

Surrogacy

Adrian Ellenbogen, M.D.

**IVF Unit , Hillel Yaffe Medical Center ,Hadera
Technion- Israel Institute of Technology
Haifa, Israel**

St. Petersburg, Russia

International Federation of Fertility Societies (IFFS)
and

Russian Association of Human Reproduction (RAHR)

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Surrogacy in Israel

Everything you wanted to know about the amendment to the Surrogacy Law

Background

The Surrogacy Law was passed in 1996. It has enabled surrogacy in Israel for the past 18 years. By law, a man and woman who are partners are entitled to find a surrogate independently, or through a surrogacy agency, and to enter into a surrogacy agreement with her.

The surrogacy agreement is submitted to [the Board for Approval of Surrogacy Agreements](#), which checks the compatibility of the parties to the process: a check that the surrogate is not entering the process out of (emotional or financial) distress, emotional and physician suitability of all those involved in the process, etc.

Data from the Board for Approval of Surrogacy Agreements

- ▶ Of 1,042 applications by couples who opened files, 1,026 couples were approved.
- ▶ Applications by couples who opened a file with the Board and were rejected:
 - ▶ 5 couples due to the woman's age, which was over 52 years.
 - ▶ 2 couples who have 3 children and sought surrogacy for a fourth child.
 - ▶ 7 couples due to partners' health issues.
- ▶ By the end of 2013, 516 children had been born in Israel through surrogacy procedures.

Principles of the Legal Agreement in Israel The Embryo Carrying Agreement consists of two parts:

- ➡ The first part deals with the surrogacy agreement,
- ➡ The second part deals with the status and parenting of the newborn.

First part

- The law views the surrogacy agreement as an independently drawn-up contract by the parties operating in the “free market,” but **which must be submitted to an authorization committee for validation.**
- The committee’s role is to approve the contract after ensuring that it meets the conditions set down by the law and is convinced that both parties signed of their own free will, and after establishing that no risks are posed to the mother’s health or to the child’s welfare.
- It was also decided that the committee has the authority to approve conditions for the surrogate mother regarding **“monthly payments to cover substantial expenses and to compensate for wasted time, suffering, loss of income or temporary loss of working capacity or any other reasonable compensation.”**

Second part

- ▶ The surrogate mother cannot withdraw from the surrogacy agreement, unless a “genuine change occurs to justify this”
- ▶ The law prohibits a family member of one of the intended parents to serve as the surrogate mother, as well as “traditional surrogacy,” where the surrogate mother is genetically related to the fetus.
- ▶ The law states that the sperm used for IVF **has to come** from the intended father,

- The law states that the embryo carrying agreement **cannot** include clauses which prevent the surrogate mother from receiving any medical treatment of her choice, including abortion.
- The law allows only heterosexual couples with legal couple status to use surrogacy.
- Single men and women, as well as lesbian and homosexual couples are not allowed to use the procedure.

The Law causes many problems.:

▶ Validity of consent given by surrogate mothers is doubtful.

▶ Possible future psychological harm are ignored

▶ There is a danger of "commodification" of children.

▶ Abusing women of low socio-economic status as breeding machines may be another outcome.

▶ No clear responsibility is imposed on the "intended parents" for an impaired child.

▶ The law ignores possibility of divorce or death of the "intended parents" before the child's birth.

▶ Splitting motherhood is another social problem that has to be dealt with.

▶ So far the sperm of the husband from the "intended parents" has to be used,

Surrogacy in Europe

Surrogacy is not officially allowed in Austria, Bulgaria, Denmark, Finland, France, Germany, Italy, Malta, Norway, Portugal, Spain and Sweden.

Altruistic, but not commercial, surrogacy is allowed in Belgium, Greece, the Netherlands and UK.

Some European countries, such as Poland and the Czech Republic, currently have no laws regulating surrogacy

ESHRE Task Force on Ethics and Law 10: Surrogacy

ESHRE Task Force on Ethics and Law including F.Shenfield, G.Pennings, J.Cohen, P.Devroey, G.de Wert and B.Tarlatzis

Recommendations

Indication

- absence of the uterus regardless of aetiology
- serious health risks for the intended mother
- difficulties in becoming pregnant .

▶ **Payment for services is unacceptable;** only reimbursement of reasonable expenses and compensation for loss of actual income should be considered.

▶ All parties involved should be counseled and screened separately by independent specialists.

▶ The surrogate should be aged <35 years **for partial surrogacy** and <45 years for full surrogacy.

▶ In order to ensure free and well-considered decision-making by the surrogate/gestatin woman, it is required that the woman has at least one child.

▶ A 'cooling off period' is recommended so that all parties can think through their decision.

▶ It is strongly recommended that only one embryo should be replaced

U.K Law

In the United Kingdom, prohibits commercial, but not voluntary-altruistic surrogacy agencies and forbids advertising for or about surrogacy.

Only the commissioning couples and the host surrogate may initiate, negotiate or compile information to make surrogacy arrangements

- ✓ It is clear that in gestational surrogacy, the intended parents are not the parents of the child at birth.
- ✓ Intended parents can seek what is called a Parental Order for adoption of the child.
- ✓ Until the Parental Order is approved, the future parents have no parental status and cannot make decisions regarding the child's welfare.
- ✓ To achieve a Parental Order, intended parents must meet several conditions:
 1. the birth mother and her spouse or partner must consent to the Order;
 2. at **least one intended** parent must be genetically related to the child
 2. the intended parents must be a couple (either married or **civil partners**) .

U.S. Law

A **proposed** laws = the 2000 Uniform Parentage Act as amended in 2002 (U.P.A.) law.

The U.P.A. "provides for a **written agreement** among the proposed gestational mother, her husband if she is married, the **donor or donors**, and the intended parents.

The gestational birth mother, her husband if she is married, and the gamete donor or donors understand that the child will be produced by IVF.

The agreement also provides for the intended parents to be the legal parents of the child so produced.

The intended parents and the gestational mother (and her husband if she is married) **must be residents of the state for at least 90 days**

The agreement can include a provision for reasonable compensation to the prospective gestational mother.

A hearing to validate the agreement must include the following findings:

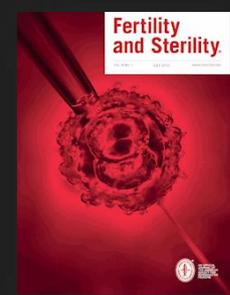
1. there has been a home study of the suitability of the intended parents in conformity with the standards governing adoptive parents
2. all parties voluntarily entered the agreement and understand its terms;
3. adequate provision has been made for reasonable health care expenses until the birth of the child;

- The U.P.A. states that **after the birth of a child** - the intended parents shall file a statement of the birth with the court if the birth took place within 300 days of the assisted reproduction.
- The court will **then** issue an order confirming the legal parentage of the intended parents,
- if necessary will issue an order for surrender of the child to the intended parents, **and direct a birth certificate** naming the intended parents as the parents.

- Despite stated above, surrogacy laws vary widely among American states.
- Some states have legislation dealing with surrogacy agreements; these laws vary as to the legality of such agreements, their enforceability, and whether compensation is permitted.
- Other states make surrogacy agreements unenforceable and rely on the common law **where custody is disputed**.

Consideration of the gestational carrier: a committee opinion

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Gestational carriers

- ▶ have a right to be fully informed of the risks of the surrogacy process and of pregnancy.
- ▶ should receive psychological evaluation and counseling
- ▶ should have independent legal counsel.
- ▶ Reasonable economic compensation to the gestational carrier is ethical.
- ▶ The intended parents are considered to be the psychosocial parents of any children born by a gestational carrier.
- ▶
- ▶ **“Gamete providers” are the sources of the sperm and oocytes; they may or may not be the intended parents.**

Australian Law

Commercial surrogacy is prohibited in Australia.

Until quite recently, even altruistic surrogacy was forbidden in several jurisdictions; now in most states it is permitted

- ❖ Australians have sought surrogacy services in other countries.
- ❖ In three Australian states (New South Wales, Queensland and the Australian Capital Territory) , such surrogacy tourism has now been banned.
- ❖ Surrogacy contract are not enforceable in Australia, although some states have provisions that enforce the obligation to pay surrogacy-related costs to the surrogate mother.

- ✓ The surrogate mother and her partner are parents at birth, regardless of whether there is any genetic connection to the child.
- ✓ In addition, most states have a process whereby intended parents can obtain a court order declaring them legal parents

Abstract

Gestational surrogacy as a treatment for infertility is being practised in some well-known medical institutions in Tehran and some other cities in Iran. While the majority of Muslims in the world are Sunni, the majority of Iranians are Shiite. Most Sunni scholars do not permit surrogate motherhood, since it involves introducing the sperm of a man into the uterus of a woman to whom he is not married. Most Shiite scholars, however, have issued jurisprudential decrees (*fatwas*) that allow surrogate motherhood as a treatment for infertility, albeit only for legal couples. They regard this practice as transferring an embryo or fetus from one womb to another, which is not forbidden in Shiite jurisprudence. Nevertheless, there are some controversies concerning some issues such as kinship and inheritance. The main ethical concern of Iran's experience with gestational surrogacy is the monetary relation between the intended couple and the surrogate mother. While monetary remuneration is practised in Iran and allowed by religious authorities, it seems to suffer from ethical problems. This article proposes that this kind of monetary relation should be modified and limited to reimbursement of normal costs. Such modification requires new legislation and religious decrees.

Surrogacy: outcomes for surrogate mothers, children and the resulting families—a systematic review

Viveca Söderström-Anttila^{1,2}, Ulla-Britt Wennerholm², Anne Loft³, Anja Pinborg⁴, Kristiina Aittomäki⁵, Liv Bente Romundstad⁶, and Christina Bergh⁷

human
reproduction
update

2016, 22(2): 260-76

Examined 55 articles regarding obstetric outcome, relationship between surrogate mother and intended couple, surrogate's experiences after relinquishing the child, preterm birth, low birth weight, birth defects, perinatal mortality, child psychological development, parent-child relationship, and disclosure to the child.

Results

- Most surrogacy arrangements are successfully implemented and most surrogate mothers are well-motivated and have little difficulty separating from the children
- The perinatal outcome of the children is comparable to standard IVF and oocyte donation and there is no evidence of harm to the children born as a result of surrogacy.

Thank

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That's all Folks!

for your attention