization is an inevitable trend in the development of the phenomenon of surrogacy. At present, the surrogacy industry is still in a very chaotic stage, and there is still a long way to go to establish standardized and planned surrogacy.

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