

Legal and Ethical Challenges of Surrogacy Contracts Termination in Iranian Healthcare System

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Abstract

Background and Objectives: Surrogacy is a challenging method of infertility treatment. In ethical domain, the value and dignity of a woman should be maintained despite the manipulative nature of surrogacy practice. The absence of strict letter of the law on surrogacy contracts has posed legal and ethical challenges to Iranian juridical and medical system. The purpose of the present study was to shed some lights on the challenges surrounding surrogacy contract termination.

Methods: This descriptive-analytical study utilized documentary method carried out through the assessment of books, articles, uniform judicial precedent votes, and valid judicial procedures.

Results: Establishment and termination of surrogacy contract is legitimate and subjected to the public codes of contracts, according to article 10 of civil law and Faqihs' verdicts. The absence of any written and consistent law code has resulted in myriad of challenges in juridical and ethical domains of contracts. Surrogate mother's economic need and a huge number of child applicant couples create a situation for contractors abuse and commercialization of agreement. Surrogacy contract allows for both automatic and non-automatic termination. In this regard, the juridical and ethical challenges usually increase in the latter when the surrogate mother, genetic parents, or treatment center change their minds and decide to give up the practice.

Conclusion: Technological innovations in medical science have opened up new horizons to human beings. Enactment of new law codes with ethical consideration can be an effective approach to infertility treatment through surrogacy and a powerful deterrent to ethical and juridical challenges arising from the termination of this kind of contract.

Keywords: Legal Challenges, Medical Ethics, Uterus, Surrogacy Contract, Juridical Procedure.

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Introduction

Infertility treatment through surrogacy as a quite new method of assisted reproductive technology requires a contract and fulfillment of the basic terms of transaction just like any other juridical acts. In this regard, further ambiguity or challenge in the implementation phase of the contract will be prevented if the terms of contract establishment and termination are registered in a written form. Surrogacy contract, which is a special kind of agreement subjected to the public terms of contracts, the written form of

which is legally preferable to its oral version. The silence of the law has led to diverse procedures in infertility treatment through surrogacy in the different regions of Iran (1). Application of different methods in infertility centers and presence of inconsistent and ambiguous judicial verdicts on this issue are important factors fueling the present challenges in this domain (1).

Cultural and ethical considerations are the fundamental problems that usually arise from the implementation of infertility treatment

methods. The cooperation of a third party in childbearing process can trigger mental and emotional tension in the genetic parents (2). Fertility is a natural concept for women; accordingly, infertility results in a great shock for the couples and their marital life. Infertility is a widespread crisis with a profound impact on personal and social life, the infertile suddenly face with. Nowadays, Assisted Reproductive Techniques (ART) have made a tremendous difference to generation survival and family life consolidation. The wide application of these techniques cannot be accomplished without taking measures toward the development of this technology (2). Infertility is of paramount importance in Iran, due to the special cultural norms of this country.

Developments and advancements in ART pose daunting challenges to the legal and ethical principles of present day society. Some of these new methods include Intrafallopian zygote transfer (ZIFT), intrauterine zygote transfer, intracytoplasmic sperm injection (ICSI), and in vitro fertilization (IVF) (3). In this regard, surrogacy (rented uterus) can be considered a fertility treatment method involving the intervention of another woman (i.e., rather than wife) in artificial reproduction (4). In this method, a third woman able to carry an embryo belonging to the sperm or egg of the genetic parents in her womb agrees to undergo this process and relinquish the resultant child to the given couple upon delivery (5).

There are two types of surrogacy:

a) Full surrogacy: In this method, the surrogate mother is genetically unrelated to the embryo in her uterus. This method comes in three different forms: 1) both the sperm and egg belong to the intended couple, 2) either sperm or egg belongs to a donor rather than the genetic parents and the surrogate mother, 3) neither sperm nor the egg belongs to the intended parents (6).

B) Partial surrogacy: In this method, the egg belongs to the surrogate mother and she is genetically related to the embryo.

Surrogacy contract is classified into two types based on the financial compensation:

A) Commercial surrogacy: In this kind of contract, the couple sign a contract with the surrogate mother to pay her a specified amount of money as the compensation of her commitments (7).

B) Altruistic surrogacy: In this kind of contracts, the couples select a woman among their relatives as the surrogate mother, and she adopts this practice out of altruistic motivation without any monetary compensation (7).

Surrogacy is a new and important issue in legal, jurisprudential, and medical domains presenting myriad of challenges. Medical advances and the special terms and conditions of surrogacy contracts have raised new problems in the implementation phase. Surrogacy contract termination and the consequent legal and ethical challenges call for a consistent and robust law code in the current society.

The present research addressed this critical issue due to the need for lawful infertility treatment, prevalent reasons for surrogacy contract termination and its associated terms, and legal and ethical challenges inherent to this domain.

Methods

This descriptive-analytic study aimed at the verification of legal and ethical challenges inherent to the termination of surrogacy contracts in Iranian healthcare systems. To this end, a documentary study was carried out through the assessment of books, articles, uniform judicial precedent votes, judicial procedures, and valid scientific references.

Result

Surrogacy definition

The surrogacy (rented uterus) refers to a situation where a third party due to different medical and mental reasons agrees to carry the fertilized egg of another couple until the birth of the resultant child (8). The advancement of medical technology in infertility treatment has led to the introduction of a new therapeutic approach for infertile women with malformed uterus that is unable to carry an embryo from the fertilized egg until birth. In this method, embryo is transferred by laboratory tools to

another woman's uterus rather than the owner of the egg.

Another definition for surrogacy is a contract through which a woman (i.e., surrogate mother) agrees to carry an embryo for a couple, delivers the baby, and relinquishes it to the intended couple shortly after birth. In this regard, the couple would raise the newborn as their own child (3). The word contract in this definition suggests the juridical and obligatory nature of this agreement wherein the two parties commit to each other, requiring the surrogate mother to relinquish the newborn to the legal parents shortly after neonatal birth(9)

Surrogacy is carried out in three different forms, each of which is selected by the infertile couples based on their own conditions (10). In all of these three forms, male reproductive cell is retrieved from the couple and the only difference lies in the retrieval of female reproductive cell. In the first form (full surrogacy), the egg does not genetically belong to the surrogate mother; it is rather retrieved from the genetic mother and transferred to the surrogate mother after fertilization.

It is evident that the only bond between the embryo and the surrogate mother is the embryo nourishment of the surrogate mother's blood. Therefore, there is no genetic connection between the surrogate mother and the embryo implanted in her uterus. However, in the second form of surrogacy, the egg is also retrieved from the surrogate mother due to some problems of egg extraction from the genetic mother. It should be noted that there is no marital relationship between the surrogate mother and the legal father, and fertilization is performed in a laboratory. In this method, the newborn will have the genetic attributes of the genetic father and surrogate mother while having no relationship with the legal mother (10).

However, in the third method, the egg is retrieved from a third party or the egg bank of the infertility center. In this type, the sperm is sourced from the genetic father; however, the egg is retrieved from a third party, sometimes an anonymous one, and transferred to the surrogate mother's uterus after laboratory fertilization. Therefore, the resultant newborn

has no genetic relationship with neither the surrogate mother nor the legal mother (10).

Historical-juridical background of the surrogate mother

In Iranian law, the act concerning embryo donation to infertile couples, enacted in 2005, is the only law ever passed on different methods of artificial fertility (11). Moreover, the administrative by-law of this act was approved and its application terms were verified by government cabinet in 2006. From the legal point of view, artificial insemination and uterus renting has a long history. Iran is the only Islamic country with a legal framework for embryo transfer for fertility through the intervention of a third party. However, there are fundamental differences between Iranian juridical principles and those of western countries as the pioneers of this legal constitution. Accordingly, this constitution in Iran is enforced through different regulations, compared to that in other parts of the world with other legal systems (12).

The first fertility and infertility center in Iran was established in Yazd in 1989. Medical practices related to fertility and infertility, as well as the legal and juridical discussions oriented toward laying the ground for suitable codification, was initiated in 1994(13). In the same year, a seminar entitled "Legal and jurisprudential issues of embryo donation" was held with the cooperation of Ibne-Sina Research Center and Tehran University, highlighting the legal issues of embryo transfer. The mentioned seminar resulted in the enactment of embryo donation code (14). In 1998, the bill of embryo donation to infertile couples was compiled in five articles. This legislation was passed by 111 votes in the parliament in 2002. It was then sent to the government cabinet in 12 articles and ratified by the government cabinet, regardless of the legal and technical problems in by-law on 9/3/2005.

Legal nature and process of surrogacy contracts

The legal and ethical issues of society and the people involved have been complicated as a result of the increasing use of surrogacy in

society, especially by infertile couple, establishment of contracts for this practice, complexity of the issue due to its novelty, lack of knowledge on the part of legal society, and absence of any written law in this respect. Determination of the nature and kind of contract will undoubtedly be a great aid to the legal community and the people involved. In law, a legal phenomenon is defined as any incident inducing a legal effect. According to the article 10 of civil law, private contracts should be binding on those who have signed them, provided that they are not explicitly contrary to the law (15).

Surrogacy contracts are among the legal private contracts that the parties involved must abide by its contents. Consequently, the establishment and termination of surrogacy contracts is legal in case of the agreement of the two parties; furthermore, it can be codified in different forms (15). However, due to the silence of Iranian law, there is not a consistent approach for infertility treatment through surrogacy for child-applicant couples and this procedure varies from a city to city or even from an infertility center to another one in the same city and jurisdiction (1).

Investigation of the law and regulation of other countries is indicative of different verdicts on the implementation of this method (i.e., surrogacy) as an innovative assisted fertility method in the ART. Different verdicts and mentalities about this issue caused disagreement among the participants of the Hague Conference on Private International Law in forming an appropriate legal course of action in 2019. In this regard, although this issue has been under investigation in this conference since 2015, the members have sufficed with the enactment of law only on monitoring the implementation phase of this method (16).

Generally, two common methods of surrogacy, including judicial process through court permit and non-judicial procedure without court permit, are adopted in Iran.

Judicial process through court permit

In this method, the couple appeals to competent judicial authorities (family court) to seek infertility treatment by surrogacy. In case

of meeting the eligibility criteria, the couples are referred to the eligible coroner and judicial authorities for verification. The eligibility criteria include legal motherment of such conditions as latent judicial and confirmed qualifications of the genetic parents by the court. The Department of Forensic Medicine is responsible for issuing the final permit for the initiation of treatment process of infertile couples (1).

Non-judicial procedure without court permit

In this method, contrary to judicial approach, no permit is issued by the family court concerning the treatment commencement and infertility centers are responsible for the implementation of this process. In fact, the diverse methods in the implementation of treatment has posed many problems for the couples referring to the infertility centers.

In infertility centers, the couples are medically tested and the surrogate mother satisfying the requirements of pregnancy is selected. The contract is then concluded officially at notary based on the agreement of both parties. It should be noted that infertility centers arrange and implement the contracts based on their own local laws and regulations due to the absence of a unified and civil law code on this type of treatment. In other words, all the infertility centers abide by the general principles; however, they define the details of the process themselves.

Establishment and termination of surrogacy

The legal basis of all private contracts is the article 10 of civil law. The mentioned article announces the freedom of contracts, thereby respecting the privacy of the two parties. Therefore, we can generalize the freedom of contracts to surrogacy contracts. The private contracts, such as surrogacy contract, shall be binding on those who have signed them, if they are explicitly not contrary to the law (17). The contract title chosen by the contractors does not affect the nature of the contract, and it is the judge responsibility to ascertain the nature of the contract. Regarding this, the contract can be surrogacy or any other kind of contract. To improve the contract process and avoid harmful deals, it is essential to pay close attention to the contents of article 10 as the

main foundation of the myriad of contracts since many people who were unaware of the details of this important article are reported to experience a lot of financial and spiritual losses (18).

Termination, which has been recognized and considered as discontinuation, is discussable provided that a contract had initially been signed. Termination of a contract is based on the agreement of the parties involved, decision of one of the contractors, or occurrence of an outside event. The contract termination involves the death of a legal entity, while contract establishment implicates a birth (18). Contract termination leaves no trace of the deal (19). However, the surrogacy contract is different since its special nature in the establishment stage makes the termination of this kind of contract different from that of other contracts. Therefore, if the parties agree to terminate the contract, they must be aware of these substantial differences.(20)

Contract termination is divided into three groups based on the role of contractors

The first category is called agreement-based termination by Faqih; furthermore, it has been referred as rescission, tafasokh, or taqayol in legal dictionary.(21) This type refers to the conditions when two parties of the surrogacy contract do not want to continue surrogacy practice any longer, and the contract is terminated upon their agreement. Automatic termination of surrogacy contract takes place automatically without contractors' intention. In this kind of contract termination, pregnancy does not end in delivery against the contractors' will, due to medical reasons and the agreement is terminated after embryo destruction. In the third kind of contract termination, which is the source of all ethical and legal challenges, only one of the contractors decides to terminate the contract (22).

Unintentional factors requiring the termination of the contract generally make the contract implementation impossible or difficult (23). With regard to surrogacy contracts and their termination, it should be noted that surrogate mothers are subjected to the same conditions as pregnant women carrying her

own embryo. Therefore, they have the same pregnancy process; accordingly, the emergence of any problems (e.g., preterm labor, hypertension, diabetes, maternal underlying diseases, urinary tract infection, hemorrhage, polyuria, intrauterine fetal growth restriction, amniotic fluid, maternal and fetal blood maladaptation, and preterm rupture of membrane) can lead to unsuccessful pregnancy and automatic termination of surrogacy contract.

However, the termination of the contract is under some special terms and law codes. Any party of the contract can terminate the deal before fetal formation since the dissatisfaction of either party will result in automatic termination. In another situation, despite the embryonic development, the surrogate mother changes her mind. In this case, the termination is authorized due to the possibility of her replacement with another surrogate mother. However, in all the mentioned cases, authorized termination is merely limited to the stage before implantation and ensoulment of embryo, and any party who does not abide by these conditions are required to compensate for the consequent losses.

Legal and ethical challenges of surrogacy contract termination

Despite a one-decade history of surrogacy in infertility treatment, no law code has yet been compiled and enacted on this issue. The commitments of surrogate mother and legal parents to each other and reluctance of any parties to fulfill the commitments have raised serious problems in public effects of contract (24). On the other hand, the 'Act of Embryo Donation to Infertile Couples' passed in 2005 as the only act on the new pregnancy methods falls short of solving the problems since it has not addressed surrogacy issues. Legality of surrogacy in Iran has led to increased demands for infertility treatment by this method (24). The absence of any specific written law codes on the establishment and termination of surrogacy contracts and inadequacy of public law in dealing with the raised problems have represented myriad of challenges to healthcare system and ethical principles concerning infertility treatment.

It seems that surrogacy contract termination and the subsequent challenges arise under three circumstances. In the first situation, the surrogate mother changes her mind and demands termination which leads to increased stress and concern in child-applicant parents. The shortage of candidates for surrogacy on the one hand, and overwhelming number of parents turning to this method on the other hand, have doubled the problem according to the principle of bodily integrity (25). It is impossible to oblige surrogate mothers to undergo surrogacy before implementation since it is her right to decide on her own body. When the contract is terminated, the surrogate mother is responsible for the losses inflicted on the genetic parents and the treatment center. In the second category, the genetic parents and treatment center meet their commitments and transfer the embryo to the woman's uterus; however, the surrogate mother or the other parties decide to terminate the contract. This happens in different forms and can be demanded by either party.

However, this termination is possible and legal under certain circumstances, such as gestational age and conditions of the embryo. It means that termination is not applicable after the ensoulment of the embryo, except in some special cases where the abortion or the destructions of the embryo is authorized or the surrogate mother's survival depends on abortion (26). Therefore, the majority of legal and ethical challenges will arise from the aforementioned conditions. In another situation, the legal parents do not maintain their previous mindset and withdraw from the contract. In this case, the surrogacy arrangement is automatically terminated provided that the embryo is not implanted in the uterus. However, if the embryo is implanted, the legal parents are enforced to continue the practice and reclaim the baby from the surrogate mother upon childbirth.

However, in some cases, commissioning parents do not want the child any longer and refuse to accept the baby after birth due to family arguments and each of them place this responsibility on the other spouse. This has

posed significant legal and ethical challenges since the surrogate mother goes into this practice due to her own financial problems and cannot refund the money in case of parents' withdrawal from the agreement.

In this stage, the future of surrogate mother and newborn is rendered ambiguous resulting in serious problems and consequences. Therefore, it seems essential to predict some complementary regulations on the effects of surrogacy contracts. These law codes can prevent the problems of the mentioned contracts since the silence of law fuels lingering uncertainty.

The other probable problems include alimony, coverage of the expenses incurred throughout and after pregnancy, and the surrogate mother's misuses through demanding more money or improper care of the embryo. Although these problems might be solved by common law and clear definition of contractors' conditions, the necessity of legal unity requires the legislator to solve these problems. Furthermore, some problems are also caused by legal void, ambiguity, and lack of consensus on the application of one consistent approach in dealing with surrogacy arrangement. These problems include responsibility assignment or enforcement of commitment in case of reneging on civil or contractual commitments

Discussion

Family is considered the backbone of society; however, infertility is widely acknowledged as a threat to marriage and family life. Surrogacy as one of the methods in infertility treatment have posed myriad of legal and ethical controversies in Iran and around the world. Diversity of opinions and beliefs has resulted in disagreement over a legal solution for infertility treatment through surrogacy in most of the countries around the world. The absence of any clear law code on this issue has increased problems for the applicants who seek infertility treatment, and development of different and somehow contrasting juridical procedures in dealing with surrogacy.

Focus on mere treatment regardless of ethical and juridical issues can be a significant factor

in the representation of present challenges to medical and juridical society. In this regard, a unified code on this issue can be an effective solution in infertility treatment and ease the problems and tensions involved. Surrogacy arrangements are created upon agreement and commitment similar to any other contracts, and the main point in the mentioned contracts is the commitments between the parties. Regarding this, the absence of a precise definition for commitment terms can be another incentive to an increase in arguments between the surrogate mother and genetic parents, treatment expenses, hazardous pregnancy, and myriad of lawsuits.

Termination terms as an inseparable component of every contract is of utmost importance in the framework of surrogacy contracts since they affect different people and aspects in diverse domains. The presence of a third party as a surrogate mother adds further complication and challenge to the terms of contract termination. Termination terms must apparently be considered thoroughly and clearly regarding all the facets of the issue. The absence of strict letter of the law in human relationship has led to anxiety and tension among the involved parties. Surrogacy contract is not legally banned if it is established orally; moreover, the written contract is preferred as a significant deterrent against probable lawsuits. Surrogacy contains numerous challenges, such as the commercialization of uterus renting, emergence of black market and dealers, shortage of candidates for uterus renting, and economical and cultural poverty. These issues create not only monopoly, financial misuse, and lack of mutual trust but also enormous problems in different domains.

These contracts can be terminated under certain circumstances depending on the conditions of transferred embryo. However, termination is sometimes impossible due to the ensoulment of the embryo despite the agreement of the genetic parents and surrogate mother. The main reasons leading to legal and ethical challenges include the nonpayment of alimony by the parents, abandonment of the newborn with the surrogate mother after birth, surrogate mother's withdrawal of the

agreement after implantation, and legal parents' relinquishment from having children.

Conclusion

Based on the verifications performed in the current research, the absence of any written and straightforward law code concerning surrogacy has directly or indirectly increased legal concerns over this issue in both establishment and termination stages of the contract. The adverse consequences of this issue can be evidently prevented by the enactment of suitable laws, along with awareness raising and culture development. Ethical commitment of the parties is undoubtedly a significant factor in the implementation of this act combating the problem of lawlessness and chaos in the present-day society.

Conflict of interest

The authors declare no conflict of interest.

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