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 km^2) 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.