



# The Implications of Gestational Surrogacy on Motherhood

*Implikasi Surrogacy Gestational pada Keibuan*

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## ABSTRAK

Ibu pengganti di abad ini telah mengambil bentuk yang lebih kuat dan telah diakui secara internasional. Ini karena berfungsi sebagai penolong bagi pasangan yang membutuhkan anak. Meskipun, awalnya menurut sejarah, itu tidak cenderung secara finansial. Bahkan menjadi diumumkan secara publik dan sama-sama berdiri untuk disahkan di negara-negara seperti Amerika Serikat dan Australia. Telah dikemukakan bahwa ibu pengganti tidak dimulai di zaman kita sekarang juga tidak pernah terdengar di masa lalu. Praktek surrogacy disinggung dalam Alkitab: "Dan Sarah berkata kepada Abram, Lihatlah sekarang, Tuhan telah mencegah saya dari melahirkan anak, Pergilah ke pembantu saya: mungkin bahwa saya akan mendapatkan anak dengan dia. Dan Abram mendengarkan suara Sara" (Kejadian 16:2). Meskipun surrogacy menjadi umum diucapkan di zaman kontemporer, berdasarkan teknologi reproduksi berbantuan yang terlibat, asal-usulnya mendahului bentuk-bentuk reproduksi baru yang dibantu. Ibu pengganti menimbulkan banyak masalah etika dalam masyarakat kita.

**Kata Kunci:** Pengganti; ibu pengganti kehamilan; ibu pengganti tradisional; donasi gamet.

## ABSTRACT

Surrogacy in this century has taken a stronger shape and has become internationally recognized. This is because it serves as succor to couples who need children. Although, initially according to history, it was not financially inclined. It even became publicly pronounced and equally stood to be legalized in countries such as the United States of America and Australia. It has been argued that surrogacy did not begin in our contemporary age nor was it unheard of in the past. The practice of surrogacy is alluded to in the bible: "And Sarah said to Abram, Behold now, the Lord has prevented me from bearing children, Go into my maid: it may be that I shall obtain children by her. And Abram hearkened to the voice of Sarah" (Genesis 16:2). Although surrogacy became publicly pronounced in the contemporary age, based on the assisted reproductive technology involved, its origin pre-dates new assisted forms of reproduction. Surrogate motherhood raises many ethical issues in our society.

**Keywords:** Surrogacy; gestational surrogacy; traditional surrogacy; gamete donation.

## 1. INTRODUCTION

Our central focus in this paper will be on Surrogacy, its meaning, and the clarification of other associated concepts in this paper. In the first section, we are going to look at definitions of the keywords used in this paper. Secondly, we are going to examine critically the implications of gestational Surrogacy on motherhood. Finally, we going to summarize all that has been discussed in the conclusion part of the paper. The traditional ways of motherhood and the values attached to it have undergone dramatic changes consequent upon the advancements in biomedical technology. Thomas Shanon (1997) said that there have been three major revolutions in this century. The first, which occurred in the 1950s, was the introduction of Oral conception; the second was the introduction of In Vitro Fertilization (IVF) in 1978 and finally, surrogacy motherhood was introduced in the 1980s. This marked the separation of sex from reproduction, reproduction from sex, and both sex and reproduction from the traditional family model (Shannon, 1997).

A surrogacy arrangement or surrogacy agreement is the carrying of a pregnancy for intended parents. There are two main types of surrogacy, gestational surrogacy, and traditional surrogacy. In gestational surrogacy, the pregnancy results from the transfer of an embryo created by IVF, so the resulting child will be genetically unrelated to the surrogate. Gestational surrogates are also referred to as gestational carriers. In traditional surrogacy, the surrogate is impregnated naturally or artificially, but the resulting child is genetically related to the surrogate (Falana, 2013).

However, intended parents may seek a surrogacy arrangement when pregnancy is medically impossible or delayed, a pregnancy presents an unacceptable danger to the mother's health or same-sex couples wish to procreate. Scientific and technological innovations have produced changes in so many ways of perceiving the world around us. This is evident in the technology of surrogate motherhood. Surrogacy involves impregnating one woman to gestate a baby who is raised by another woman. In western culture, the practice of surrogacy is very common.

## 2. SURROGACY

The word 'Surrogacy' is derived from the Latin word 'subrogare' which simply means one woman the surrogate mother carries a child for another person or persons (the commissioning couple) as a result of an agreement before the conception that the child should

be handed over to that person after birth (Basak *et al.*, 2010). A surrogacy arrangement or surrogacy agreement is the carrying of a pregnancy for intended parents (Patel *et al.*, 2018). There are two main types of surrogacy, gestational surrogacy, and traditional surrogacy. In gestational surrogacy, the pregnancy results from the transfer of an embryo created by IVF, so the resulting child will be genetically unrelated to the surrogate.

Gestational surrogates are also referred to as gestational carriers. In traditional surrogacy, the surrogate is impregnated naturally or artificially, but the resulting child is genetically related to the surrogate (Gibbs, 2008). However, intended parents may seek a surrogacy arrangement when either pregnancy is medically impossible or delayed, a pregnancy presents in unacceptable danger to the mother's health or same-sex couples wish to procreate. Scientific and technological innovations have produced changes in so many ways of perceiving the world around us. This is evident in the technology of surrogate motherhood. Surrogacy involves impregnating one woman to gestate a baby who is raised by another woman.

### 2.1 Traditional Surrogacy

Traditional surrogacy arrangements use artificial insemination(A1) to impregnate the surrogate mother's egg with the sperm of a man who is not her husband. The sperm that is used is usually the intended father's sperm. Artificial insemination is probably the least complicated of the assisted reproductive therapies and refers to the process of introducing sperm into the female reproductive organs by means other than sexual intercourse<sup>14</sup>.

### 2.2 Gestational Surrogacy

Instead of using the method of artificial insemination(A1), gestational surrogacy uses a more complicated procedure known as in vitro fertilization (IVF). This procedure refers to the process by which a doctor stimulates a woman's ovaries, removes several eggs, and fertilizes the egg outside her body. The fertilized egg is then introduced into the gestational surrogate's uterus. The gestational surrogate carries the child to term, however, she never has a genetic link to the baby.

### 2.3 Gamete Donation

This is the use of eggs, sperm, or embryos from someone else to help intended parents to have a child. The intended parent is the term used for the persons who will raise the children. Donors are people who donate either eggs or sperm and they can be known to the intended

parents or introduced through a reproductive center.

### 3. MOTHERHOOD

The term “motherhood” which we started using at the end of the nineteenth century refers to the state or condition of being a mother (Kirkman 2013). Motherhood is often defined as an automatic set of feelings and behaviour that is switched on by pregnancy and the birth of a baby. It is also viewed as a moral transformation whereby a woman comes to terms with being different in that she ceases to be an autonomous individual because she is one way or the other attached to another person. In many societies, a central feature of motherhood is that it should ideally occur within a heterosexual relationship, where a man and a woman cohabit and preferably legally married. Motherhood is generally known to begin when a woman gives birth to a baby. Generally, women are under pressure to bear children, and motherhood is often associated with their maturity and achievement in life. Being a mother is also considered to be a normal life course stage for women. This perception is also common in other societies (Akujobi, 2011).

A mother is someone who carries pregnancy; gives birth and nurtures till the child reaches adulthood. Adoption motherhood is when a woman adopts a child. Foster motherhood is very close to adoption, it is a situation whereby a woman who is not the mother of a child takes up the responsibility of caring for the child. However, the foster mother does not have any legal claim over the child unless the child is adopted, For example, in China, many Chinese women accepted without question, the view that childbearing was a natural and necessary part of their family life course, Therefore, few people considered the option of not having children. The pressure for women's childbearing is derived not only from their personal network or relations and friends but also from society (Akujobi, 2011).

Historically, despite changes in women's labor force participation, fertility rates, and age at first marriage, the experience of motherhood has remained a central aspect of most women's lives. Motherhood is socially constructed as an essential part of adult femininity so that women who do not become mothers, for whatever reason are usually unhappy. Many women share the idealized view of motherhood common in many societies so it is not the case that they are forced into having children. Motherhood, which is having an experience of carrying the pregnancy and giving birth to children, wherein the mother finds joy in doing her duty as a mother should not be jeopardized for money

or bio-medical advancement (Jones, 2002).

### 4. TYPES OF MOTHERHOOD

#### 4.1 Genetic Motherhood

A genetic mother is the one whose contribution to the child was the ovum, and hence the genes (Frati *et al.*, 2015). The genetic link a mother has to her child is an important component of motherhood. In today's society, the genetic connection between parent and child has an almost divine reverence. Some cultures and religious traditions that do not believe in a formal afterlife believe that we live on through the genes of our children (Naseri & Ekpene 2011; Naseri 2017; Udok et al., 2020 Akpanika 2020; Naseri 2021). Parents often see their own genetic child as a small link to immortality, thus going to great physical emotional, and financial lengths to produce genetically related children.

#### 4.2 Gestational Motherhood

Another component of motherhood is the pregnant woman's biological and emotional bond created with the child by simply gestating the embryo in her womb for nine months (Shuster 1992). Therefore, the resulting child is impacted in some part of the gestational mother regardless of who contributed the genetic materials. Biologically, the placenta, an organ that is genetically part of the fetus and controls the transfer of hormones from mother to fetus connects the mother and the fetus. Throughout the pregnancy, the developing fetus and its placenta form a unique interrelated partnership in large part controlled by material contributions. In addition to the placenta, the mother's entire body and overall health play a large role in the development and health of the fetus. Many pregnant women report the development of an attachment to their fetus especially after quickening, the point at which a woman begins to feel the movements of the fetus.

#### 4.3 Intent Motherhood

The contractual aspect of motherhood is not traditionally seen as a component of material rights but with the advent of surrogacy contracts and increased medical advances, intent plays a new role in the reproductive process. The intended mother is the woman who has orchestrated the entire gestational surrogacy arrangement including the reproductive relationship between the gestational mother and the gamete donor therefore she should have a connection to the child because she was essentially responsible for the birth of the child (Gotlib 2016).

## 5. THE IMPLICATIONS OF GESTATIONAL SURROGACY ON MOTHERHOOD

Before the advent of new reproductive technologies, motherhood in western societies referred to the biological mother. The concept of motherhood was not ambiguous. It was traditionally accepted that the mother of a child is the person who physically gives birth to the child. The status of motherhood used to be self-evident by the pregnancy and birth of a child (Shannon, 1997). However, the concept of motherhood in recent times has been changing from the generally known or accepted form. The introduction and wide development of new reproductive technologies have complicated the concept of "motherhood". Gestational surrogacy which embraces wholeheartedly reproductive technologies has radically re-defined motherhood from what it ought to be. In gestational surrogacy, several types of motherhood are possible (Hisano, 2011).

1. the genetic mother, who is the source of the egg;
2. the gestational mother, who carries the pregnancy,
3. the nurturing mother, who raises the child;
4. the genetic-gestational mother, who is the source of the egg and carried the pregnancy but does not raise the child;
5. the genetic-nurturing mother, who is the source of the egg and raises the child but does not carry the pregnancy and;
6. the whole mother, who is the source of the egg, carries the pregnancy and raises the child (Jones, 2002).

The above raises the potential of multiple claimants to the rights and duties of motherhood. The legal system is therefore currently faced with the challenges of defining motherhood and the various relations contingent on conception and pregnancy. There can now be multiple actors in the reproductive process that may have or desire recognized social roles regardless of their biological ones (Niekerk, 1995). For example, under British law, the woman who carries the child is considered the mother, whether or not the child is genetically linked to her. Furthermore, the husband of the woman who gestates the child is considered the child's father, regardless of the genetic link to the child.

The intention to treat a person as a mother is a social construction that may contrast with the natural facts. In the past, the natural facts that define a mother always seemed more comprehensive than those defining her partner. She both donated genetic material and brought the child to term, elements combined in the former cultural assumptions that childbirth was a supreme natural fact of life. The increase in the number of women involved in gestational surrogacy arrangements

could lead to a complicated analysis of maternity disputes. In adjudicating maternity disputes, different courts base their decisions on three different components of motherhood: genetic, gestational, and intentional motherhood (Zyl, 1995). Because most states have no legislation specifically governing the gestational surrogacy arena, most maternal rights disputes are resolved in court. To adjudicate such matters, state courts have developed tests to determine material rights based on three components of motherhood which have been earlier discussed under types of motherhood:

- 1) The genetic component
- 2) The gestational component
- 3) The intent-to-mother component

The courts have been forced to choose one woman's contribution to the child over the other. Each of these three components contributes to motherhood but alone does not define motherhood. Therefore, the court hierarchical system has always been inherently unfair and ineffective (Emeka, Ekeke & Uchehgue 2010). It is evident that gestational surrogacy. This has produced complications in maternal rights disputes including the once impossible separation of the genetic and gestational contributors.

Gestational surrogacy coupled with the technological intervention it embodies has clearly complicated the traditional understanding of motherhood, such that the fragmentation has caused a lot of social and ethical problems. It has challenged our understanding of 'motherhood' and forced us to question what it means in our society. Gestational surrogacy creates a new situation in which a child had not one but two biological mothers – one genetic and the other gestational.

## 6. EVALUATION

Judging from experience, we can say in the words of Charles F. Curren (1978) that it is a truism that medical science and practice has contributed immensely in recent times to correct birth defects, cure diseases, shed light on our ignorance, and ultimately conquered all the ailments that plague man to make him uncomfortable (Doefler, 2000). Therefore, the progress of biotechnology and medical science is appreciable, for at least man now has at his disposal ever more effective therapeutic resources which constitute progress in the service of man. Although the unenforceable consequences of some other new technologies that are fundamentally non-therapeutic can also involve serious risks. They can also expose man to the temptations to go beyond the limits of a reasonable dominion over nature.

Furthermore, it is worthy to note that in the interventions on procreation, the value and rights of the human person must be safeguarded. Hence, the need to take into

cognizance an ethical looks into biotechnology. This evaluation should be based on the criteria of moral judgment as regards the applications of scientific research and technology especially in relation to human life and its beginnings. These criteria are for the respect, defense, and promotion of man, his primary and fundamental rights to life, and his dignity as a person who is endowed with a spiritual soul and with moral responsibility. Through this way, man will be helped to recognize and respect his rights and duties. In this light, gestational surrogacy can be questioned on the grounds as to whether it fulfills the criteria such as respect, defence, and promotion of man, his primary and fundamental rights to life, and his dignity.

Ethical evaluation of gestational surrogacy will be viewed under the following sub-topics:

1. Procreation in marriage
2. The economic perspective of gestational surrogacy
3. The psychological effects of gestational surrogacy
4. Human life in embryo
5. Attack on motherhood.

### 6.1 Procreation in Marriage

The gift of life, which God has entrusted to man, challenges him to appreciate the inestimable value of what he has been given and to take responsibility for it (Odey & Boniface 2011; Odey, & Ashipu 2013; Odey & Agi 2015; Odey 2019). This fundamental principle must be placed at the centre of one's reflection to clarify and solve the moral problems raised by gestational surrogacy with artificial interventions on life, as it originates in the process of procreation. Doefler John (2000) in his examination of reproductive technology to ascertain whether it assists or replaces the divine act of procreation in marriages notes the following criteria to be followed:

- (1) There must be a natural conjugal act open to life;
- (2) The child must be the fruit of the conjugal act that is, the child must be a principal course of conception;
- (3) There must be a natural uninterrupted continuity from the conjugal act to conception (Burell & Edozien, 2014).

In essence, Doefler John (2000) brings to the fore the fact that where these criteria are not met, it replaces the conjugal act of procreation in marriage. Thus, the artificial reproductive technologies used by gestational surrogacy fall short of the above-mentioned criteria. This is because they separate procreation from sexual intercourse. The means of trans-military life should be more carefully considered and understood in marriage because human life is sacred, unique, and different. Thus, should be treated with respect and dignity.

### 6.2 Economic Perspective of Gestational

### Surrogacy

The issue of economy is central to the unethical background of gestational surrogacy. Through this mode, surrogacy launched a huge attack on the human person by demeaning and denigrating his moral value, spiritual value, and distinctive state the human person. The introduction of money where the surrogate mother is being paid off for the service she has rendered, and the argument that women should be allowed to do what they want with their body, that their autonomy should be respected. However, this will lead to prostitution. This is against Kantian ethics that we should not be seen as a means to an end but ends in themselves.

Ethically and morally, gestational surrogacy raises concerns. Kant, in his theory of morality, claims that we as people, have a duty not to use other people as a means to our ends, as all people should be treated as ends in themselves. I believe that Kant's categorical imperative draws too stark a bright line

### 6.3 Psychological Effects of Gestational Surrogacy

Gestational surrogacy has inevitable psychological trauma as one of its consequences. This psychological imbalance affects the commissioning couple, the surrogate mother, and children resulting from the surrogate arrangement. Most surrogate mothers go into the practice of surrogate not because it is the right thing to do, but most times, because of the financial answer to material problems it provides. After getting pregnant and giving birth to the child, the surrogate mother may decide to keep the child because she is bonded with the baby in her womb (Agnafors, 2014).

The child may also suffer psychological trauma if such a child gets to know the history of the situation surrounding his or her birth. The child may suffer from loss of identity and self-confidence.

### 6.4 Human Life in Embryo

Another reason why gestational surrogacy should be rejected in line with non-therapeutic experimentation or diagnosis is the fact that it promotes the manipulation of human embryos and does not regard them as potential human persons or as having equal moral status with the human person. Surrogacy implies preventing people from believing that human embryos have life and soul and so should be accorded respect and dignity and treated as a sacred entity. Instead, it treats human embryos as things for experimentation, (Hill, 1990) the church pronounces that at the moment of conception, a new life or new individual is formed. This individual has a right to life, to be protected and cared for in all ramifications as a human person.

## 6.5 Attack on Motherhood

Another strong reason why gestational surrogacy should be rejected is its effect on motherhood. Gestational surrogacy has bastardized the term motherhood which was traditionally known as the biological mother. It has succeeded in bringing separation between the genetic and gestational mother who was supposed to be one person. This calls for a serious demand for the redefinition of motherhood. Consequently, many have argued that gestational surrogacy has divided into fragments the concept of motherhood such that four or five women could share in the procreation of a child which is against the traditional conception of motherhood. It has led to the misinterpretation, misconception, and redefinition of the value of motherhood.

## 7. CONCLUSION

The main thrust of this paper is an attempt to ethically evaluate gestational surrogacy and motherhood. Therefore, we have been able to do some concept clarifications, so also consider motherhood vis a vis surrogacy. We have also considered, critically the meaning of motherhood and the types. We reviewed the idea of motherhood via Surrogacy which connotes multiple mothers. We examined the artificial reproductive method which gestational surrogacy involves and highlighted the flaws in its attempt to remedy infertility. We also considered the implication of gestational surrogacy on the concept of motherhood. How possible is it for a child to have multiple mothers who could claim a right to him or her because they shared in the process of his or her birth? We, therefore, submit that surrogacy in its entirety should not be encouraged because the confusion it creates cannot be commensurable to the fact that it solves infertility.

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