

Gestational surrogacy

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Abstract:

Some women may not be able to carry their own children even when capable of conceiving biological offspring. *In-vitro* fertilization and embryo-transfer (IVF-ET) through surrogacy can now make this possible for these women. Surrogacy however, is still considered unacceptable in the Philippines due to moral and legal issues. This article will explore the need and acceptability of surrogacy in this age of IVF-ET in a country where the prevailing social norms and religious values still disapprove of third-party assisted reproductive technology (ART). Medical indications that would benefit from gestational surrogacy were enumerated and briefly discussed. The differentiation between traditional and gestation surrogacy, as well as commercial and altruistic surrogacy were defined. IVF with gestational surrogacy is a feasible solution to a number of medical difficulties in the carrying of a gestation. Strictly regulating the practice and restricting its use only to cases with legitimate medical indications will prevent its misuse and exploitation. Moral issues, admittedly will still remain an issue particularly for commercial surrogacy. However, limiting these only to altruistic and gestational surrogacy in some cases may be an acceptable compromise.

Keywords:

Congenital, gestational, surrogacy

Introduction

Some women, for one reason or another, may not be able to carry their own children even when with gametes that allow them to conceive biological offspring. These may be due to (1) the congenital absence of a functional womb, (2) surgical conditions that require the removal of the uterus, or (3) medical conditions that put their lives at risk if they get pregnant. With *in vitro* fertilization and embryo transfer (IVF-ET), having biological children is made possible for these women through gestational surrogacy.^[1]

IVF-ET is a technology that became available in the Philippines in 1996.^[2] Gestational surrogacy, however, is still generally considered unacceptable in the country.^[3] Supposed moral and legal issues of surrogacy have always been obstacles to its practice here.^[4] Not to mention the concern of

abuse for financial gains and the potential violation of human rights of those involved as already seen happening in other countries with medical tourism offering this kind of services.^[3]

Burden of the Problem

Congenital absence of a functional womb

The Mullerian ducts and the urogenital sinus are the embryonic precursors of the female reproductive tract. The cephalad one-third of the paired Mullerian ducts develop to become the fallopian tubes. The caudad two-thirds fuse medially together to form the uterine corpus, the cervix, and the superior aspect of the vagina. This then connects with the lower vagina that differentiated from the primordial urogenital sinus. The various possible structural anomalies in their development result from arrest at different stages of its morphogenesis. Etiology is not exactly known. Although often randomly occurring, multifactorial patterns of inheritance and teratogens have been implicated in its pathogenesis.^[5]

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An estimated 1 in 5000 newborn females will have some degree of vaginal agenesis.^[6,7] Of these, 90% will have the complete form also known as the Mayer-Rokitansky-Kuster-Hauser syndrome, which is characterized by the absence of both the vagina and the uterus.^[8] For the 10% of the patients with the partial form of vaginal agenesis where a uterus is present, a creation of a neovagina leading from the cervix to an introital opening may be attempted. However, if a sufficient outflow tract for menstruation is not sustainable due to scar contracture and vaginal reclosure, a hysterectomy may still have to be eventually performed.^[9]

Surgical conditions that require removal of the uterus

There are a number of gynecologic conditions, malignant, or even benign, for which a hysterectomy is part of their definitive management. Due to the reproductive function of the uterus, these are managed conservatively until such time the contemplated family size has been attained. Still, there are instances when a hysterectomy cannot be delayed.

In the case of early cervical cancer, it is possible to have surgery to just remove the lesion and leave the uterus in place.^[10] With hormonal treatment, adenomyosis may be medically shrunk to permit pregnancy to occur naturally or through assisted reproductive technology (ART). Similarly, large myomas may be reduced to a manageable size that would allow a myomectomy that will leave behind a still functional endometrium and a strong enough uterus to sustain a full-term gestation. However, a patient's poor response to medical treatment or inadequate improvement with fertility-sparing surgery may not provide the desired benefits of a conservative management.^[11]

Obstetrically, hemorrhagic complications such as intractable uterine atony, placental attachment problems (placenta accreta spectrum), and irreparable uterine rupture may force the removal of the uterus at the time of childbirth in women possibly still desirous of future pregnancies. This has been estimated to be 1.6% of women with severe postpartum bleeding.^[12]

Medical conditions that contraindicate pregnancy

Preexisting medical conditions in reproductive-aged women may be serious enough to put them at significant risk in case of pregnancy. This includes, for instance, cardiovascular conditions that the WHO classified as absolute contraindications to pregnancy. These are (1) pulmonary arterial hypertension of any cause, (2) severe systemic ventricular dysfunction (left ventricular ejection fraction 45 mm), (3) aortic dilation >50 mm in aortic disease associated with bicuspid aortic valve, and (4) native severe coarctation.^[13-15]

The Process of Gestational Surrogacy

For these women, the prospect of having another woman willing to carry the pregnancy for them is indeed a promising remedy to having a biological child of their own. This is what is known as gestational surrogacy, a form of third-party reproduction that involves a woman consenting to carry a pregnancy for a couple who will provide their biological embryos for transfer (ET) and implantation. This should not be confused with traditional surrogacy where the woman elected to carry the pregnancy is also the source of the ova fertilized. With the surrogate, therefore, having a genetic contribution to the pregnancy.^[1] This and cases involving ovum donation where the intended parents are not the source of the gametes are beyond the scope of this article and will not be discussed.

The gestational carrier, or the surrogate, should be a healthy woman aged 21–45 years old with no medical conditions that may adversely impact pregnancy. Preferably, with at least one (1) previous full term uncomplicated pregnancy, no more than five (5) prior deliveries, and no more than three (3) cesarean sections.^[16]

Ethicomoral Issues

With the Philippines being a predominantly Catholic country, surrogacy is not an openly accepted concept. The Vatican in 1987 through its *Vitae* explained the church's stand on artificial reproductive technologies and it teaches that reproductive technologies must only assist and not replace the natural marital union of couples in having children. The church, therefore, does not condone surrogacy, wherein a third party, the surrogate, is allowed to participate in the process.^[17]

Women's rights activists worldwide claim that surrogacy in general is dehumanizing. According to them, it somehow reduces the human body to a mere commodity that can be rented out for others to use.^[18] This, however, is countered by surrogacy advocates who claim that women fundamentally have the right to use parts of their person to help someone in need of it in the case of altruistic surrogacy. Or, to lawfully use it to fend for herself or her family in case of commercial surrogacy.^[18]

Altruistic surrogacy refers to surrogacy arrangements where the surrogate does not receive monetary compensation and is usually a relative or a friend to the intended parents. On the other hand, commercial surrogacy is any arrangement in which the surrogate is compensated for being a gestational carrier beyond the reimbursement for medical and miscellaneous expenses incurred.

Legal Issues

Worldwide, there are three country classifications based on the acceptability of surrogacy. These are (1) countries where the practice of commercial and/or altruistic surrogacy is legal, (2) countries where the practice of any type of surrogacy is illegal, and (3) countries where the practice of surrogacy is neither outlawed nor formally permitted. Of the three, understandably, the third proves to be the most problematic with no established system for monitoring and quality control. With no established laws for regulating its practice and safeguarding of the legal rights of those involved, the biological parents, the surrogates, and the children are left unprotected.^[3]

Surrogate's compensation

For altruistic surrogacy, aside from incidentals, the gestational carriers do not expect any form of payment. For commercial surrogacy, however, the intended parents agree to compensate the surrogate for services rendered. This is stipulated in a contract drawn up between parties before the commencement of the procedure. The expenses of having it done in another country will also have to be added on top of the combined cost of the IVF procedures and the obstetric needs accrued. According to several unofficial sources in the internet, this has been reported to range from USD 80,000 to USD 200,000 for the whole process. Needless to say, preparations for any untoward pregnancy or delivery complications must also be anticipated.

Child's parentage

In most countries where this procedure is performed, the subsequent legal procedures for parenthood are intricate due to the typical legal presumption that a woman giving birth to a child is the legitimate mother of said baby. Therefore, a surrogate mother who accepts to carry a pregnancy, whether altruistically or for financial gains, is required to legally relinquish parental claims and authority, with the intended parents then adopting their biological child when born.^[19] Such would be the case if surrogacy is allowed in the Philippines and if the present definition of parentage is not amended in the current family code where the paternity and the filiation of the child are defined.^[20]

Child's nationality

The eventual citizenship of the child is usually based on the prevailing laws of the country where the child is born in. Often, this is dictated upon by the nationality of the legally acknowledged parents or by virtue of the child's birthplace. This in turn will depend on the arrangements allowed for by the surrogacy program chosen. Since surrogacy is not offered in some countries, for couples who avail of the procedure overseas, travel

of the gestational carrier for delivery in a country where the nationality of choice for the baby is permissible must be taken into consideration. In the Philippines, the child is legally a Filipino at birth if at least one of the parents is a Filipino citizen.^[21,22]

Future Prospects

In 2023, Zamboanga City's 1st District Congressman, Rep. Khymer Adan T. Olosa, filed House Bill 8301 to institutionalize and regulate the practice of IVF and surrogacy in the country.^[23] According to Congressman Olosa, should the bill be signed into law, Filipinos can avail of ART and/or surrogacy services without having to leave the country and will also provide clear cut guidelines on parentage where all the rights and privileges of a biological child under existing laws will be accorded a child born through gestational surrogacy. He added that the country still does not have a comprehensive legal framework for the practice of these fertility procedures, and the ratification of an ART and surrogacy regulation law is necessary for its ethical and safe conduct in the Philippines.^[24]

The ART Regulatory Board of the Philippine Society for Reproductive Medicine (PSRM), in charge of monitoring and ensuring the standard of practice of its IVF practitioners in the country, was consulted. Although the board, at this time still maintains its recommendation to prohibit the use of surrogacy, it has been observed in a survey (a Delphi-method study) conducted by PSRM participated in by all its members, that the willingness to do surrogacy is acceptable to a majority (46% in favor vs. 34% against; 20% are undecided). However, the numbers have yet to reach the levels that are required for it to be a consensus (>75%).^[25] In other words, although it cannot yet be said that their membership fully advocates surrogacy, neither does it mean that it is totally against the practice.

The bill is still pending with the Philippine House of Representatives' Committee on Health.

Alternative to Surrogacy

Uterine transplantation

A uterine transplant offers a viable option for women who themselves cannot carry a pregnancy because they do not have a womb.^[26,27]

Compared to surrogacy, uterine transplantation will provide couples with the desire to have biological children an alternative that does not bring along with it the same legal, cultural, ethical, and religious limitations. It, however, will not address the fertility needs of women with uterus who should not get pregnant herself due to

preexisting medical contraindications.^[3] Furthermore, this is not without its own challenges and difficulties.

The recipient will have to be immunologically matched with preferably a live donor.^[3] Both the donor and the recipient will have to be healthy and willing to undergo lengthy and extensive surgeries for the uterine harvest and transplant, respectively. The recipient will have to take antirejection drugs, must every time deliver through cesarean sections, and will have to have a hysterectomy once no longer desirous of the future pregnancies.^[3] Since the fallopian tubes are not included in the transplant, recipients can only conceive through IVF-ET.^[28] All these considered, uterine transplant would appear to be a riskier, more complex, and a more costly way of achieving a biological child than gestational surrogacy.^[3]

Technologically, uterine transplantation is currently not available locally.

Adoption involving children who are not biological offspring of the intended parents is beyond the scope of this article and will not be discussed.

Conclusion

IVF with gestational surrogacy represents a viable medical solution to a number of problems involving the carrying of a gestation. Surrogacy can provide an answer for couples with no other alternative options, couples wherein the woman has clinical indications related to the absence of the uterus or medical contraindications to pregnancy. If ever allowed here, the Philippines should benefit from the lessons learned from the experience of other countries where surrogacy is already legally permitted. Attention should be given to the legal, medical, economic, and moral basis for its use. Pertinent guidelines for the proper practice of this medical option and the strict implementation of laws based on this must be in place to prevent its abuse and protect the rights of those involved.

With the technology already available here in the country, not to address the issue of surrogacy in the Philippines will only possibly force its underground practice. Openly, regulating surrogacy and strictly limiting its use only to cases with legitimate medical indications will prevent its misuse and exploitation. If the country is still not ready for commercial gestational surrogacy, seriously considering the legalization of altruistic gestational surrogacy may just be the cautious first step that might be needed.

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Conflicts of interest

There are no conflicts of interest.

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