

# Research on the Legal Regulation of "Surrogacy"

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## Abstract

It is well known that surrogacy exists for decades throughout the entire world. According to statistics from the relevant organization in our country, nowadays, there are more than 40 million people with infertility in China with the increasing rate of 100,000 people per year. Hence, there is no doubt to say that the existence of surrogacy means huge for those infertile couples. At present, The law of China has an absolute negative attitude towards the existence of surrogacy. It is worth mentioning that China's relevant legislation is blank in how to resolve surrogacy disputes. Such legislation that mainly exist in the departmental regulations of the Ministry of Health and these laws do not involve principals such as entrusted couples, surrogate mothers and intermediaries will inevitably can not solve the various conflicts and contradictions brought about by surrogacy. In response to these problems, China should abandon its position of absolutely denying surrogacy. Affirming the rationality of the existence of surrogacy, taking the path of limited openness, Limiting the qualifications of surrogate subjects and Setting up a surrogate regulatory agency. At the same time, we must regulate the surrogacy agreement, and build a comprehensive surrogate legal regulation in many aspects. We should always remember that following the trend of the development of the times is the right way.

## Keywords

Surrogacy; Surrogacy; Regulation; Limited Legalization.

## 1. THE INTRODUCTION

In China, the traditional family concept of "there are three ways to be unfilial, and having no children is the greatest" still holds its place in modern society. With the development of modern science and technology, surrogacy technology has realized the wish of infertile families to have children. It is undeniable that surrogacy technology also has positive and negative impacts. On the one hand, it plays an important role in realizing the perfection of family and social harmony; on the other hand, the imperfect legal regulations and its own limitations have brought many social disputes and contradictions. The blank legislation also makes the law enforcement behavior is faced with an embarrassing situation that can not be relied on. Therefore, it is urgent to perfect relevant legislation and design a complete system. It is imperative to perfect the legal regulation of surrogacy.

## 2. OVERVIEW OF SURROGACY

### 2.1. The Concept of Surrogacy

The definition of surrogacy as a modern means of assisted reproduction has not been clearly defined in Chinese law. The concept of surrogacy is widely discussed in academic circles. Some scholars believe surrogacy is the practice of infertile couples who entrust healthy women who

are willing to take their place. Some scholars believe that "surrogate" refers to some couples due to reasons such as their own physical condition and cannot or dare not birth and some women do not want to experience the pain of childbirth and want to get the offspring inherit kindred, so choose artificial assisted reproductive options will be fertilized embryos implanted into another female uterus and by the maternal fetal childbirth behavior. Chinese scholars have basically the same definition of the term surrogacy. Chen Shuyun believes that surrogacy refers to the use of medical technology to manually operate sperm and egg, implant the fertilized egg into the uterus of a third party, so that the third party can achieve the purpose of pregnancy. [1] Yang jun defined surrogacy as the practice in which a surrogate mother receives artificial assisted reproductive technology and gives birth to a fetus. [2]

Although there are many theories about the concept of surrogacy, there is no great disagreement about the connotation of surrogacy. Generally speaking, surrogacy refers to the act of combining sperm and egg outside the body to form a fertilized egg and then implanting it into the uterus of the surrogate mother. It should be pointed out here that surrogacy should not only be interpreted as the behavior of carrying a child and delivering the fetus by other people through assisted reproduction because the couple is unable to bear children, because in real life, there are not only such people who have the need for surrogacy. Therefore, the concept of surrogacy should be defined more broadly.

Because surrogacy involves subjects (including the entrusting couple, surrogate mother and intermediary agencies), the complexity of technology application and the limitations of legal regulations, it is bound to be a complex body with disputes and discussions.

## 2.2. Classification of Surrogacy

In real life, surrogacy is often understood as "giving birth by borrowing a baby", and some unscrupulous media deliberately guide the public in order to attract more attention, which further deepens people's misunderstanding of surrogacy. Surrogacy technology is the progress of modern medical technology, is the Gospel of infertility; And "borrow abdomen to give birth to a child" is the embodiment of the feudal thoughts of Chinese ancient society, such as valuing sons over daughters and carrying on the family line, which has been abandoned by modern society. [3] Therefore, the analysis of surrogacy classification is helpful for the public to better understand what surrogacy is. In practice, surrogacy can be divided into the following categories:

### 2.2.1. Complete surrogacy, genotype surrogacy and embryo donor surrogacy

According to the origin of sperm and egg, surrogacy can be divided into complete surrogacy, genetic surrogacy and embryo donor surrogacy. Complete surrogacy refers to the practice in which the husband provides the sperm and the wife provides the egg, but the surrogate mother provides the uterus and implants the fertilized egg into the surrogate mother only because one of the wife is infertile. The paternity identification of complete surrogacy is relatively simple, because the gene carrying sperm and egg are extracted from the body of the client couple, so the client couple and the children born to the surrogate mother are directly related, but not with the surrogate mother. [4] Genotype surrogate refers to entrust is provided by the male sperm in the both sides of husband and wife, the wife because the body cannot provide eggs, the uterus and the egg should be provided by a surrogate mother, will be fine if the sperm and a surrogate mother to provide eggs by manual operation in vitro synthesis of fertilized egg, then a fertilized egg implanted in a surrogate mother, The act of bearing children by a surrogate mother. Donor surrogacy. Embryo donor surrogacy refers to a process in which both sperm and egg are provided by a third party other than the entrusting party, and then the fertilized egg is manually transplanted into the surrogate mother and the surrogate mother gives birth to the fetus. Genotypic surrogacy is more likely to cause various ethical problems between the children born through surrogacy and the entrusted couple as well as the surrogate mother, since both

the egg and uterus are provided by the surrogate mother and only the sperm comes from the male.

#### 2.2.2. For-profit surrogacy and non-profit surrogacy

Surrogacy can be divided into profitable surrogacy and non-profit surrogacy according to whether the surrogacy aims at profit or not. For-profit surrogacy means that the surrogate mother accepts surrogacy for the purpose of obtaining high monetary or physical reward. This kind of surrogacy is easy to cause the commercialization of surrogacy due to its high yield, which promotes the development of the surrogacy market. Non-profit surrogacy refers to the surrogate mother's behavior of helping others to obtain children without the purpose of making profits. Although the purpose of non-profit surrogacy is free, it will cause irreparable harm to the surrogate mother's body and affect her daily work and life. Therefore, reasonable medical expenses, nutrition expenses, loss of work expenses, transportation expenses and other expenses should be allowed.

### 3. LEGAL CONFLICTS AND PRACTICAL DIFFICULTIES FACED BY SURROGACY

#### 3.1. Legal Conflicts Caused by Surrogacy

##### 3.1.1. Surrogacy and reproductive rights

Reproductive rights mean that both husband and wife enjoy equal rights in the matter of whether to bear children. One party has the right to bear children or not in accordance with the provisions of the law, and no one has the right to interfere. [5] First of all, from the legal perspective, the reproductive right belongs to the category of the content of personal right. Personal right is a kind of world right, which has exclusive property, i.e. cannot be transferred to others, and has no direct property content. Its most prominent feature lies in its inseparability of the human body. Surrogacy is the act of implanting the fertilized egg into the body of the surrogate mother to give birth to children, which leads to the existence of surrogacy violates all the characteristics of the inseparability of the human body. Secondly, the reproductive right contains the connotation that if one party wants to exercise the reproductive right, the other party shall not impede its exercise of reproductive rights. Because procreation is a consensual activity, it can't be done by one partner alone. If only one spouse and a third party to reach an agreement will undoubtedly lead to a series of difficult to deal with problems. Finally, even if the surrogate mother is willing to carry a baby for others, the harm to the surrogate mother must be unavoidable. In real life, it is also true that the surrogate mother causes her own body damage, such as uterine injury, after carrying out surrogacy for others, resulting in the pregnancy of her own children with difficult damage to recover. Therefore, surrogacy will actually hinder the implementation of the reproductive rights of the surrogate mother. In order to protect the reproductive rights of the surrogate mother, appropriate protective measures (such as limiting the number of surrogacy by the surrogate mother) can be taken to protect the health and other rights of the surrogate mother. This protection measure is also a reasonable solution to protect the reproductive rights of surrogate mothers to the greatest extent that can be accepted at present. [6]

##### 3.1.2. Surrogacy and body rights

The right of body is an important right of personal right, which refers to the right of natural person to maintain the integrity of their own body organization and control their own body directly. Surrogacy is essentially the act of a surrogate mother "renting out" her uterus. Those who support surrogacy believe that since the right of body is a natural person's right to control his own body tissue, the womb, as a part of the surrogate mother's body, is certainly a natural

person's right to control his own body and should be protected by law. Opponents of surrogacy, meanwhile, have the opposite attitude. The body right belongs to the category of the personal right, which has the same exclusive property as the personal right. Surrogacy, in a sense, is divorced from the existence of such exclusive property. It is worth paying attention to the fact that in case of the failure of surrogacy, such as dystocia and abortion, i.e. the relationship between the client and the surrogate mother is broken, the surrogate mother may not get the remuneration she should get, bringing the surrogate mother both physical and psychological harm. [7]

### 3.2. Practical Difficulties Faced by Surrogacy

#### 3.2.1. Commercialization is getting more serious.

Surrogacy, as a high-risk behavior, has a high profit margin behind it. First, because the concept of child-bearing is deeply ingrained in traditional Chinese families, some poor women are willing to turn to surrogacy for short-term gains that are far higher than other professions. In some cases, these poor women are even harassed and victims of criminal offenses as surrogate mothers, and they are unable to effectively protect their rights on their own. [8] Secondly, due to the development of medical technology, surrogacy is no longer a difficult medical technology problem, so a number of "black" clinics, even some qualified medical units, clinics will be misled by huge profits, regardless of the legal provisions to meet the client's surrogacy request and implement surrogacy technology. Since China's laws on surrogacy are very rough, and there is no relevant regulatory agency to monitor the surrogacy market, in such a disorderly state, it is difficult to effectively control the spread of commercial surrogacy, and the commercial characteristics of surrogacy become more and more obvious. [9]

3.2.2. The identification of parent-child relationship standards under surrogacy is complicated.

At present, there are two kinds of blood relatives stipulated by law in Our country, one is natural blood relatives that have real blood ties. The other is the artificial consanguinity, that is, the consanguinity which has no natural consanguinity, but is confirmed by law to have the same rights and obligations with natural consanguinity because of the legal provisions. In the case of natural consanguinity, the mother naturally becomes the biological mother of the fetus after normal conception, and there are not many objections to this in practice. However, the parent-child relationship between the children conceived by surrogacy and the mother is different from the natural blood relationship, which needs to be analyzed based on the specific type of surrogacy. In the case of genotypic surrogacy in which both the egg and uterus are provided by the surrogate mother mentioned above, the mother of the child born from the surrogate mother is identified as the surrogate mother. If the surrogate mother is unmarried, the client providing sperm is the father of the child. If the surrogate mother is married, the surrogate mother's husband is presumed to be the father of the child. At this time, the client's husband can apply to the court to adopt the child born by the surrogate mother. [1] In the case of complete surrogacy, the sperm and egg carrying genes are provided by the client couple, and the children born from the surrogacy are directly related to the client couple, so the client couple will of course become the parents of the children. Due to the fact that the egg and sperm are provided by the third party, there is no direct blood relationship with the entrusting couple, the identification of paternity is more complicated. In reality, there are other types of surrogacy, and it is undoubtedly difficult to deal with how to identify the parent-child relationship formed by these different types of surrogacy.

#### 3.2.3. Is the high cost of surrogacy reasonable.

First of all, the illegal surrogacy has been repeatedly banned in the real society, and the high profit it carries behind it is undoubtedly a very important reason. When a surrogate couple

decides to carry a baby, the next challenge is to find a surrogate mother. Voluntary surrogacy is also difficult to find clients with demand through their own efforts, so the surrogacy agencies emerged, in which the surrogacy agencies charge high intermediary fees. Secondly, the physical damage of surrogacy to the surrogate mother is inevitable and even difficult to be remedied, and such irreversible damage is also one of the direct causes of the high cost of surrogacy. Finally, at present, China's laws absolutely prohibit surrogacy, but the actual demand for surrogacy is also real, and the conflict between the law and the reality leads to the majority of surrogacy violations of the law. The illegality of such behavior is also an important reason for the high cost of surrogacy. The author believes that the high cost and high risk of surrogacy determine that surrogacy is bound to have the characteristics of short-term high profits compared with other professions. The damage of surrogacy to the surrogate mother is irreversible, and the risk of surrogacy is huge, so it is not advisable to be paid absolutely. However, such remuneration should be limited within a reasonable range. Excessive profits will undoubtedly deepen the commercial characteristics of surrogacy and encourage the evil trend of underground surrogacy.

## **4. THE MODEL AND ENLIGHTENMENT OF THE LEGAL REGULATION OF SURROGACY IN AND OUTSIDE THE REGION**

### **4.1. Types of Legal Regulation Models of Surrogacy in and Out of the Region**

#### **4.1.1. Absolutely forbid mode**

Absolute prohibition mode refers to the law that prohibits surrogacy in any form in the country. When it comes to countries that have adopted an absolute ban on surrogacy, Germany has to be mentioned. [10] Germany has not made clear legal regulations on surrogacy for a long period of time. Regulations on related aspects of surrogacy did not begin until 1989, but the focus was mainly on the regulations on surrogacy agencies, which prohibited the existence of surrogacy agencies, let alone the existence of surrogacy agencies. The regulation also prohibits any agency from advertising surrogacy technology, and those who violate the law may even face criminal penalties. In 1991, Germany enacted the Law on The Protection of Embryos, which strictly restricted the implementation of surrogacy technology within a certain range. For example, the bill stipulates that medical workers who perform surrogate operations on behalf of surrogates could be punished unless the surrogate mother agrees to be the mother of the child. [11] According to the law, as long as the surrogate mother is willing to take care of the child born from the surrogate, the person who performs the operation for the surrogate can be exempted from punishment. There seems to be no explicit ban on surrogacy, but behind it there are many strict conditions for the practice of surrogacy. It can be seen that Germany takes an absolute prohibition attitude towards surrogacy legislation.

#### **4.1.2. Limited open mode**

The United Kingdom is a representative country that adopts the limited open model in surrogacy legislation. The world's first ivf baby has been born using artificial assisted reproduction in Britain. It is worth mentioning that the UK adopted the model of absolute prohibition on surrogacy at the beginning, and then changed to the limited open model. The catalyst for Britain's shift to a more limited model was the famous cross-border surrogacy dispute known as "Baby Cotton". The case directly contributed to the birth of surrogacy Agreement Act, the first normative document regulating surrogacy in the UK and even the world. The act bans commercial surrogacy, but allows consensual non-commercial surrogacy. As the law was hastily drafted to ease the public opinion and moral pressure caused by the "Baby Cotton" case, it also has many shortcomings. For example, although the law prohibits commercial surrogacy, it is very tolerant and even indulgent towards non-commercial surrogacy.



Moreover, the act does not make perfect provisions on the establishment, invalidity and rescission of surrogacy agreements. At the same time, the act does not solve a sharp problem caused by surrogacy, that is, the identification of the paternity relationship between the children born through surrogacy technology and the subject of surrogacy. And the law only has five simple, completely unable to solve many problems and contradictions in reality, is not conducive to the stable and healthy development of the surrogacy market. In order to better solve the problems caused by surrogacy, the British Parliament promulgated the Human Fertilisation and Embryology Act more than a decade later. The act provides for the surrogate mother who provides the womb and her spouse to be the biological mother of her child. In order to become the legally recognized parents of the child born by surrogacy, the authorized couple must apply to the court for a paternity order, and the court determines that they meet the application conditions, so that they can have the legally qualified parental status of the child born by surrogacy. Britain has legalized same-sex marriage in recent years, giving it the same legal status as straight marriages. So legally recognised same-sex couples can have children of their own genes. It can be seen that British legislation on surrogacy is more inclusive and advanced in response to the development of The Times.

#### 4.1.3. Fully open mode

When it comes to the completely open model of surrogacy, we have to talk about India. First of all, India adopts a completely open model, which means that there are no many legal restrictions on surrogacy. Commercial surrogacy is undoubtedly legalized in India. Secondly, due to the low level of economic development in India, most people are in poverty, and the high remuneration of surrogacy can greatly improve their lives. Finally, the cost of commissioning a surrogate mother in India is much cheaper than in other parts of the world. So why not those who want surrogacy? The legality of commercial surrogacy has made India one of the world's most important countries for surrogacy, and the huge dividends brought by surrogacy have boosted other industries in India, including tourism and the medical sector. It must be said that the fully open model also poses many difficulties for India. India is also moving to regulate the practice of unrestricted surrogacy in the country. For example, transnational surrogacy is restricted, and only those who are legally married through legal procedures can carry out surrogacy. In effect, the law closed the door on surrogacy for homosexuals and non-Indians. The author believes that the one-size-fits-all approach is undoubtedly not conducive to the correct development of surrogacy system and is more likely to make surrogacy turn into the underground market, which provides fertile ground for the underground surrogacy market and is not conducive to social stability.

### 4.2. The Enlightenment of the Legal Regulation Mode of Surrogacy in and Outside the Region

Looking at the legal regulation forms of overseas surrogacy, we can clearly see that the civil law countries generally take a more conservative or even prohibited attitude towards surrogacy due to their profound civil law theories. The Anglo-American law system attaches more importance to the autonomy of private law because of its democratic tradition. Surrogacy is generally more tolerant. Although different countries have different attitudes and practices towards surrogacy, in general, due to the progress of surrogacy technology and the practical existence of its demand, the legislation of surrogacy in various countries gradually begins to change from a completely prohibited model to a limited open model.

Therefore, we can get the following enlightenment: First of all, a limited open attitude towards surrogacy has become the consensus and even a trend of all countries in the world. The main reason why commercial surrogacy continues is the existence of the demand for surrogacy. The human desire to have offspring of one's own blood is acknowledged by people in all countries. An absolute ban on surrogacy will undoubtedly push it underground, fueling the

rampant underground surrogacy black market. Therefore, the limited opening of surrogacy is more conducive to the regulation of the surrogacy industry, so as to better meet the needs of surrogacy and give consideration to the reasonable development of the surrogacy industry, which is conducive to the stability of families and society. Secondly, no matter what kind of attitude a country holds towards surrogacy, its country and society all deny and prohibit commercial surrogacy. The essence of commercial surrogacy is to turn the uterus into a commodity, with a price tag on the market. However, the commercialization of uterus will involve very complex and difficult issues including ethics and social order, which will seriously affect the stability and harmony of society. At present, there is no perfect legal regulation on surrogacy in all countries in the world, so it is reasonable and correct to prohibit commercial surrogacy. Last but not least, people's ideas should keep pace with The Times. People should treat the existence of surrogacy rationally and abandon the traditional conservative ideas. Blindly denying or affirming the rationality of surrogacy can not fundamentally solve the problems brought by surrogacy. The first thing to do is to let the legislature pay attention to surrogacy, to carry out reasonable regulations, combined with excellent science and technology, eliminate the negative effects, to bring good news to all mankind.

## **5. THE SYSTEM CONSTRUCTION OF LEGAL REGULATION OF SURROGACY IN CHINA**

### **5.1. Establish the Limited Legalization of Surrogacy in China**

The rationality of surrogacy is mainly reflected in the following points:

Firstly, surrogacy is in line with public order and moral customs. In the theoretical circle, some scholars object to surrogacy because they think that surrogacy does not conform to the spiritual connotation of public order and good customs. I think this view is biased refute. The existence of surrogacy has its legitimacy and legitimacy basis and cannot be prohibited, that is to say, the complete prohibition of surrogacy does not have legitimacy. [12] Because the era is rolling forward continuously, science and technology is also developing continuously upward. The connotation of public order and good customs is also constantly enriched and replaced. The emergence and development of new things lies in his non-existent advanced nature with old things. The development of surrogacy has been gradually accepted and recognized by people today, but the abhorrence of commercial surrogacy is the consensus of the whole society and mankind. Legislators should not view surrogacy from the standpoint of old public order and good customs, but should recognize the rationality of surrogacy and look at new things with new ideas in the new era.

Secondly, the civil law system of our country affirms autonomy of will. Reasonable surrogacy should be the result of mutual agreement. The surrogate mother is willing to gain legal advantage by controlling her own body. The client is also willing to pay the consideration for genetic continuity, so legal surrogacy undoubtedly involves an element of consensus.

Finally, surrogacy conforms to the spiritual connotation of personal control over their own bodies. Supporters of legislation to ban surrogacy argue that surrogacy is a commercial activity with criminal business chains and capital covered in the blood of countless surrogate women. Most of the opponents think that most of the surrogate mothers for the high pay of surrogacy, regardless of the irreversible damage to the female body caused by the behavior, is a great violation of the dignity of women. The author believes that surrogacy is essentially the behavior of the surrogate mother to "rent" the egg or uterus with compensation or no compensation. The egg or uterus is part of the surrogate mother's body. The surrogate mother of course has the right to exercise physical control over her own body to the extent prescribed by law. No one can

interfere with that. This kind of "renting out" within the scope of the law should be protected by law.

Practice has proved that the absolute prohibition of surrogacy cannot fundamentally solve a series of problems it brings. As the saying goes, "It's better to keep out than to keep out", surrogacy exists because of environmental pollution. The demand for surrogacy, such as population quality, is rising instead of falling. Therefore, limited open surrogacy is the right way. From our country surrogacy legislation also can see our country to surrogacy attitude change. The administrative Measures for Human Assisted Reproductive Technology, the first departmental regulation on surrogacy promulgated in China in 2001, clearly stipulates that medical institutions and medical personnel shall not carry out any form of surrogacy technology. This shows that Chinese legislators adopted a one-size-fits all approach to surrogacy at that time and strictly prohibited it in legislation. However, the provision prohibiting surrogacy in any form in article 5 and Article 6 of the original draft amendment was deleted from the decision of the Population and Family Planning Law of the People's Republic of China. [13] This bill shows that Korea is giving up the idea of absolute prohibition. Limited open surrogacy has become the legislative direction of China's legislature.

The limited legalization of surrogacy is conducive to alleviating the huge demand of surrogacy in our society and effectively solving the problems existing in the surrogacy market in Our country. Therefore, the absolute prohibition of surrogacy in Our country to the limited legalization of the open change is the general trend, can not resist.

## 5.2. Limit the Qualifications of Surrogate Subjects

A good surrogacy environment, the limitation of the subject of surrogacy is an essential key link. In practice, many problems arise because the qualification of the subject of surrogacy is not stipulated. It can be clearly observed from the foreign countries' regulations on surrogacy that they all regulate the subject qualification of both parties. China should also improve the regulations on the subject qualification of surrogacy as soon as possible.

### 5.2.1. Qualification of surrogate mother

The first thing to do is to set the age at which a surrogate mother can carry out a surrogacy. The harm of surrogacy to women's body can be said to be irreversible. Medically, the most suitable age for pregnancy is between the ages of 20 and 35, when women are in better physical and mental health. Can provide a good physiological conditions for the fetus to gestation, more smoothly complete the process of gestation and production. Miss this stage, women's physical quality will inevitably decline, the higher the risk of surrogacy, the higher the harm to women's body.

Second, the surrogate mother should be a woman with birth experience. New mothers who lack experience in childbirth may not be able to adapt to and deal with various problems in the process of surrogacy, which will damage their own health and the smooth process of surrogacy. In addition, women without childbearing experience tend to have uncontrollable feelings for their children conceived in October, and tend to violate the surrogacy agreement signed by both sides in advance, leading to a series of complicated disputes. Women who have childbearing experience can better arrange various matters during pregnancy and better protect the health of themselves and the unborn child more rationally. A woman who has a husband and wife relationship shall obtain the consent of her husband to avoid family disputes.

Last but not least is the surrogate mother's physical health. The surrogate mother shall issue a physical examination report from a regular medical institution to prove that she is in good physical condition and can withstand the uncomfortable conditions during pregnancy. Good health is important for creating healthy embryos and avoiding the inheritance of genetic diseases.



### 5.2.2. The principal qualification of the surrogate

First of all, the client of surrogacy must have a legal marriage relationship, namely a legally recognized marriage relationship. Single men and women who are not legally married cannot be allowed to carry out surrogacy. Because these groups don't have a whole healthy family relationship. Unable to give children a good growth environment, is not conducive to the children's physical and mental health development. Surrogacy was created to fulfill the desire of infertile couples to have their own biological children. Both parties without legal marriage are allowed to carry out surrogacy because of the instability of their relationship. Once the relationship breaks down, the ownership of surrogate children will arise and a series of difficult problems will arise.

As for whether the client of surrogacy is allowed to find the surrogate mother and obtain the legally recognized children, the author thinks it can be allowed on the basis of the legalization of same-sex marriage. The homosexual community is a reasonable existence that cannot be ignored in today's society. Their legitimate claims should also be treated as normal. At present, China has not recognized the legality of same-sex marriage, and the social tolerance of same-sex groups is not high, so the gay family is still in an embarrassing position in China today. At present, countries outside the region that recognize same-sex marriage gradually begin to allow such groups to entrust surrogacy, which can be said to be a trend.

Secondly, in complete surrogacy, both sperm and egg come from the client, while in genetic surrogacy, the surrogate provides sperm. This requires that the surrogate be in good physical condition and can provide high-quality sperm and eggs. This greatly reduces the chance that children born through surrogacy will develop genetic diseases. Better guarantee surrogacy quality.

### 5.3. Establish Supervision Agencies for Surrogacy

One of the important reasons why surrogacy is criticized is that its relevant regulations are very imperfect, and its glory of benefiting mankind is completely covered by the high profit of commercial surrogacy behind it. Hopes that absolute legal prohibition would curb the negative effects of surrogacy have certainly not worked. At present, China needs to set up a surrogacy supervision agency to manage various matters of surrogacy. Surrogacy as a human assisted reproductive technology must be responsible for and implemented by specialized medical institutions and medical personnel. Therefore, an important responsibility of the regulatory body is to supervise and check the qualifications of these specialized medical institutions and personnel, and reduce the access of black clinics and unlicensed physicians to the technology. In addition, the agency should also be responsible for examining whether the qualifications of both parties to carry out surrogacy conform to the provisions of the law and the relevant fees of surrogacy, so as to prevent unreasonable surrogacy fees.

### 5.4. Regulate Surrogacy Agreements

If we search surrogacy agencies to consult surrogacy in the Internet search engine, almost all underground surrogacy agencies without surrogacy technology require the parties to sign a surrogacy agreement. Based on this, we can ensure that all kinds of problems during the process of surrogacy and after the end of surrogacy can be solved. The fundamental purpose of the surrogacy agreement is to confirm the parents of the surrogate child as the entrusting party and solve the dispute of paternity identification from the source. Therefore, the surrogacy agreement mainly adjusts the personal relationship, of course, the agreement on the property relationship is also indispensable. [14]

The regulation of surrogacy agreement is an important part of managing surrogacy market effectively. Specifically, the effective and termination of the surrogacy agreement, the compensation for breach of contract, and the necessary terms and so on.

First of all, surrogacy agreement is essentially a kind of contract. The complexity of surrogacy determines that the validity of the surrogacy agreement is stricter than other general provisions of the validity of the contract. Surrogacy agreements cannot be effective unless they are signed and sealed by both parties and must be reviewed and approved by special regulatory agencies.

Second, surrogacy is a civil act. Both parties to the surrogacy agreement may encounter various circumstances and fail to fulfill their obligations as agreed in the agreement. In this case, the surrogacy agreement shall, like other contracts, stipulate the compensation liability for failure to perform the surrogacy agreement due to one party's reasons. The performance of the surrogacy agreement may be terminated under the following circumstances: First, the surrogacy shall terminate naturally after both parties have fulfilled their respective obligations. Second, the surrogacy parties agree to terminate the surrogacy agreement. Third, the surrogate mother or surrogate client requests termination of the contract due to other circumstances. In the first and second cases, both parties can freely agree on the amount of compensation. If the surrogate mother aborts the pregnancy without the consent of the surrogate or commits any other breach of contract, the surrogate mother shall be responsible for the expenses of the operation. The surrogate mother may request to rescind the agreement when the reason can be attributed to the principal of the surrogacy, such as giving up the surrogacy. The amount of compensation can be negotiated by both parties. Finally, the surrogacy agreement inevitably involves the qualification of the subject of surrogacy, the identification of parent-child relationship, the provisions of surrogacy fees, the responsibility of breach of contract and other necessary clauses.

High profits and huge demand drive illegal surrogacy to continue in real life. Therefore, surrogacy cannot simply be regarded as a consensual negotiation without the intervention of state power. The surrogacy agreement, as a product of bilateral agreement, must be attached importance to by the legislators. The surrogacy parties are not allowed to disregard the principles of public order, good customs and spirit to arbitrarily agree on the content of the agreement, and damage social morality and ethics.

## 6. CONCLUSION

Traditional fertility concepts still hold their place in today's Chinese families. The maintenance and inheritance of consanguinity have always been the spiritual needs of the Chinese people. So this idea is a source of pain for infertile families. The first cases of artificial insemination in the 18th century opened the door to the mystery of human fertility. The birth and maturity of assisted reproduction technology has brought a blessing to countless families suffering from childlessness.

The reason why surrogacy technology is so controversial is that it has brought a great impact on the ethics, morality and law of human society. At present, the underground surrogacy market is rampant and commercialized. However, there are no detailed laws to regulate the disorder of surrogacy market in China. The interests of surrogacy subjects cannot be guaranteed. For this article from the basic concept of surrogacy, classification. On the basis of understanding the basic connotation of surrogacy, this paper analyzes the current conflicts and difficulties of surrogacy in the real society, and deeply understands the parts of surrogacy, such as reproductive rights and physical rights, which are in urgent need of legal improvement. A survey of countries outside the region, including the United Kingdom, the earliest surrogacy technology, and the United States, where medical technology is developed, analyzes the absolute prohibition of the attitude is not desirable. The current shift in attitudes towards surrogacy from absolute prohibition to limited openness is the global mainstream. My country's attempt to sidestep this trend by hoping for an absolute prohibition can only lead to a worsening of the

situation. Our country should seize this trend to change the attitude towards surrogacy, and perfect the regulation of surrogacy from the Angle of law as soon as possible, so that surrogacy can walk under the sun.

The birth of artificial assisted reproductive technology is the achievement of human science and medical technology. A technology is not good or bad, it is the people who use it. While enjoying this technology, humans should remain in awe of human reproduction. Only by using this technology with awe can mankind go farther and safer.

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