



## Research Article

# Commercial Surrogacy between Ethics and Legalization

**Hekmet Bugrein, Hamad Mohammed AlJaber**

Phimedcare, Phi Group Qatar.

**\*Corresponding author:** Hekmet Bugrein, Phimedcare, Phi Group Qatar.

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### Introduction:

Commercial surrogacy, where a woman carries a pregnancy for another couple in exchange for compensation, has gained prominence with the rise of assisted reproductive technologies. While it offers hope to infertile couples, it simultaneously raises significant ethical and moral concerns[1,2]. A major ethical dilemma surrounding commercial surrogacy is the risk of exploitation, particularly in developing countries[2,3]. This highlights the danger of commodifying women's bodies and reproductive functions, reducing these deeply personal aspects of human experience to transactional agreements [4]. Furthermore, the commodification extends to children, as they may be viewed as products to be bought and sold, raising profound moral and ethical questions about the nature of human dignity [5]. The well-being of children born through surrogacy remains a paramount concern. Issues such as legal identity, psychological development, and emotional stability must be carefully addressed. There is a risk of long-term psychological harm if the child is rejected or abandoned by the intended parents, leaving questions about legal accountability and the child's rights [3,5]. Islamic ethics is very different. Islam prohibits surrogacy because it interferes with proper lineage, Islamic bioethics, from the principles of human dignity and the sanctity of life, offers a strong condemnation of commercial surrogacy. It underscores the importance of preserving lineage and family ties, which are fundamentally disrupted in such arrangements. Islamic scholars argue that surrogacy compromises the moral dimensions of reproduction [1,5]. Western secular and Islamic perspectives, while approaching the issue from different ethical frameworks, share overlapping concerns about exploitation, commodification, and the long-term well-being of both the surrogate and the child. Philosophers such as [4]. Many authors argue that both types harbor significant moral and ethical challenges [1]. This essay aims to dissect the arguments related to each party involved in the process and to focus on specific

ethical issues. While liberal thinkers and utilitarian's may suggest that commercial surrogacy benefits all parties, with contend that the implications extend far beyond mere benefits. This paper analysis commercial surrogacy through a multifaceted ethical lens examining its compatibility with human rights, social justice, Islamic bioethics, and medical ethics. By addressing the challenges of informed consent, autonomy, and postnatal care and, argues against the legalization of commercial surrogacy, discussing the complex ethical issues involved [3]. It explores the exploitation of surrogate mothers, The essay also analyzes the commodification of human reproduction, where children are treated as commodities rather than individuals with inherent value [4].

### Types of surrogacy

Surrogacy can be classified into two distinct types: partial (Traditional) and full surrogacy (gestational) . Both types can utilize in vitro fertilization (IVF), with partial surrogacy often being characterized as the safest, and most cost-effective approach [6]. Where the intended father fertilizes the surrogate mother's own egg through artificial insemination [7]. As a result, the surrogate mother in these cases has a biological connection to the child that is equal to that of the intended father [8]. While many women choose to become surrogate mothers primarily for altruistic reasons, there is a general consensus among all parties involved that compensation is a fair and essential aspect of the arrangement, given the physical and emotional toll that carrying a child to term entails [9], gestational surrogacy, which has gained popularity due to advancements in artificial insemination and in vitro fertilization techniques, involves a surrogate carrying an embryo created from the eggs and sperm of the intended parents. Altruistic gestational surrogacy entails a close relative or friend carrying the child as a favor without financial compensation, whereas commercial surrogacy compensates the gestational mother for her services through an agency or overseas clinic, particularly given that many countries still prohibit the practice.

## Parties involved in the Surrogacy process and to focus on specific ethical issues.

### The Intended Parents

Several factors motivate to words commercial surrogacy, with infertility , primary or secondary due to hysterectomy, ovarian diseases, or co-morbid medical conditions being paramount. Other reasons include the desire for a child among same-sex couples or single fathers, and cases where a frozen embryo exists from a deceased partner. Disturbingly, there are instances where wealthy individuals or celebrities, often healthy, opt for this method simply to avoid the physical burdens associated with pregnancy, which raises ethical concerns about their motives [10]. Islamic ethics strictly advises to form the family solely on the basis of biological ties. Islam condemns surrogacy because the child will be deprived of information about his lineage and may result, unknowingly, in half-sibling marriage which is a dangerous consequence for a society. But on the contrary, a Western secular bioethicist argues that family ties have never been only biological: a husband and a wife, to take the most obvious example, are not biological relatives. It is also argued that, if ‘the family’ is a good thing, then developing more children by different methods, including non-biological ones, to form a family should also be seen as a good endeavor( Pence GE.1995).

Commercial surrogacy presents significant challenges, particularly as it remains illegal in many countries. This legal landscape drives intended parents to seek options in countries like India, which has historically served as a major hub for these procedures. The ethical implications are profound when considering that many surrogates in such locations live at or below the poverty line, which raises critical questions of exploitation [11].

### Concerns Regarding Surrogate Mothers

In examining commercial surrogacy in India, numerous unethical practices emerge. Surrogate mothers often come from impoverished rural backgrounds, are frequently illiterate, and lose the autonomy over their bodies as they are persuaded by middlemen or pressured by family members [12]. Once they enter surrogacy hostels, their lives are heavily controlled throughout the pregnancy, a situation that can be likened to semi-prison conditions, separating them from their families and homes and leading to neglect in their domestic responsibilities.

The selection process markedly favors passive, obedient women, excluding those who express opinions or inquiries perceived as threats to the surrogacy’s success. The psychological counseling provided is often geared toward ensuring the success of the surrogacy rather than promoting the well-being of the surrogate herself [13]. Furthermore, many surrogates may not fully understand the agreements they sign, leading to a troubling power

dynamic where their autonomy is compromised.

Informed consent, a crucial ethical issue, is often neglected. While many surrogates sign legally binding agreements, they may not be adequately informed about the implications, side effects, and potential dangers associated with the surrogacy process. A significant concern is that intended parents frequently exert more control over pregnancy decisions than the surrogates, particularly regarding termination [14]. One of the biggest ethical problems with surrogacy is the issue of Consent. Despite the women having signed the legally binding agreement, most of them are not properly informed. The process of informed consent must ensure full understanding of the details of the process and outcome with all possible side effects and dangers. (P Fronck ) In many instances they are not informed about their right to withdraw consent or terminate the surrogacy, and in many cases the intending parents have more control over the pregnancy than the surrogate mothers themselves, especially when it comes to termination of pregnancy. Since I mentioned informed consent as moral issue, it is worth mentioning the medical complications that are associated with surrogacy and are usually overlooked or not mentioned to the mothers. Surrogacy is an invasive process where the embryo is implanted into the uterus [13] This carries procedure-related complications, in additions to the surrogate mother more likelihood to develop complications such as pre-eclampsia, gestational diabetes, ovarian torsion, chronic pelvic inflammation, reproductive cancers due to hormonal therapy and infertility, not to mention that most surrogates undergo caesarian section for delivery as many would be having twin embryos implanted, with the risks that maybe associated, and if the pregnancy is lost for whatever reason, the gestational mother may lose her payment. (Saxena et all ) After birth, when the child is taken away from the gestational mother, she may suffer psychological consequences such as post-partum depression, in addition to breasts full of milk which can cause medical problems such as mastitis when the milk ducts are engorged. Complications can also occur to the intended mother as administration of hormones to stimulate the ovaries to produce eggs, and they are subsequently extracted by invasive methods, in addition to the possibility of other complications such as ovarian hyper stimulation syndrome and possible ovarian cancer on the long term. Surrogacy in countries like India can have serious social consequences. Stigmas related to surrogacy when becomes known to families and neighbors sometimes forces them to move away in search of new homes.

### The Child as a Third Party in Commercial Surrogacy

In the context of commercial surrogacy, the child emerges as a significant third party. As the ultimate product of this arrangement, the best interests of the child must be prioritized. From a medical perspective, babies born to surrogate mothers are often delivered via cesarean section. When multiple embryos are implanted, these

infants face an increased risk of premature birth, along with the myriad complications that accompany such medical conditions [5].

From a human rights standpoint, the child possesses various rights as outlined in the Convention on the Rights of the Child (CRC). Considering these rights within the context of commercial surrogacy raises ethical concerns that may lead some to argue against the legalization of this practice, as it might normalize the commodification of children [9]. In evaluating the interests of the child, three key factors come into focus: the child's right to know their own identity—especially important given the multiple parties involved—the right to maintain their cultural background, and the question of whether separation from their gestational mother has any detrimental effects on the child. According to Tobin (2014), existing research suggests limited evidence of such harm.

Another often-overlooked aspect of commercial surrogacy is the compatibility of laws between the countries of the intended parents and the host country where the surrogacy occurs. A notable example is the case of Baby Manji, who was born in 2008 in India to a Japanese couple. Following the couple's divorce just a month before her birth, her father faced significant difficulties in securing custody and citizenship for the child, as Japanese law does not recognize commercial surrogacy [8]. The Indian government also declined to issue a passport for Baby Manji, deeming her genetically non-Indian. This legal quagmire underscores the concern that the best interests of the child are often overshadowed, with the entire process appearing more akin to a transaction than a protective arrangement [5].

Moreover, it has been proposed that intending parents undergo parental counseling akin to the requirements for adoption. Assessing their capability to provide suitable care for the child, along with the stability of their relationship, is crucial to mitigating potential disruptions during the surrogacy process, which could adversely affect the child [7].

### Post-Birth Considerations for Surrogates

Following the birth, the babies are typically transferred from the surrogate mothers to the intended parents, often with minimal regard for the surrogate's rights regarding the timing of separation or the opportunity to retain custody if emotional attachments develop [8]. These women are frequently psychologically conditioned to concentrate on the compensation tied to the process, promoting emotional detachment and easing the transition to relinquishing the newborns shortly after delivery [8]. As Islam encourages reproduction, it advocates treatment of infertility. Further, protection of progeny entails care for pregnant women and the health of the children. It further entails preservation of lineage. Each newborn should know and be related to both his/her mother and father. Hiring a 'womb' for procreation is a very

recent phenomenon that contemporary jurists have to handle. Islamic bioethics cannot accept this practice because surrogacy is a clear form of using donor sperm, a foreign element, in the womb of a woman which results in the mixing of lineage. Mufti Sheikh Ahmad Kutty, an Islamic scholar, opines that the introduction of male sperm into the uterus of a woman to whom he is not married transgresses the bounds of Allah.<sup>6</sup> In view of the term 'transgressing the bou.

Healthcare and counseling support ceases immediately after the surrogacy arrangement concludes, leaving surrogates with no resources to address potential medical or psychological complications that may arise in the aftermath of delivery. They are, in essence, discharged back into their lives without further consideration for their wellbeing [9]. This stark lack of support raises significant moral questions about the treatment of surrogates and the responsibilities of all parties involved in the surrogacy process.

### What is motherhood?

Reflecting on the whole surrogacy topic, I could not help to wonder what is the strongest bond that constitutes motherhood? Is it the genetic factor being the eggs belonging to the intended parents? Or the social bond of adoption? Does gestation itself have any consideration at all? not intend to dive deep into the motherhood philosophy, but it is worthwhile to touch on this subject considering the experience of childbearing and all the pains and hassles of childbirth, which in many cultures including mine has a great consideration and virtue.

Most emphasis in discussion relating to commercial surrogacy involves the intending parents (sperm and egg donors) which is the genetic source of DNA, with little consideration, if any to the gestational carrier. Does the sharing of blood or the exchange of body fluids relevant in the process of gestational surrogacy?

In a study conducted by [16], he proves the relationship between the surrogate mother and a non-genetic embryo, and that the maternal health and wellbeing impacts its growth and development. He also proves every organ system in the embryo is affected by the gestational mother's endocrine system. Therefore, the product of the pregnancy is the gestational mother's baby regardless of the contributing DNA. Thus, a psychological and emotional relationship cannot be denied and as a result the whole concept of surrogacy is ethically challenged and should be re-considered when making the decision to perform it or even to separate the baby from the gestational mother.

**A comparative study of Islamic and Western secular philosophical perspectives reveals some similarities and several dissimilarities. Both approaches are concerned about the well-being of both mother and child. Both are very concerned about the**

welfare of the society. Robertson looks for a very straight forward utilitarian interpretation to justify the practice of surrogacy. He opines that although surrogacy is a deviation from our cultural norms of reproduction, nevertheless it is good for the parties involved. His argument is that if the surrogacy arrangement can fulfill the desire of a barren couple, why should we deprive them from taking this opportunity? He argues that it also opens the way for financial gains of some needy women. In addition, some women enjoy pregnancy and the respect and attention that it draws. It is a blessing for the child because he/she would not have come to the light of the world except through this special arrangement.<sup>13</sup>

### Challenges

Taking a stand on commercial surrogacy as an unethical practice does not come without challenges or arguments. To summarize the topics challenged, then will discuss each one separately.

- 1) The exploitation / autonomy
- 2) The commodification of mothers
- 3) The commodification of babies

### The exploitation / Autonomy argument

Before I start to present the challenges, I would like to define each term individually. Exploitation refers to the act of taking advantage of someone or a certain situation that could be described as unethical or wrong. Whereas Autonomy refers to the freedom to take decisions about any matters related to the person without any interference from anyone and based on ones' wishes and judgments.

One of the most famous arguments was developed by [17] Alan Wertheimer who implies that exploitation would occur if the benefits were unfairly distributed, coerced consent or even the process resulting in harm. Others argue that if commercial surrogacy results in harm then altruistic surrogacy, which is widely accepted, does the same harm to the surrogate, which makes commercial surrogacy in this case the better choice as it is paid. The same authors argue that exploitation could also occur in circumstances where there is excessive manual labor is involved and if monetary compensation is attractive, would that add further fairness to the process. They also add that since the process itself is driven by the surrogate financial interest in the first place, doesn't that make it autonomous and legitimate? and if the compensation is little, would a higher price for example make it more ethical?

To defend my position and answering to Wilkinson who suggests that exploitation must be accompanied by harm or unfair benefit, using Ganguli-Mitra's article. She describes that the unfairness is much deeply rooted than simple unfairness in the compensation. It reflects inequality in the "social-structural processes" that is multifaceted including cultural, legal, political, and economic

factors. While money is the primary reason for accepting the surrogate deals, agents or brokers specifically targets those who are on or under the poverty line which in my opinion as though looking for the most vulnerable. These women are not only poor but are also mostly illiterate which would jeopardize their autonomy and their right of giving proper consent. It is true that the money they would receive would make a big transformational change in their life but looking at it from this angle only can be deceiving, as suggested by Canguli-Mitra. The society make-up generally favors males than females. They lack not only educational, but also work opportunities, and if present are usually low paid and extremely unfavorable and unregulated, in addition to other factors like social caste, corruption and failure of protection by the legal system. Adding to all of this, the social caste or fairness of the skin or even the level of intelligence can play a factor in bargaining leverage for the surrogate mother, which further reflects in defects in the structure of the society.

Proponents for the professional models to enhance autonomy and consent practice fail to acknowledge the fact that there is great power disparity in negotiation, in addition to the fact that consent does not cover the changing nature of the circumstances of the pregnancy nor guarantee its outcomes.

For the welfare-based argument that suggest that the ladies are usually taken care of throughout the pregnancy, this adds to the contradiction since the welfare is only concerned until the product is delivered (the baby), after which all the care ceases. questions the disparity of the care that surrogates receive compared for the purpose of the surrogacy to what normally she would receive during normal pregnancy with general poor healthcare and poverty.

Other form of exploitation occurs through the mechanism by which they are recruited. As I have previously mentioned that the women usually fall into a circle of coercion between the clinic whose primary concern is commercial, intermediaries or brokers who are on lookout for potential surrogates and possible family member who would exert pressure to make money.

### The Commodification argument

Commodity as a word was first used in the 15th century, and it came from the French word commodity, which in turn came from Latin commodities, all meaning "convenience, suitability, advantage". In economics the term describes goods that have fungibility, meaning that are replaceable and have no regards to who produces them.

Most of the arguments that support commercial surrogacy reject the commodification issue despite agreeing that it is degrading to humanity. However, they consider it all a matter of practicality, meaning the payment is for the service rather than the product, and the conditions that the surrogate face during pregnancy is

only peculiar to countries like India, where there is limitation of personal freedom and treatment like labor camps. A solution for this problem lies in regulation, proper compensation and perhaps giving more freedom and autonomy to the surrogates.

Similar arguments challenge the idea that children are bought and sold like products by suggesting the price is paid for the time, pain and effort. They also suggest monthly payment for the surrogate and payment to the medical facility for their service. It has also been suggested that the concept of buying and selling children has some cultural conception due to the fact that having children is considered priceless and the thought is more symbolic than actual claim.

In my opinion all of these are mere excuses and do not focus on the main principles. strong proponent of Kant's philosophy that humans should be treated as ends rather than means to an end, and when surrogates are used the way they are in commercial surrogacy, which is very dehumanizing and makes the entire process unethical.

To add to this argument, one of the main reasons why commercial surrogacy is commodifying both the mother and the child is the mere definition itself. Ann Philips argues that the service is mere use of human attributes that are fungible, meaning can be substituted by any other person without the change in real value. The fungibility in that regard is the paying for the service of pregnancy (rent of womb) regardless of who the mother is. The body is sacred in a way that it is not an object and cannot be disposed as Kant illustrated , so the self-ownership debate is also rejected in my point of view.

In an extreme view, Philips compares 'renting' services can be so intimate to the extent that it could be compared to prostitution. They do differ in many ways, but the main association is with intimate parts of the female body. Many find this very offensive, but in some cultures especially India, it holds a lot of stigmata similar to prostitution, as discussed earlier.

Regarding commodification of babies, I defend my position by the mere fact that the payment is towards delivery of a healthy baby rather than payment for the surrogate to get pregnant, and if she refuses to surrender the child or something goes wrong with the pregnancy, she may not get any payment. In addition to the fact that surrogates do not have the power to control the outcome and the whole mechanism of finding surrogates the business concept in how to make profits makes mothers and babies like commodities, as success is measured by 'number of babies born'.

One of the most stunning examples that children are treated as commodities, the cases where children were abandoned by their commissioning parents when they did not meet expectations. A notable example of this is the story of the baby who was born with

Down Syndrome and was abandoned in the birth country while the parents took home the other healthy twin.

The last point I would like to make regarding the unethical nature of commercial surrogacy is the conflict-of-interest issue. There are several sources of this found in the interests of medical professionals running the surrogacy services, including doctors and lawyers, agents and other intermediaries or brokers, all of which affect the interest of the surrogates to be viewed as patients who should receive the care needed, whether medical or psychological, not to forget seeking the best interests of the born babies. These factors if left to work the way they do, the business will definitely use mothers and children as commodities.

After a comprehensive examination of the myriad conditions surrounding commercial surrogacy agreements—from the selection of surrogate mothers to the delivery of babies, and the conditions experienced during and after pregnancy—I conclude that commercial surrogacy is ethically unjustifiable and should be banned. Individuals cannot simply be treated as means to an end, nor should wombs be commodified and available for rent [18]. The exploitation of the poor and marginalized, regardless of financial compensation, underscores the complexity of the ethical issues at hand. Such arrangements often extend beyond straightforward transactions for services rendered, revealing a troubling spectrum of power imbalances and ethical concerns regarding consent and autonomy (Pande, 2010).

It is crucial to also highlight that human rights, intrinsic human value, and, most importantly, the best interests of the resulting children are frequently overlooked in the commodified nature of commercial surrogacy (Buchanan, 2016). The legal and social implications for these children are significant and warrant serious consideration. In light of these ethical concerns, I strongly advocate for the prohibition of commercial surrogacy. The prioritization of human dignity and the protection of vulnerable populations must take precedence over practices that commodify human life[19,20,21].

## **Conclusion**

This paper analyzes commercial surrogacy through a multifaceted ethical lens, examining its compatibility with human rights, social justice, Islamic bioethics, and medical ethics. It addresses several key challenges, after a comprehensive analysis of the legal, ethical, and social implications of commercial surrogacy, it becomes evident that this practice is ethically unjustifiable and should be prohibited. Analyzing a secular perspective of commercial surrogacy undermines human dignity and violates fundamental ethical principles. It is imperative to advocate for its prohibition and to promote alternative ethical solutions for those seeking to build families and raises concerns about the potential for exploitation, the commodification of children, and the long-term psychological

and emotional consequences for all parties involved and Islamic bioethics, in particular, strongly condemns commercial surrogacy as it violates fundamental principles of family formation and human dignity. While approaching the issue from different ethical frameworks, both secular and Islamic perspectives share concerns about exploitation, commodification, and the long-term well-being of both the surrogate and the child. The practice is seen as a form of exploitation that undermines the sanctity of the human body and the natural process of procreation.

The arguments presented against commercial surrogacy demonstrate how the practice dehumanizes both mothers and children, commodifying them and leading to inequitable distributions of benefits. Importantly, the ideals of human rights and the welfare of the resulting children are often overlooked in the quest for profit and convenience.

It is imperative, therefore, to recognize the moral implications of commercial surrogacy and its inherent ethical violations, ultimately advocating for its prohibition to protect the dignity and rights of all involved parties.

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