

On Legal Regulations Prohibiting Surrogacy

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Abstract

With the development of China's economy and social progress, various problems such as environmental pollution and excessive living pressure have been caused, resulting in a decline in China's fertility rate year by year. The hope is placed on artificially assisted science and technology, and surrogacy is the most popular method among them. Regarding the issue of whether surrogacy should be legalized, the academic views are basically divided into two categories: one is a complete ban; the other is an open limited surrogacy. This article supports the former view. Surrogacy is an impact on social ethics and the legal system, the materialization and exploitation of surrogate mothers, and the trampling of human nature. Only by completely prohibiting surrogacy and strengthening legislative, institutional, and ideological construction can safeguard civil rights. , the best way to maintain social order.

Keywords

Limited surrogacy; Prohibition of surrogacy; System construction.

1. Introduction

This article refutes some views on opening limited surrogacy, and focuses on putting forward solutions from the aspects of legislative supervision, system construction, and ideological popularization. Improve a better society under the rule of law.

2. Refutation of the View of Open Limited Surrogacy

Scholars who support the opening of limited surrogacy basically support the view of the "limited surrogacy dichotomy", that is, "open some surrogacy and prohibit some surrogacy". They believe that the rights and interests of families who have lost their only child and infertile families still need to be protected. Blindly prohibiting them will not solve the problem fundamentally. The problem of surrogacy may not only be banned repeatedly but will become more and more serious, which is not conducive to the stability of society and citizens' lives. . It is better to legalize some types of surrogacy, which is conducive to better regulation of the law. As for what types of surrogacy should be prohibited, paid surrogacy, surrogacy with embryo donation, surrogacy using surrogate eggs, and surrogacy by others who are fertile but unwilling to bear children should be prohibited by law. What should be open is the act of free surrogacy for others. However, opening limited surrogacy cannot effectively solve the problem. (1) Surrogacy is the materialization of the surrogate mother Some scholars believe that surrogacy is a labor service in which a woman uses her own womb to give birth to a surrogate child and then deliver it and get paid. It is not fundamentally different from other labor services. But unlike ordinary labor, the surrogate mother will have feelings for the child in her womb during the pregnancy in October, and the child will also have feelings of attachment to the mother-this is the inevitable result of pregnancy result. It is precisely because the two sides can develop feelings that prove that the surrogate is a person, not a commodity, and the sale of the surrogate is almost no different from the abduction of a child. (2) Surrogacy is the commercialization of surrogacy In commercial surrogacy, surrogate mothers can only receive extremely low

remuneration, bear extremely high health risks, and finally deliver children who will accompany them in October-this is the consequence of surrogacy agencies using surrogacy as a reproductive tool The exploitation is seriously inconsistent with Kant's moral concept that "people can only be used as ends, not as means". Therefore, surrogacy should be strictly prohibited. (3) Surrogacy is not an effective way to protect the reproductive rights of infertile couples China's Population and Family Planning Law does give people the right to reproduce. Therefore, some scholars believe that "Chinese law has recognized that infertile couples can use artificial reproductive technology to realize their reproductive rights under certain conditions, then, as a basic human rights, without sufficient theoretical support, no individual or unit can Illegal deprivation of the right of infertile couples to choose to obtain their own children through surrogacy technology." But it is worth noting that the law guarantees basic human rights, but it does not give people any rights, nor does it give anyone completely equal rights. Reproductive capacity is the premise for the existence of reproductive rights. If citizens themselves do not have reproductive capacity, their rights will not be possessed. Therefore, it is not appropriate for those infertile couples who want to solve their fertility problems through surrogacy.

3. The Pitfalls of Open Limited Surrogacy and the Necessity of Its Prohibition

(1) The opening of limited surrogacy is an impact on the public order and good customs of Chinese society In some cases of cross-border surrogacy, even if the courts of some countries recognize that the interests of surrogate children should be protected, the "principle of reservation of public order" is often applied to the effective judgment of surrogacy obtained by the entrusting couple abroad without recognition and enforcement. For example, in the "Monsen case" in France in 2014, the judgment mentioned that although the interests of Valentia Manson and Flora Manson, the two children born by surrogacy in this case, need to be protected, the French Civil Code "Articles 16-7 and 16-9 clearly stipulate that for the purpose of maintaining public order in the country, the surrogacy agreement is invalid. This principle also applies to China, where the parent-child relationship in Chinese morals has always had the concept of "the one who gives birth is the mother". Therefore, in surrogacy, the surrogate mother who is the childbirth should become the biological "mother" of the child. But if the surrogate mother gives the surrogate child to the entrusting party in accordance with the surrogacy agreement with money as the consideration, isn't that a kind of commodity trading behavior as mentioned above? If it is a non-commercial surrogacy and there is no monetary transaction, then this kind of adoption constitutes the abandonment of the child by the mother. Whether it is commercial surrogacy or non-commercial surrogacy, surrogacy is an impact on China's public order and morality and should be banned.

(2) China should completely ban any surrogacy Surrogacy is the objectification and exploitation of women and the commercialization of surrogate children. Its existence is not conducive to the development of society. Prohibition is the best choice at present. However, there are still many problems to be solved regarding the prohibition of surrogacy. The following are some solutions to the regulation of surrogacy.

4. Legislative Regulations Prohibiting Surrogacy in China And Responses to Related Needs

(1) Raise China's legislative rank At present, China's relevant regulations on prohibiting surrogacy only exist in the "Human Assisted Reproductive Technology Specifications", "Human Assisted Reproductive Technology Management Measures" and other departmental

regulations, with a very low level of effectiveness, and cannot be fully and effectively regulated for the active surrogacy market in China. . In the "Population and Family Planning Law (Draft)" published in 2015, the prohibition of surrogacy was clearly stated, and some scholars explained: "I hope that through the revision of the law, we have been in accordance with relevant department regulations for more than 10 years. This work has been promoted to the legal level." However, when the Standing Committee of the National People's Congress voted later, the clause on "prohibition of surrogacy" in the draft was deleted, which shows that the state does have concerns about surrogacy, but it does not mean that this It is the attitude of "open surrogacy", not to mention that the judicial administration in the following years has adhered to the attitude of "prohibiting surrogacy", but the process has been hindered by the lower level of departmental regulations. It can be seen that it is quite necessary to improve the "Population and Family Planning Law".

(2) Strengthen the punishment for other surrogacy subjects In the "Administrative Measures for Human Assisted Reproductive Technology" and the "Human Assisted Reproductive Technology Specification" and other relevant departmental regulations, there are provisions prohibiting medical institutions and medical personnel from implementing surrogacy technology, but it is limited to this. For surrogate mothers, surrogacy agencies behavior is not regulated. 1. Increase the penalties for surrogacy agencies Surrogacy agencies are usually responsible for "matchmaking" during the entire surrogacy process. They can enjoy hundreds of thousands of profits every year, but squeeze surrogate mothers. The documentary "Surrogate" shows the exploitation of surrogate mothers by surrogacy agencies, which is enough to see them. subjectively bad. In the case where the excellent medical clinic sponsored by Fuchen Group was suspected of illegally carrying out assisted reproductive technology, the group engaged in surrogacy during the six years of surrogacy, and the circumstances were bad, but according to the existing department regulations, the group was only fined 30,000 yuan Yuan, can't play the role of punishment and deterrence at all. Therefore, it is necessary to increase the amount of fines. Since the price agreed for each surrogacy may be different, the amount of fines cannot be the same, but the amount of fines must be greater than or equal to the illegal income of the surrogacy agency. At the same time, if the circumstances are bad, the person in charge of the unit shall be subject to administrative detention, the business license of the unit shall be revoked, and he shall be prohibited from engaging in medical undertakings. As for the degree of evil, it should be judged from various aspects such as the number of surrogates, the profits obtained, and the degree of influence. As long as there is one aspect that is beyond the tolerance of the good and common people in the society, it should be deemed that the circumstances are bad. 2. Punish the surrogate mother Surrogate mothers play a pivotal role in every surrogacy activity, therefore, in order to regulate surrogacy, it is necessary to take measures to prohibit women from engaging in surrogacy activities. To this end, some scholars said that for surrogate women who have violated the "Population and Family Planning Law" for multiple surrogacy, they can be ordered to pay social maintenance fees in accordance with the law on the payment of social maintenance fees, increasing the illegal cost of surrogacy. . Moreover, for pregnant mothers with particularly serious circumstances, the use of punishment should be considered. For some surrogate mothers with minor circumstances, criticism and education should be the main focus; in the identification of parent-child relationship, the "delivery theory" should be the main treatment, supplemented by "the best interests of the children"; the surrogacy agreement should be invalid because it violates public order and good customs. In judicial practice, surrogate mothers assume the responsibility of raising their children to regulate their behavior.

(3) Strengthen the government's control over surrogacy In terms of the overall control of surrogacy activities, the government can set up relevant departments to specifically manage surrogacy affairs, in order to achieve "strict enforcement of laws and investigations of

violations of law". At the same time, the government should provide reporting channels for the masses, such as establishing a special website, mobilizing the power of the masses, and strangling surrogacy in the cradle.

(4) Encourage adoption of surrogate pregnancy Adoption is the best option to protect the needs of offspring for infertile families. Adoption not only enables the demander to choose the most suitable adopted child, but the adopted child also gets a new family. Blood and genes are not the necessary links between parents and children. Family affection is created through companionship and support. The government can reward adoptive families in terms of money and honor, in order to gradually adopt surrogacy.

(5) Strengthen the construction of a socialist society and establish a correct life concept for the masses Since ancient times, China has had the traditional life concept of "raising children to prevent old age". In addition, China's existing pension mechanism is not sound enough. Many family pension tasks fall on the children. This is one of the reasons why surrogacy is rampant in China. Therefore, it is necessary to improve and change the deep-rooted thinking concept of "raising children to prevent old age", and devote ourselves to establishing a correct concept of life for the masses. More importantly, strengthen the construction of socialist material and spiritual civilization, improve the pension mechanism, etc., to solve the problem of surrogacy.

5. Conclusion

Surrogacy is a constant topic, and as society evolves, our laws and regulations may see it differently. But at present, it seems that prohibiting surrogacy is in line with our current social philosophy and social order, and is conducive to maintaining a happy and stable life for our citizens. As a part of this society, we are all obliged to abide by the law, and only by working together can we create a harmonious and beautiful future together.

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