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SURROGATE MOTHERHOOD AND HUMAN RIGHTS

Surrogacy is important because it is the only way for many individuals to produce offspring to whom they are genetically related. Many people desire this link. With surrogacy, at least one of the intended parents is able to have a genetic link to the child.

The aim of this article is to establish the nature and value of surrogate mother.

Surrogacy is one of the most significant achievements of medicine, at the same time it has a lot of problem sides. Such as whether it is necessary to resolve all kinds of surrogate motherhood and how does society accept surrogate mothers? What kind of girls offers surrogate motherhood service in the world and in Kazakhstan? Is it worth commercializing this service? According to the law, at what level are surrogate mothers protected and after the childbirth, does the surrogate mother have the right to communicate with child?

On the conclusion of this article we will seeking how to solve issues deriving from surrogate motherhood, one should first question this practice with regard to the serious legal and ethical problems it raises in current time.

Key words: Kazakhstan, surrogate mother, human rights, exploitation.

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Суррогат ана және адам құқықтары

Көптеген адамдар үшін генетикалық жолмен балалы болып, ұрпақ қалдырудың жалғыз жолы – суррогат ана қызметін пайдалану. Көпшілігінің өзімен генетикалық байланыста болатын баласын қалайтыны анық. Ал суррогат ана қызметін пайдалану арқылы ата-ана болуға үмітті жұптың бірі баламен генетикалық байланыста болу мүмкіндігіне ие болады.

Мақаланың мақсаты – суррогат ана түсінігінің мәні мен қоғамдағы маңызын анықтау.

Суррогат ана медицинаның озық жетістігінің бірі бола тұра, бұл мәселенің көптеген шешімін таппаған, қоғамда дау туғызатын күрделі тұстары бар. Мәселен, суррогат ананың барлық түріне заңды тұрғыдан рұқсат берген дұрыс па және суррогат ана қызметіне қоғамның көзқарасы қандай? Дүниежүзінде және Қазақстанда суррогат ана қызметін кімдер ұсынады және аталған қызмет түрі үшін ақы алған моральдық тұрғыдан орынды ма? Заң бойынша құрсақ ана қызметінің қорғалу дәрежесі қандай және бала туылғаннан кейін суррогат ана баламен көрісіп тұруына рұқсат берілген бе?

Мақаланың қорытындысында суррогат анаға қатысты өзекті мәселелердің, ең алдымен аталған мәселенің құқықтық реттелуі мен қазіргі таңда көтеріліп жатқан этикалық сұрақтарға жауап табуға тырысады.

Түйін сөздер: Қазақстан, суррогат ана, адам құқығы, қанау.

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Суррогатное материнство и права человека

Суррогатное материнство важно, потому что это единственный способ для многих людей производить потомство, потому что они генетически связаны. Многие люди хотят собственных детей. При суррогатном материнстве, по крайней мере, один из предполагаемых родителей может иметь генетическую связь с ребенком.

Цель этой статьи – установить природу и значимость суррогатной матери.

Суррогатное материнство – одно из самых важных достижений медицины, в то же время оно имеет много проблемных сторон, как: следует ли разрешать все виды суррогатного материнства и как общество принимает суррогатных матерей? Какие девушки предлагают услугу суррогатного материнства в мире и в Казахстане? Стоит ли коммерциализировать данную услугу? Согласно закону, на каком уровне защищены суррогатные матери и после рождения ребенка суррогатная мать имеет права видеть ребенка?

В заключение статьи авторы предлагают способы решения вопросов, связанных с суррогатным материнством, прежде всего, следует задать вопрос о правовом регулировании этого вопроса и этических проблем, возникающих в настоящее время.

Ключевые слова: Казахстан, суррогатное материнство, человеческие права, эксплуатация.

Introduction

Science and technology have had a major impact on society, and their impact is growing. By drastically changing our means of communication, the way we work, our housing, clothes, and food, even the length and quality of life itself, science has generated changes in the moral values and basic philosophies of mankind. Beginning with the plow, science has changed how we live and what we believe. By making life easier, science has given man the chance to pursue societal concerns such as ethics, aesthetics, education, health and justice; to create cultures; and to improve human conditions. But it has also placed us in the unique position of being able to use a surrogate mother to become parents.

Whilst some people come to terms with their childlessness or find adoption or fostering acceptable alternatives, others see surrogacy as a solution. It provides an opportunity for couples to have a child with some genetic contribution from them where the woman is infertile or has, for example, had a hysterectomy for carcinoma, or where she has had recurrent miscarriages or where pregnancy would be a life-threatening condition. Of course, this is respectable reason to use a service of another woman. But some couples doesn't prefer get pregnant and hires someone, which can give a birth to baby.

Certainly, questions arise is it legitimate to allow commercial surrogacy or in general all types of surrogacy. This kind of problem is really affects the

honor and dignity of the surrogate mother, the rights of the child and finally the future commissioning parents.

The aim of the article

Surrogate mother and the child should not consider as a good, like in civil commercial transactions. State should give high priority to ensuring of surrogate mother rights and prevent abuse and exploitation from commissioning parents.

Methods

Surrogacy is a complicated social and psychological phenomenon, which may concern everybody. That is why, to distinguish society attitude to surrogacy, the survey methods were used during the study. We performed a questionnaire survey anonymously on the attitude toward commercial surrogacy in Kazakhstan, October 2017. Women aged 20 to 35 were interviewed. Since, according to the law this age category can be a surrogate mother.

The women were asked questions like:

1. Do you support the service of a surrogate mother?

Out of the 50 women interviewed, 60 % said they were against the surrogate motherhood, but they specified that if a woman cannot have children on medical grounds, this medicine can be used. Also, the respondents said that according to religious belief, this is contrary to the norms of Islam. They clarified a woman is considered as a machine, without any feelings. And childbirth is the most valuable thing in a woman's life.

2. You are willing to become a surrogate mother?

To this question, 100% said that they did not want to be a surrogate mother. In addition, the respondents added that after the childbirth, woman is mentally traumatized.

3. Does a surrogate mother have the right to communicate with a child?

95% of the respondents answered no. Since the surrogate mother after communication with the child may refuse to give the child to the commissioning parents.

In the course of the survey, 20 men at the age of 23-35 were interviewed, all respondents expressed that they did not mind surrogate motherhood services.

4. Surrogate mothers are being exploited (as a new types of rent a woman's womb)?

Almost all respondents (95%) said no. They clarified, that is a conscious act of woman, also for this service surrogate mother gets money.

In the inquiry, a midwife with maternity ward was interviewed, who delivered a baby from a surrogate mother. The child was not shown to the surrogate mother and was immediately taken away, however, according to the midwife, it was evident that the surrogate mother had a maternal feeling and the woman received a psychological postnatal trauma.

Unfortunately in Kazakhstan, clinics that provide surrogate mother services do not give information about surrogate mothers, in order to preserve medical confidentiality. And we were not able to interview with surrogate mothers, children of surrogates and the commissioning parents. But we would like to show the results of the study in UK. ESRC-funded research project in UK is based on in-depth interviews with 34 surrogates, 36 children of surrogates and 11 partners of surrogates. Twenty of the surrogates had been interviewed. The study found that surrogates stayed in touch with the majority of the surrogacy children (77 per cent) and with most of the parents (85 per cent of mothers, 76 per cent of fathers). The surrogates who had chosen to maintain contact with the surrogacy families, most would meet in person once or twice a year. Most of the surrogates' own children (86 per cent) had a positive view of their mothers' involvement in surrogacy. Almost half (47 per cent) were in contact with the surrogacy child all of whom reported a good relationship with him or her. A significant number of surrogates' children referred to the child as a sibling or a half sibling (Family bond). So, the findings paint a largely positive picture of the relationships between the surrogate and her own family, and

between these individuals and the families created through surrogacy.

Main Body

Surrogacy as new types of labor

One of the main desires of the couple – it's to have a baby. In modern time, thousands of couples, in search of surrogate mothers, make them customer. Nowadays, there were all sorts of businesses, also the number of offered products is growing every day, but who knew that the time will come when we turn children into commodities and let us order them? In addition, it is necessary to mention that our country, though not among the first on the "order" of children still indicator is not inferior to the leaders in this field. And of course there are questions: Who is the surrogate mother? How is the attitude of society toward to this service? Whether surrogate mother would be classified as form of labour?

The World has come a long way from America's first surrogate baby in 1980 (The History of Surrogacy). Since then, surrogacy has become a popular alternative to childbirth, using a "host of boldfaced names from Elton John to Sarah Jessica Parker and Alla Pugacheva [all of which have] publicly acknowledged using surrogates to birth babies for them" (Hansen, 2011).

If we clarify the meaning of surrogate mother, 'surrogate' literally means 'substitute' or 'replacement'. A 'surrogate mother' is therefore a 'substitute mother': she is a woman who, for financial and/or compassionate reasons, agrees to bear a child for another woman who is incapable or, less often, unwilling to do so herself. In other words, she is a substitute or 'tentative' mother in that she conceives, gestates and delivers a baby on behalf of another woman who is subsequently to be seen as the 'real' (social and legal) mother of the child (Niekerk, 1995). Here, surrogate mother is not the genetic mother of the child, since there is no genetic link (Hatzis), because we consider full type of surrogacy. Also, surrogate motherhood is variously described in emotive terms such as "rent a womb" or, on the other hand, "gift of love" or "gift of life" depending on a particular viewpoint. Regardless, surrogacy is a source of considerable legal, moral and ethical debate all over the world (Surrogate motherhood).

However International human rights law does not directly support surrogacy because there is no recognized right to a child. But, certain international principles can be extended to support the intended parent/s rights to enter into a surrogacy contract. For example, members at the World Conference on Population held in Cairo said that, "the aim should

be to assist couples and individuals to achieve their reproductive goals and give them the full opportunity to exercise the right to have children by choice.”

Every country has their own legislation and concept about surrogacy. For example in India, people have a general idea about the concept of surrogate motherhood. Legal experts as well as medical experts were asked as how they see surrogacy. Majority of them i.e. 54 per cent (legal experts) and 90 per cent (medical experts) considered surrogacy as a “boon for infertile couples.” Very few of them referred it as “baby selling” or “immoral practice” (surrogate motherhood).

Andrea Dworkin compared surrogacy to prostitution: surrogacy sells what prostitution sells without the stigma of prostitution. Men will inevitably control the surrogacy process and use it to vindicate their own economic interests. (Dworkin, 1983). Various types of view and relevant to surrogate mothers, but anyway all-time pregnancy remains what pregnancy always has been: a risky, unpredictable, deeply personal experience? Embryos can be created in laboratories but human beings take shape – where? In wombs? In mothers? In families? Such distinctions matter but it takes more than scientific progress and legal reform to make them clear (Marsh, 2015). Whatever views and disputes are about surrogate motherhood, the fact is that this is a great moral damage for a surrogate mother which cannot compensate for anything. And in the light our legislation, where all types of surrogacy permitted, including commercial surrogacy, this issue requires particular attention by the Government.

On the Code “On marriage (Matrimony) and family” of the Republic of Kazakhstan is established that a surrogate mother must give the child after giving a birth and on the birth certificate mother of a child recorded customer-woman. And during pregnancy, all the actions of the surrogate mother should be addressed together with the customers. If the surrogate mother has a permanent job, the question of continuing work is decided by mutual agreement of the parties to the surrogate motherhood contract. A surrogate mother is responsible for pregnancy, as stipulated in the surrogate motherhood contract, after the use of assisted reproductive methods and technologies, and must exclude the possibility of the onset of a natural pregnancy. The issue of bearing a multiple pregnancy is decided by mutual agreement of the parties to the surrogate motherhood contract (On marriage (Matrimony) and family). Consequently, the surrogate mother only provided the service for a determined reward. Customer considered as employer, and surrogate

mother as an employee must follow all rules which are established. It is doubtful whether in this condition someone will agree for altruistic type of surrogacy. Reason that the acceptance of condition of surrogate mother may be necessity to earn money. Moreover, the further relationship of the surrogate mother and the customer is not prescribed by law: such as communication with the customer and the child after the birth of the child, leaving the child after birth, etc. This fact, reiterates that surrogacy is a type of labor after implementing all relations between participants terminated.

Which category of women hire like a surrogate mother?

Surrogacy is not a new idea; there is a precedent in the book of Genesis, with the story of Abraham, Sarah and Hagar, the slave who bears Abraham’s son Ishmael (The book of genesis). Obviously, in ancient time slave women didn’t have a right to choice, but currently situation is another, women have all right which is provided for by law. Here the question arises as, why in modern community where almost all women are educated commercial surrogacy takes place?

To find the answer we resort to preliminary psychological and demographic studies and as well as surrogate matching service reports to Technology Assessment demonstrate, that women who have volunteered to be surrogates are distinctly less well educated and less well off than those who hire them, but their self-reported motivations for offering to be surrogates include noncommercial considerations. It should be noted, however, that absent financial remuneration, few say that they would offer to participate as surrogates (we have to mention, that in this research conducting country altruistic and non-commercial surrogacy allowed) (Parker, 1983). Although according to a recent rough estimate in Greece’s newspaper in 90% of the cases the surrogate mothers are not relatives but “best friends” (Hatzis, 2010). At the same time there is no reference in any of these cases to evidence submitted to court as to the close friendship that could lead a woman to offer her womb altruistically, because commercial surrogacy prohibited there. Here I would like to return to girls who participating in the survey in Kazakhstan all graduated from higher education and many of them had a stable salary, and said that they never saw themselves in the role of a surrogate mother. The high costs or blanket ban of surrogacy in many first world countries, lead couples to turn to poor women in undeveloped nations (Sergent, 2012). It seemed that commercial surrogacy allowed in most developing countries.

Recent studies have found that surrogates in the U.S., and similar countries like Canada and the U.K., are not necessarily poor nor claim to feel pressured into surrogacy. Many say they are appreciative of the fee but were inspired to be surrogates for other reasons, including that they enjoy being pregnant and are proud to be able to make such a difference in an otherwise childless couple's life (Janice, 2005).

Fact that surrogates are not motivated purely by the compensation provided, they have altruistic view and were the true motivation behind surrogacy there would be more surrogates performing the service for lower-class couples who could not afford to pay much as compensation (Kerian, 1997)

There also does not appear to be a definitive trend of less educated or psychologically vulnerable women acting as surrogates at a disproportionate rate in Western countries.

As we see, surrogate mothers can be women from different countries, both in developed and developing countries. Surrogate mothers are guided by different motivations, commercial and altruistic. However, if surrogate women were guided by altruistic beliefs, this would be morally more respectful.

Returning to the legal side of surrogate motherhood on marriage (Matrimony) and family law of the Republic of Kazakhstan does not provide a point of compensation for a surrogate mother in a case of miscarriage or when a child is pregnant. Therefore, at the legislative level, it is necessary to protect the rights of the surrogate mother at a high level. Also, clinics implementing the service of a surrogate mother explained the nature of the surrogate mother to prevent unpleasant consequences after childbirth.

Discussion

In the discussion, we used the Report of Columbia Law School Sexuality & Gender Law Clinic, it reflects various commentaries on surrogate motherhood. According to data some argue that the significant hormonal, biological, and physiological changes a woman experiences during pregnancy and birth, including the bonding that occurs between her and the child (Tieu, 2009), make it too difficult for a woman to consent surrogate contract. This may be the case because woman cannot predict the bond she may feel with the child (Walker, 2005). Moreover, surrogates also must consume large doses of hormones in order to prepare their bodies for implantation, which may lead to serious side effects and also affect their decision-making ability

while negotiating a surrogacy contract. But after signing the contract, surrogate doesn't have a right to change her mind (it's not provided by law, there is only mention that force majeure case should be solved by Civil law).

Other commentators argue that prohibiting surrogacy restricts the freedom of women to use their reproductive capacity as they choose and that it is an affront to the autonomy of women to make their own choices about the way they will spend their time and their talents (Shapiro, 2014). In this view, women are rational and autonomous actors who have the capacity to make fundamental decisions about their lives and bodies, including pragmatic choices in light of their practical realities and the opportunities available to them. These commentators tend to argue that surrogacy is like any other form of labor or work and the best approach is therefore to offer protections and regulations which identify the conditions that heighten risks of exploitation as well enhancing the possibility of positive outcomes (Pande, 2009).

Other claim's that surrogates are vulnerable to manipulation by a broker, agent, assisted reproductive clinic, and/or the intended parent/s (Allan, 2016). Intended parent/s generally have greater wealth, education, and social status, as well as stronger connections to institutions of power than surrogates and that even well-intentioned intended parent/s may unwittingly exploit their surrogates simply by making demands she is not in a position to resist. Similarly, highly educated and skilled individuals run surrogacy agencies; they have access to legal professionals, and are repeat players with established expertise and experience (Finkelstein, 2016).

This is a conviction that is being reiterated by empirical research, surrogacy is an expensive, and thus exclusive, process. This means that the intended parent/s are likely to be from a higher socioeconomic class than the surrogate, which could cause coercion during decision-making. However, other commentators have noted that empirical research does not support these concerns. They point to studies conducted in Western countries that indicate that few women have regretted participating in surrogacy contracts or experienced distress on giving up the child after birth, and that surrogates rarely refuse to relinquish the child after birth (Busby & Vun, 2010). On the contrary, empirical studies of commercial surrogacy have largely concluded that surrogates and the intended parent/s are satisfied and enriched by the process (Laufer-Ukeles, 2013).

Results

According to our research, surrogate motherhood is an act of mercy and at the same time labor for which one can receive a reward. Studies have shown that girls with higher education and stable wages rarely become surrogate mothers; they usually become potential consumers of this service. Surrogate motherhood is found all over the world, but there is no equal approach to this issue. There is no single normative document that fully covered the legal regulation of this issue. Therefore, the rights of all participants will be unprotected and vulnerable.

Let's look at the basic rights of the surrogate mother, is not specified in the national legislation fully. Firstly, surrogate mother doesn't have a choice. It disappears since the signing of document about surrogacy. Refusal of its obligations is not provided by law, and what compensation it should incur in case of refusal to fulfill its obligations under the surrogate motherhood contract is not specified also. The rights of surrogate mother towards to child not recorded in legislation. Therefore, issues related to rights of surrogate mother remain unsolved in lawful level.

The surrogate, according to the law on Marriage has no right to make decisions according to her lifestyle, beliefs, or interests. It also violates the constitutional rights of the surrogate mother.

Conclusion

In our country all kinds of surrogate motherhood are allowed on a statutory basis. What is surprising, that such a social, psychological topic was not the

object of fundamental scientific research? From the above facts it is clear that the theme of surrogate motherhood was and will be the topic of discussion. But the state must ensure the rights of the surrogate mother and child (the current law provides a refusal of customers from a child born from a surrogate mother, but does not mention the responsibility provided by the law in this case).

Commercial surrogate motherhood, it would seem, is an easy way to earn a lot of money, but the consequences of this service in many cases cause psychological damage to a woman. A surrogate mother does not fully understand or treats negligently when concluding a surrogate motherhood contract; however, after signing the contract, the woman has no choice. Termination of the contract entails full compensation for the costs spent on the surrogate mother, whom she can in reality neither compensates, and therefore even if the surrogate has changed her mind in providing services, she has no choice. This is already considered a violation of human rights and exploitation of women's labor. Health and the life of a surrogate mother, the life of a child, in these circumstances cannot be considered as an object of legal regulation only of civil legislation. Surrogate mother and child as vulnerable part of our society need a special legal regulation and protection by the state.

Based on international research and the situation in our country, it is necessary to review the permits of all types of surrogate motherhood. Namely, whether it is necessary to resolve commercial surrogate motherhood? If our country will allow only altruistic surrogacy, we can prevent pressure and exploitation of surrogate mother, also society will respect their best intentions.

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