

# Should commercial surrogacy be legalised?

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For The Straits Times

Does Singapore condone commercial surrogacy? This question is in the limelight with a court judgment on a Singaporean doctor's bid to adopt a boy he fathered through a commercial surrogacy arrangement in the United States.

The district judge, pointing to how in-vitro fertilisation (IVF) procedures are limited to married couples under Singapore law, held last month that the doctor cannot use adoption to formalise the parent-child relationship he created through medical procedures that are not legal here.

There are two types of commercial surrogacy. Traditional surrogacy involves artificially inseminating the surrogate's own egg with the intended father's (or a donor's) sperm. Gestational surrogacy involves the surrogate carrying a baby that is conceived through fertilising the egg of the intended mother or a donor with the sperm of the intended father or a donor.

The traditional surrogate is the

biological mother of the baby, while the gestational surrogate has no genetic connection. Gestational surrogacy is sometimes preferred by intended parents as it might be easier for the surrogate to part ways with the baby.

Surrogacy may be chosen because pregnancy is impossible or risky for an intended mother or because gay men wish to have children with whom they have genetic connection. Conceivably, some might choose surrogacy to avoid what they perceive to be the inconvenience of pregnancy, though the intended mother would have to endure the extraction of eggs if she wishes to have genetic offspring.

Altruistic surrogacy, involving no profit for the surrogate, raises different concerns. This article focuses on commercial surrogacy, which involves a fee, and is typically arranged by a broker.

Commercial surrogacy is not explicitly legalised or condoned in Singapore. Yet it is not a crime. However, the Ministry of Health's rules permit artificial insemination procedures only for married couples in certain situations, mostly involving medical or fertility issues.

Thus, practically, surrogacy is not

an option unless an intended father is able to inseminate the surrogate through other means.

Singaporeans can also go overseas for artificial insemination of a Singaporean or foreign surrogate, if the other country does not prohibit this. But if either side reneges on the surrogacy agreement – for example, if the surrogate refuses to hand the baby over – it is doubtful whether the agreement can be enforced in a Singapore court.

Proponents of commercial surrogacy focus on the parties' freedom and general welfare. If consenting adults enter into a mutually beneficial agreement, why prohibit them? After all, the desire to have children of one's own is natural, and surrogacy is sometimes the only way for some couples to fulfil such intense desires.

With prevalent fertility issues, why not legalise commercial surrogacy to increase birth rates?

Some arguments against commercial surrogacy can be addressed with appropriate laws. If one is concerned about exploitative brokers, a non-profit or governmental agency can be tasked with brokering.

What of other objections against commercial surrogacy?

**Even if the law gives the surrogate an option to retain maternal rights to sidestep objections about her inability to consent at the outset of pregnancy or the concern that children are sold, the law ends up sanctioning the alteration of the traditional family structure. The child possibly has three parents. Must the law also countenance rights of egg, if not sperm, donors?**

If one fears the poor will be tempted to undertake multiple surrogacy arrangements for profit without proper regard for health risks, the law can restrict multiple arrangements, regulate procedures for consent, mandate health screenings and so on.

As for fears of potential parenthood contests between a reneging surrogate and the intended parents, these may be

settled by amending the Status of Children (Assisted Reproduction Technology) Act to clarify the claims.

But promoting freedom of contract is not a strong argument for legalising something like commercial surrogacy, as human lives – vulnerable babies in this case – are involved.

Ethical concerns abound in issues around commercial surrogacy, which suggests not just that the law should not condone it, but arguably that criminal sanctions should be applied to brokers.

First, can a woman truly consent to giving up her maternal rights and handing over her baby upon birth? As noted by Chief Justice Robert Wilentz of the New Jersey Supreme Court in the case of *Baby M* in 1988, the surrogate cannot make any "totally voluntary, informed decision" when she does not understand the strength of her bond with her child, not having gone through that particular pregnancy.

Second, surrogacy commodifies pregnancy. As the surrogate is encouraged to unnaturally suppress maternal bonds which form during pregnancy (even in gestational surrogacy when she does not contribute the egg), her dignity and labour are denigrated. As Professor Elizabeth Anderson, an opponent of commercial surrogacy, notes, the surrogacy industry is interested in "suppressing, manipulating, and trivialising her perspective".

Even if some women really do not mind being surrogates, and even if they claim to form no maternal bonds, condoning commercial surrogacy objectifies women as womb renters, mere means to the ends of others.

Third, children are commodified, at least in traditional surrogacy. Prof Anderson notes that the

surrogate is required to relinquish her maternal rights, and give the intended father exclusive parental rights over the child. Even if the intended father purports to pay for the surrogate's service, rather than the sale of the child, the child is commodified because the father would not pay for a service of pregnancy without the sale of maternal rights.

Psychological harm may result to children who come to know that they were brought into being in a transactional manner, for the sake of money, by biological mothers who were traditional surrogates.

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Proportionally, too, if the industry were legalised or condoned, there would be far more poor surrogates serving rich intended parents than rich surrogates serving poor intended parents.

Would the poor as a class be indirectly instrumentalised and viewed as second-class citizens who would do such jobs for what is a pittance to the rich, accentuating invidious class divides?

For these reasons, commercial surrogacy is fraught with ethical and legal concerns and remains rightly outside the realm of the legally permissible.

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