Surrogacy, Parenthood, and Legal-Ethical Issues

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Discussion

Surrogacy, or Gestation by Substitution as it is called, is a technique of Assisted Human Reproduction (AHR) in which a woman, the gestational mother, donates her gestational capacity. This fits within AHR involving collaboration from third parties, which include:

- Gametes donation: ovules and sperm
- Embryo Donation
- Cytoplasm / Mitochondria Donation
- Uterus Donation:
    - Donation of the organ, in which case it would be a transplant.
    - Donation of gestational capacity, which causes a surrogate gestation process.

Surrogate pregnancy constitutes a major area of medical, bioethical, and social research. Despite not being a new procedure, it has become increasingly relevant due to the widespread adoption of its practice. It has ceased to be a reproductive procedure that was hidden, sometimes even from the family itself. The terminology was proposed by the European Society of Human Reproduction and Embryology (ESHRE) in its course of action, along with recommendations from the Committee for the Supervision of Assisted Reproduction Technology (CSART). Medically Assisted Reproduction (MAR) is also defined as the 'Reproduction produced through the induction of ovulation, controlled ovarian stimulation, induced ovulation, ART (Assisted Reproduction Technology) procedures and intrauterine, intra-cervical or intra-vaginal fertilization with husband/partner or semen donor.

In turn, AHR technology is defined as all conduct or procedures that comprise the in vitro operation of both human oocytes and sperm for the purpose of establishing a pregnancy. This comprises but is not restricted to in vitro fertilization and embryo relocation, gamete intra-fallopian transfer, zygote intra-tubal transfer, embryonic tubal transfer, embryo and gamete cryopreservation, oocyte and embryo donation, and gestational substitution. ART may not include assisted fertilization (artificial insemination), whether with the partner's sperm or a sperm donor (Margalit, 2011).

For its part, the Society for Assisted Reproductive Technology considers that such technology includes in-vitro fertilization/embryo transfer (FIV-TE), gamete intra-fallopian transfer (GIFT), zygote intra-

fallopian transfer (ZIFT), and the transfer of frozen embryos. These techniques are also applied to oocyte donation and gestational surrogacy. Surrogacy is the assisted reproduction technique that raises a greater variety of opinions because of the ethical, legal, medical, and psychological consequences that may result from its application. Therefore, it is important to assess the possible effects and risks both for the surrogate pregnant woman, known as the pregnant mother or surrogate mother, as well as for the intended parents and the future baby (Brinsden, 2000).

Psychological Aspects

A surrogate pregnancy is a reproductive process by which a woman carries a baby for another woman, man, or couple and delivers the baby to them after birth. It is a procedure that breaks the traditional concept of a mother, who is considered the woman who gives birth. For this reason, many wonder if submitting to this technique can lead to some psychological effect or risk, both for the pregnant woman, who has to deliver the baby she has gestated, and for the future parents, for having to resort to this technique (Joseph, Rafanello, Morris & Fleming, 2018).

Substitute Pregnant

Although the pregnant woman is clear that the baby she carries for nine months is not her child (and she declares it in the surrogate pregnancy contract), there is the well-known maternal-fetal bond since the baby feeds and grows thanks to the contributions of the woman who carries it. For this reason, it is inevitable that there is a small feeling of grief or helplessness when delivering the baby. The emotional cost is great, and not all women are prepared to undergo pregnancy in a surrogacy process. This is the reason why surrogacy agencies carry out numerous medical and psychological tests on pregnant women before starting the surrogate pregnancy. In this way, they ensure that the surrogate pregnant woman is prepared to act as such, voluntarily and without any moral pressure, thus reducing the possible negative consequences on an emotional level. We must not forget that there is a positive effect of helping other people to fulfill their biggest dream (having a child), which increases the self-esteem of pregnant women and makes them feel that they have accomplished something meaningful (Allan, 2014).

Parents Of Intention

It is not easy for future parents to initiate this type of procedure. Some find it difficult to assume the need for this treatment; others may think that their child will not want them because they were gestated by a ‘strange’ woman, etc. In this sense, it is also important that prospective parents using surrogacy understand and accept what this implies. The rejection of the link between pregnancy and delivery or, in some cases, the genetic contribution, if it is necessary to resort to the donation of ovules and semen, can be legally challenging. On the other hand, the tremendous pain that many

couples suffer from the inability to conceive and the enormous desire to have a child leads them to devote great efforts to the pregnant woman (Saxena, Mishra & Malik, 2012).

Although many may believe that this dedication is pure selfishness, the truth is that the vast majority of intentional families care about the health of the pregnant woman and try not to cause trauma for her by giving them the baby. The ultimate goal and desire of these families is to have their baby at home, but although some may not believe it, they also think about the surrogate pregnant woman, her interests, and her health. In this sense, it is recommended that there is a relationship between the pregnant woman and the future parents, as this will encourage both parties to engage more emotionally and help reduce the negative effects (Kirkman & Kirkman, 2002).

Social Problems

There are many criticisms that surrogate motherhood receives from society in general. One of the main reasons is that many consider motherhood to be a business and the body of the woman to be a commodity (Hanna, 2010). However, more and more people now understand that the concept of surrogacy is an opportunity for many couples to have a family. The surrogate mother receives financial compensation, but this does not have to be synonymous with exploitation or a business. Is financial compensation not given to participants in clinical trials of drugs, medical treatments, or donation of gametes (ova and semen)? Why, then, does surrogate pregnancy not receive the same social acceptance (Poote & van den Akker, 2008)?

When surrogate pregnancy poses a social problem for the pregnant woman, as happens in some countries where pregnant women hide their intervention in the process and where it is the husband or guardian who decides if they can act as such, we can think of exploitation, malpractice and lack of freedom (Murphy, 2013). What violates the basic rights of women in many social contexts is the failure to respect the interests and decisions of the pregnant woman when applying for surrogate pregnancy. This way of doing ‘surrogate gestation’ is and should be rejected by society (Murphy, 2013).

However, when the process is done under legal guarantees, and the pregnant woman decides for herself, freely and consciously, to act as such, not only does she not hide it, but she feels proud of being able to help others (Murphy, 2013). This is the defensible form of surrogate pregnancy that is practiced in countries where the majority of the general society accepts and understands uterine subrogation as another means of procreation (Stearns, 2012).

Symptoms And Physical Consequences Of

Pregnancy

During pregnancy, changes occur both physically and emotionally. The hormonal flow of women is very different from usual, and this has a series of very different side effects among women. Some women respond well to hormonal variations, which makes them feel happier and relaxed. On the contrary, other pregnant women do not tolerate the change of hormones so well. In any case, there are some general changes, such as weight gain, swelling, heaviness, appetite and urination variations, back pain, or increased sensitivity, that occur in virtually all pregnant women. In a surrogate pregnancy process, Healey (2015) has suggested that it is an indispensable requirement that the pregnant woman has gone through a previous pregnancy because only in that way can she know firsthand the possible physical and emotional changes that this implies (Stearns, 2012).

She must be willing to go through it for other people and not for herself because the pregnancy that she is going to carry is not for her own child. It must also be clear that, although in most cases, the normal state after childbirth is recovered, it does not always occur. There are consequences, such as the appearance of stretch marks, weight gain, the possible scar of childbirth, etc., that do not always disappear. Also, it is essential that the pregnant woman is aware of the risks that may arise from pregnancy and childbirth, and acknowledge them by signing the surrogate pregnancy contract (Saxena, P., Mishra, A., & Malik, S., 2012).

Legal Effects

From the legal point of view, one of the main concerns of surrogacy is the filiation of the child born by this method. Uterine surrogacy makes it possible for a woman to renounce the legal qualification of the mother, which is granted for having gestated and given birth to a baby. This opens a new legal approach because motherhood must be assigned (Banerjee, 2012). Since surrogate pregnancy is not allowed in a certain country (where the mother is the woman who gives birth, except for cases of adoption), the issue relates to international law, as cases of surrogacy of the uterus are carried out abroad (Banerjee, 2012).

The organizations of the country allow the determination of filiation in favor of the intended parents when it has been ruled by a judicial ruling before the birth of the child. We must emphasize that it is an instruction and not a law, so there is the possibility of its cancellation. In this case, among other legal consequences, the registration of the baby would be questioned. If a judge does not have a valid resolution (which is not required in all countries), the paternity of the father of intention can be established by genetic test and subsequent adoption by his partner (Overall, 2014).

British law establishes that any woman who gives birth to a child is considered the legal mother, regardless of the way in which the child was conceived (Overall, 2014). The biological mother’s husband, if he has one, is considered the legal father (Overall, 2014). However, if the surrogate mother is not married, the genetic father may be listed on the birth certificate (Horsey, 2016). It

should be noted that no law requires the surrogate mother to be a single woman, but the rights her husband acquires automatically make it more advisable to choose a surrogate mother who is not married. The British legal process to determine that the prospective parents are the only parents and guardians of the child is a Parental Resolution (Horsey, 2016).

This judicial resolution confers full and permanent paternal rights on the child and results in the birth certificate of the child being issued with the future parents as solely responsible for the child. It also legally eliminates the rights and responsibilities of the surrogate mother. Parental resolutions are similar to adoption resolutions but are specific to surrogacy in the United Kingdom. Like an adoption resolution, a parental resolution transfers the parental rights of the biological mother to the prospective parents (Horsey, 2016). The resolution confers all rights and responsibilities on the child to the new parents (Horsey, 2016).

Legal complications may arise in situations such as the following:

- The intended parents do not contribute to the genetic material of the child.
- The pregnant woman does not renounce her maternity rights.
- There is suspicion of fraud or malpractice of the process.
- The pregnant woman or intended parents do not respect what was agreed in the surrogate pregnancy contract.

In case of legal problems that prevent recognition of the baby as a child by the intended parents, they cannot return to the home country with the child. The Assisted Human Reproduction framework indicates that the surrogate pregnancy contract is null and void and that the legal mother of the minor is the woman who gives birth. Therefore, one of the main negative consequences for the future parents are the awarding of the filiation to the surrogate pregnant woman. This means that since the contract is not binding, there is no legal security for this process if it is carried out in a particular country. At the medical level, the surrogate pregnancy is medically comparable to a pregnancy achieved through a fertilization process, with the only difference being that the created embryo is transferred to the uterus of a woman who will not be finally recognized as the mother (Healey, 2015).

In this sense, the risks for the pregnant woman are the same as those associated with a natural pregnancy, as well as those derived from the transfer process. Regarding the intended parents, the risks or possible negative effects relate to the collection of gametes: ovules and spermatozoa. The process of collecting the ovules is somewhat more complex and, therefore, subject to greater risks. However, serious consequences are implausible (Bergman, Rubio, Green & Padrón, 2010).

Current Situation Of Surrogacy

Since developments in Assisted Reproduction Techniques have made them common medical practices, concerns about respecting the ethical and bioethical norms of the whole reproductive process, as well as respect for the human rights of those involved, have been constant. The rules of

good practice, the intentional filiation that emanates from them, and the need to protect the best interests of the child have led different Ethical Committees and Associations dedicated to reproductive technology to issue guidelines and recommendations for their implementation (Ross-Sheriff, 2012).

These guidance documents are necessary because technology must go beyond simply therapeutic approaches when techniques involve the donation of reproductive capacities and therefore affect Sexual and Reproductive Rights. The concepts of filiation must be specified, as well as the assumption of the necessary measures to ensure fully informed consent, the correct defense of the principle of autonomy, and effective advice to make a well-founded decision. Without rigorous medical advice and a psychological evaluation carried out by an expert, the process of surrogacy might not work as intended. It would not be wrong to say that the concept of surrogacy still has a paradox for the people who practice it. The difficulty of the procedure and the social and legal aspects further create more difficulty for parents who have an intention to practice surrogacy (Ross-Sheriff, F. 2012).

Being a surrogate mother is a wonderful and extraordinary experience. The teams of surrogacy agencies are there to help the surrogate mothers throughout the process every day. In fact, agencies offer every surrogate mother full support throughout the process, either through community events, celebrations, or family gatherings as part of the Surrogate Mothers program. The public has the opportunity to participate in an extraordinary experience, to help people affected by infertility to create their families and give them the child they could not have without their help as a surrogate mother (Poote & van den Akker, 2008).

In addition, the surrogate mothers are part of a community of extraordinary women. These women, as well as our support staff, consisting of a psychologist and a licensed clinical social worker, will help you throughout the process (Crawshaw, Blyth & van den Akker, 2012). There are also many social effects such as the inability to guarantee that the pregnant mother will not suffer psychological consequences from a possible abortion, physical problems after nine months of gestation and separation from the child, and concerns that the child may become commodified by being assigned a price (Joseph, R., Rafanello, A., Morris, C., & Fleming, K. 2018).

In any case, there are a number of general changes, such as weight gain, swelling, heaviness, variations in appetite and urination, back pain, or increased sensitivity, that occur in virtually all pregnant women. Surrogate Mothers must meet the following requirements to be considered in the surrogacy program: to have given birth to at least one baby without complications, be aged between 21 and 40, have adequate proportions of height and weight, and have excellent health (Hammarberg, Stafford-Bell & Everingham, 2015).

The intended parents feel both pleased and worried at the same time when they hire a surrogate mother because it makes them feel that the baby will be born from someone else’s stomach. The Intended Parents need to work openly with the gestational carrier. The suggestions and recommendations from other parents or agencies working on this topic can help them better

understand the process. The views of surrogate women can be beneficial for the intended parents (Kleinpeter, 2002).

The parents of the baby undergo uncertainty, anguish, stress, and moral conflicts. In short, it is a complicated situation that generates many doubts, pressures, and anxieties that can trigger a serious emotional crisis for parents that may be transmitted to the baby during its growth. In countries where this type of practice is common, it is recommended to have legal and psychological advice in order to carry out this process in the best possible way. Maternity surrogacy involves a series of emotional challenges for everyone involved. So before opting for this option, it is advisable to evaluate other alternatives, such as adoption. Motherhood and fatherhood are sacred roles, so it is well worth taking into account all the provisions to enjoy children and cultivate healthy relationships (Bergman, K., Rubio, R., Green, R., & Padrón, E. 2010).

The surrogate mother, her family, and intended parents may experience some social and other problems during the process. These issues can be handled by proper care of the mother and not taking care of what people say. A positive and healthy environment will help the surrogate mother to produce a healthy child.

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Society

Breastfeed

Due to

Premature baby

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