

EXAMINING LEGAL REGULATIONS OF THE SURROGACY INSTITUTION: A COMPREHENSIVE FRAMEWORK AND ONGOING CHALLENGES

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Abstract. This article examines the legal and ethical complexities of surrogacy, highlighting the need for consistent legal frameworks to protect the rights of all parties involved. Surrogacy, offering hope to individuals and couples facing infertility, also presents legal challenges due to varying international and national views on its legality and ethics. The absence of uniform laws leads to issues like „reproductive tourism,” where people seek surrogacy in countries with lenient regulations, potentially leading to exploitation due to economic disparities. A major concern is the determination of parental rights and legal parentage, often leading to disputes and emotional distress due to unclear laws. This lack of clarity necessitates definitive legislation to safeguard everyone involved in surrogacy arrangements. Additionally, the involvement of financial compensation raises questions about the commodification of reproduction and the ethical implications of paying for a child’s birth. The article stresses that surrogacy laws must be comprehensive and uniform to protect children’s rights, surrogates, and biological parents. It calls for a unified approach to regulation, addressing concerns of exploitation, commodification, and the potential use of surrogacy for child trafficking, ensuring that arrangements are voluntary, free from coercion, and ethically sound.

Keywords: Assisted Reproductive Technologies (ART), surrogacy, traditional and gestational surrogacy, commercial surrogacy, human rights, legal vacuum, prevention of child trafficking, international agreement.

INTRODUCTION

Surrogacy, the arrangement in which a woman carries a pregnancy for another individual or couple, has emerged as a complex and controversial topic in the field of reproductive medicine. While it offers a promising solution for individuals and couples facing infertility or other reproductive challenges, the legal regulation of surrogacy presents significant challenges. The absence of comprehensive and uniform legal frameworks has led to a myriad of ethical, social, and legal dilemmas that require careful examination and consideration. Surrogacy, a practice that has gained increasing prominence in recent years, stands at the crossroads of personal autonomy, reproductive rights, and legal oversight. The use of surrogacy as a means to help individuals and couples achieve their dreams of parenthood has ignited debates over the ethical, social, and legal aspects of this institution.

The scientific article delves into the complex web of issues surrounding surrogacy and its legal regulation. With surrogacy becoming a viable option for individuals facing fertility challenges or desiring alternative paths to parenthood, it has raised pertinent questions about the rights of surrogates, intended parents, and the child born through this arrangement. Moreover, the practice spans international borders, adding a layer of complexity as it transcends various legal jurisdictions. The article aims to explore the intricate facets of surrogacy, clarifying the ethical dilemmas, potential exploitation concerns, and the challenges of creating a legal framework that adequately addresses the unique circumstances of surrogacy. By dissecting the existing international and national regulations and examining the effectiveness of those legal structures, the author seeks to understand the evolving dynamics of surrogacy and how they intersect with the broader landscape of reproductive rights and familial relationships (Vok, 2021).

The scientific article aims to explore the problem of legal regulation surrounding surrogacy and its implications from a multidisciplinary perspective. By analyzing existing literature, legal cases, and ethical debates, the author seeks to provide a comprehensive overview of the current state of surrogacy regulation and the associated challenges faced by policymakers, healthcare professionals, and society as a whole. The article delves into the various approaches taken by different countries and jurisdictions, ranging from complete prohibition to varying degrees of regulation. The author critically evaluates the effectiveness and ethical implications of these approaches, considering factors such as the protection of surrogate mothers' rights, the welfare of the child, and the interests of the intended parents.

Additionally, in the end, the article examines the impact of cultural, religious, and socio-economic factors on the legal regulation of surrogacy, highlighting the complexities that arise in the world as well as in Azerbaijan. In Azerbaijan, however, the field of surrogacy legislation remains largely uncharted territory. The lack of specific laws and regulations surrounding surrogacy has created a complex and uncertain landscape for those involved in or considering this reproductive option. The article explores the current state of ART and surrogacy legislation in Azerbaijan and the implications it has on individuals and families seeking surrogacy arrangements. The article aims to emphasize the potential consequences of the current legal vacuum, to contribute to this issue, and to contribute to the ongoing discussions surrounding the need for comprehensive surrogacy legislation in Azerbaijan (Babayev, 2022).

The article aims to inform policymakers, legal experts, healthcare professionals, and the general public, fostering a deeper understanding of the challenges and potential solutions in the realm of surrogacy regulation. By examining international legislation and comparing it with the legal systems of various countries, this article provides an extensive analysis and gives proposals that serve as a valuable resource for policymakers and lawmakers in Azerbaijan.

MATERIALS AND METHODS

The author employed a comprehensive array of scientific techniques and methodologies in the scientific article. The cornerstone of this study is grounded in fundamental research and the application of the dialectical method of cognition. Furthermore, it adopts a systematic

approach to the analysis of surrogacy and delves into the intricate web of legal regulations within the domain of medical law, drawing from the rich tapestry of domestic and foreign legislation, as well as court cases. At its core, this study is methodologically robust, relying on a combination of both general scientific and specialized legal methods of inquiry. Among the general scientific methods, the author harnessed a spectrum of tools, including analysis and synthesis, deduction, induction, modeling, analogy, and the method of dialectics, to name just a few.

To comprehensively dissect the intricacies of the study's subject matter, a systematic analysis and synthesis method was judiciously employed. This approach enabled the identification of key legislative challenges and quandaries surrounding the practice of surrogacy. Through the harmonious integration of these methodologies, the author sought to provide a holistic and nuanced perspective on the topic, clarifying the complex legal landscape governing surrogacy.

In the article, various legal methods were employed, including comparative-legal and formal-legal techniques, to enhance the depth and breadth of the analysis. The formal-legal method was utilized to establish the precise definitions of fundamental concepts and to systematize the material, facilitating the extraction of overarching conclusions within the specified subject matter. This method proved essential in clarifying the foundational elements and organizing the content effectively.

Furthermore, alongside the utilization of the comparative legal approach, the study incorporated additional methodologies to enhance its depth and breadth. In conjunction with the analysis of commonalities and differences between national legislation of several states like France, Germany, Spain, Belarus, India, USA, Great Britain, Netherlands, etc., and international legal instruments concerning surrogacy, the research also embraced systems-structural, integrated, and holistic research approaches. These complementary methods played a pivotal role in elucidating the convergence and divergence of legal frameworks across various countries.

Moreover, the integration of systems-structural, integrated, and holistic research approaches proved instrumental in formulating and justifying surrogacy as an ART. These approaches were essential in not only presenting proposals but also in developing practical legislation for both local (Azerbaijan) and international contexts. By synthesizing these diverse methodologies and approaches, the study aimed to establish a robust foundation for comprehensively addressing the challenges associated with surrogacy at both local and international levels.

RESULTS

The complexities and challenges associated with the legal regulation of surrogacy are significant and multifaceted. This is primarily due to the lack of consistent laws and regulations across different jurisdictions, leading to confusion, ethical dilemmas, and potential exploitation of the parties involved. The evolving dynamics of surrogacy arrangements necessitate a responsive and adaptive legal framework that can provide clarity and safeguard the rights and responsibilities of everyone involved, including the

intended parents, surrogates, and the child.

Your study's approach to addressing these concerns by delving into the existing legal framework and outlining potential challenges is commendable. It recognizes the importance of balancing the interests and rights of all parties and underscores the need for comprehensive and ethical legal frameworks in the field of surrogacy.

The proposal to introduce a new legal framework, potentially titled the „Law of the Republic of Azerbaijan on Regulation of the Right to Use Assisted Reproductive Technologies,” is an interesting approach. This proposed legislation could serve as a model for other nations, considering the legal and judicial practices of various states. The comprehensive scope of the legislation, including definitions and elucidations of Assisted Reproductive Technologies (ART), donation procedures, and the institution of surrogacy, is crucial. It would effectively address the complexities surrounding legal parentage, the rights of the parties involved, and the state's regulatory authority.

Additionally, the focus on establishing the legal status of ova and embryos, along with the rights and responsibilities of donors, is critical. The proposal to establish a unified state register for donor information and the ethical consideration of permitting the selection of a child's sex only under specific circumstances are also noteworthy aspects.

Overall, by enacting such a comprehensive and ethically informed legislative framework, the legal landscape surrounding assisted reproductive technologies and surrogacy can be significantly enhanced. This will not only ensure the protection of all parties involved but also promote family values and the well-being of children born through these methods. The adoption of bioethical norms as guiding principles, especially in areas where legislative gaps exist, further strengthens the approach, emphasizing the best interests of the child and the values associated with family dynamics.

From the day of world creation until today, one of the most important demands of man is reproduction. However, this demand cannot always be realized naturally. Sometimes, depending on the physiological structure of women and men or certain pathologies, such a situation leads to infertility. According to various estimates, the infertility rate in the world is between 15% and 23%. According to a new report provided by the World Health Organization (2023) (WHO), about 17.5% of the adult population is affected by infertility, that is, about one in six people in the world. Note that according to the statistics of infertility in the world countries, the situation is: in Europe - 10%, in the USA - 8-15% (Tokova et al., 2013).

With the progress of medicine and medical technologies, we can make human reproductive functions useful in modern times and observe the elimination of the diagnosis of infertility (except for severe physiological pathologies and anomalies). Another way to have a child with the use of reproductive technologies is the surrogacy institution with the artificial insemination method. The use of surrogacy during the introduction of reproductive technologies requires solving some ethical and legal issues. The origin of the word surrogate (lat. *surrogatus*, surrogate means „assigned to act with in place of”), Eng. gestational carrier (surrogate) means the carrier of pregnancy. Surrogacy is also classified as Assisted Reproductive Technologies by WHO.

Another international instrument states that „Surrogacy” means a special form of

reproductive practice agreed upon with the participation of the future parents and a „third party” when the surrogate mother will conceive, carry the fetus, and give birth to the child. Application of this method is usually ensured based on the contract (written arrangement) and payment of service (expenses) to the surrogate mother. As a rule, as part of surrogacy arrangements, the parties consider or agree that the surrogate mother will legally and physically transfer the child to the prospective parent(s) without retaining parental rights and responsibilities.

In general, the definition of surrogate mother is given in different formulations in many international instruments, which confuses society and the rule-making system. For this, let's explain the definition of „Surrogate mother” in detail. Surrogate mother as an ART exists in several forms: „Traditional carrier (surrogate)” and „Gestational carrier (surrogate)”.

During „traditional surrogacy”, the donor man's biomaterials (sperm) and the surrogate mother's biomaterials (oocytes) are artificially inseminated and placed in the woman's uterus. In this case, the surrogate mother has a genetic connection with the child she is carrying, and she carries the “in vitro” fertilized child in her womb, then gives birth to the child and hands him/her over to the genetic parent(s) - the clients.

During the „gestational surrogacy”, the donor woman's biomaterials (oocytes) and the donor man's biomaterials (sperm) are fertilized „in vitro”, and then the embryo is transferred to another woman - „gestational carrier”, “surrogate” uterus. In this case, the gestational carrier, that is, the surrogate mother, has no genetic connection with the child she is carrying, she only carries the „in vitro” fertilized child in her womb and then gives birth to the child and hands it over to the genetic parent(s) - the clients. “Gestational surrogacy” can be both altruistic and commercial (.About surrogacy, 2023)

In both cases, the surrogate mother must have voluntary consent for her pregnancy. The use of this reproductive method is usually applied when there are severe physiological pathologies, for example, when a woman does not have a uterus. In the case of „gestational surrogacy”, it is generally considered normal for a husband and wife to act as donors, but sometimes, due to pathological and physiological diseases, the couple cannot become donors, and third and fourth parties are requested to collect the material. In this sense, the surrogacy institution creates the problem of the „real mother” of the child (Azarova, 2012)

Thus, a child born with such manipulations can have 5 parents, 3 biological: sperm donor - male, donor of the ovum (oocytes) - female, surrogate mother-woman, and 2 social - clients, of course, at this time there are ethical and legal problems and it will inevitably cause court disputes in the future (Ismayilova, 2023). This situation creates opponents and supporters of the method by influencing the legislative regulation.

When talking about „traditional surrogacy”, the application of this form of surrogacy is sometimes deemed unacceptable by the international community and as a violation of all ethical and moral norms. Because the fact that the surrogate mother is a direct donor of biomaterial and at the same time acts as a carrier of the child and, as a result, hands over the child with a genetic connection to a third party, it is interpreted as an insult to human dignity and incompatible with human morality.

Opponents of the surrogacy institution justify their stance by arguing that it can lead to the degradation of a woman's dignity, as it involves carrying a child in exchange for financial

compensation. Additionally, they contend that the commercialization of the birth process is morally unethical. Consequently, the matter of selling a child for monetary gain, often referred to as human trafficking or child trafficking, is met with widespread condemnation. Nevertheless, it's worth noting that surrogacy has gained popularity, with many affluent individuals and celebrities utilizing this method. Moreover, the increasing prevalence of same-sex couples turning to surrogacy as a means to build their families has become more common in recent years.

Understanding the opposition's arguments against this method is not particularly challenging. Often, „surrogacy“ gives rise to legal disputes, particularly in criminal cases. For instance, if the child born isn't in line with the expectations of the intended parents, it may result in the rejection of the child later on. The proliferation of numerous children from various women via commercial surrogacy introduces uncertainty regarding these children's futures and raises concerns about the exploitation of women. As an example, a 24-year-old Japanese multimillionaire, Mitsutoki Shigeta, had 16 babies through more than 11 surrogate mothers in Thailand and India, prompting significant ethical considerations (Hawley, 2014).

Utilizing a surrogate mother as a means to achieve parenthood undoubtedly presents numerous intricate issues. Among these concerns, situations can arise where the surrogate mother may be hesitant to relinquish the child to the intended parents after nine months of pregnancy, or worse, she might exploit or blackmail the donor family by violating the confidentiality agreement in the future. Consequently, it becomes imperative for the legal regulation to institute specialized protocols and strict confidentiality measures within the surrogacy process. Across many European nations, the legal landscape mandates that the surrogate mother must unequivocally consent to acknowledge the intended parents as the child's legal guardians. As the utilization of surrogate motherhood continues to rise, the necessity to address these concerns within national legislation becomes increasingly pronounced. Furthermore, the diverse legal frameworks governing surrogacy in various countries can sometimes lead to a legal vacuum, particularly concerning the child's legal status.

An Illustrative Case: „Matter of Baby M“ (1996). To exemplify the complexities of surrogacy-related legal battles, one can delve into the landmark court case known as „Matter of Baby M,“ which played a pivotal role in instigating the development of surrogacy legislation in the United States. This dispute unfolded in 1996, pitting a married couple, Bill and Elizabeth Stern, against their surrogate mother, Mary Beth Whitehead, who had originally agreed to carry a child for them. The case hinged on the application of „traditional surrogacy,“ utilizing the biological materials of Bill Stern and the surrogate mother, Mary Beth Whitehead. However, the situation took a dramatic turn when Whitehead, after giving birth to the child, refused to relinquish custody to the intended parents. Bill and Elizabeth Stern resorted to legal action, securing an initial victory in court. Nevertheless, in 1988, the New Jersey Supreme Court reversed the initial decision (*In the Matter of Baby M*, 109 N.J. 396, 537 A.2d 1227, 1988). The court deemed the surrogacy contract and the compensation paid to the surrogate mother to violate established legal principles, labeling them as „unlawful, criminal, and degrading to women.“ Despite this, the court prioritized the best interests of the child above all else, ultimately granting custody to the Stern couple while allowing

visitation rights to the surrogate mother, Mary Beth Whitehead.

The „Matter of Baby M” case stands as a critical turning point in the evolution of surrogacy law in the United States. It brought to the forefront the ethical and legal complexities associated with surrogacy arrangements, forcing lawmakers and legal experts to reconsider and develop comprehensive legislation to address these intricate issues, safeguard the well-being of children born through surrogacy, and protect the rights and interests of all parties involved.

„Baby Manji Yamada vs. Union of India” is another notable legal case that emerged in 2008, revealing the complex legal and ethical issues in surrogacy. The central figure in this case was Baby Manji Yamada, who was born through surrogacy in India. The child’s statelessness resulted from the divorce of the Japanese couple who had intended to adopt her and were also her biological parents. Following the divorce, Baby Manji found herself in a precarious situation, residing in a maternity clinic in India under the care of her grandmother. Neither Japanese law nor Indian law offered a clear solution to her citizenship status and parentage issues. In Japanese law, only the surrogate mother was recognized as the biological mother, which did not acknowledge the biological father’s parenthood. Meanwhile, Indian law posed a challenge as it did not allow a child to be adopted by a single parent (Ministry of Health and Family Welfare, India, 2019). This legal conundrum left Baby Manji in legal limbo, with neither jurisdiction willing to acknowledge her biological father’s paternity. Only after the matter was settled in the Supreme Court of India, the child was given an identity card so that he could travel to Japan with his father. This case and many other similar court cases led to the drafting of Surrogacy Law and Regulations in India which came into effect in 2020 (Baby Manji Yamada vs Union Of India & Anr, 2008).

„Baby Manji Yamada vs. Union of India” serves as a powerful illustration of the complex issues and vulnerabilities that can arise in international surrogacy cases. It highlighted the necessity for legal reforms, international cooperation, and ethical considerations to ensure the well-being and rights of children born through surrogacy (Baby Manji Yamada vs Union Of India & Anr, 2008).

In conclusion, the arguments against surrogacy that we have mentioned highlighted some valid concerns (Robinson, 2021):

1. Legal Disputes: Surrogacy arrangements can indeed lead to legal disputes, especially if the terms and conditions of the contract are not well-defined or if unexpected situations arise during the pregnancy.
2. Child Rejection: If the child born through surrogacy has health issues, disabilities, or other characteristics that are not in line with the expectations of the intended parents, it may lead to complications and even abandonment. This highlights the need for comprehensive legal and ethical frameworks to address such situations.
3. Concerns About Commercial Surrogacy: Commercial surrogacy, where women are paid for their surrogacy services, raises ethical questions about the commodification of reproduction. Critics argue that it may exploit vulnerable women who choose to become surrogates due to financial hardships (Cohen, 2011).

The regulation of surrogacy following international legal norms is contingent on the willingness of individual states to align their national legislation with these standards. A

central and contentious issue in surrogacy, encompassing both physical and legal dimensions, pertains to the moment when the child is transferred to the biological parents. In numerous instances, this transition presents a significant risk of human trafficking, constituting an illegal act of paramount concern. It falls upon the executive and legislative branches of states, in collaboration with international organizations, to enforce prohibitions against the exploitation of surrogacy for the trafficking of children, as well as human organs and tissues.

The prevailing „vacuum” created by the problem of child trafficking within the context of surrogacy necessitates a comprehensive review. This vacuum, analogous to the issues surrounding illegal adoption, underscores the critical need for international regulatory mechanisms and guidelines governing the domain of international commercial surrogacy. The absence of such regulatory frameworks can lead to violations of the rights of children born through surrogacy, a situation that frequently results in the conflation of surrogacy with child trafficking. The concerns raised by the UN Committee on the Rights of the Child further accentuate the potential risks associated with the practice of surrogacy at an international level. It underscores the urgency of addressing the legal and ethical complexities of surrogacy to ensure the protection and well-being of the children involved, while also combatting any potential involvement of surrogacy in child trafficking. The development of robust international regulations in this realm is crucial to strike an appropriate balance between reproductive rights and the safeguarding of children’s rights.

Following Article 2 of the Optional Protocol to the 2000 Convention on the Rights of the Child addressing issues related to the sale of children, child prostitution, and child pornography, any act or transaction through which a child is transferred from one party or group of individuals to another in exchange for compensation or any other form of consideration is classified as child trafficking. This broad definition encompasses a range of situations where children may be exploited for various purposes. When it comes to interpreting the process of transferring a child from a surrogate mother to the intended biological parents, certain states consider the financial compensation provided to the surrogate mother for her role in carrying and delivering the child as a component of the objective aspect of this crime. In these cases, the compensation is viewed as a form of consideration that is exchanged for the child’s birth and transfer. This interpretation underscores the importance of legal clarity and consistency in surrogacy arrangements to ensure that the rights and well-being of all parties involved, especially the child, are adequately protected and respected.

According to Article 3 of the aforementioned Protocol, children are involved in trafficking for sexual exploitation, transfer of organs for profit, or engagement in forced labor (Ismayilova, 2023).

At the 37th session of the Human Rights Council in 2018 and as a follow-up in October 2019, the UN General Assembly report on the Protection of the Rights of Children born as a result of the Surrogacy Arrangement recommended the following (Special rapporteur on the sale of children..., 2018):

- adoption of transparent and comprehensive laws prohibiting child trafficking;
- implementation of safeguards for the prevention of child trafficking in the context of commercial surrogacy;
- protection of surrogate mother's rights given the altruistic surrogacy;
- in the context of parental rights and responsibilities, courts prioritize the protection of the rights of the child (after birth) to be included in local legislation.

DISCUSSION

At present, the international legal regulation of the surrogacy institution in the world is very limited. In this field, there is no universal international act that will help to unify the national legislation of countries, show specific cases of surrogacy that pose a threat to public interests, as well as reduce gaps in the legal field. Some acts, reports, and recommendatory standards that we have already mentioned above are the following: 2012 and 2014 The Hague Conference on Special International Law (HCCH) (2012), Document on "Issues arising from International Surrogacy Arrangements", United Nations General Assembly Human Rights Council's legal instrument of March 23, 2018, entitled "Child trafficking and sexual exploitation of children including child prostitution, child pornography and the production of other materials related to the sexual exploitation of children", legal instrument of the United Nations General Assembly of July 15, 2019 „Child trafficking and sexual exploitation of children, including child prostitution, child pornography and document on the production of other child sexual exploitation materials", the „Principles for the protection of the rights of children born through surrogacy" of February 2021 (Verona principles, 2023) and other thematic documents provide more guidance on the protection of the rights of children born through surrogacy. One of the main reasons for the absence of a universal international act on surrogacy is the diversity of domestic legislation in this field. In the legal regulation of the surrogacy institution, the national legislation of the states differs from each other, there are prohibitions in certain cases, conditional permits in other cases, and the third case, the legislation is in a position to not comment on this issue.

Upon studying and comparing examples of national legislation regulating surrogacy, we can group them as follows:

- France, Germany, Sweden, and some US states prohibit all forms of surrogacy, including commercial or altruistic, conventional, and Gestational surrogacy.
- National legislations of Greece, Australia, Canada, South Africa, New Zealand, and Great Britain (taking into account all costs of the surrogate mother), Denmark (with severe restrictions), Israel, Canada, the Netherlands, Norway, some US states regulating surrogacy directly or indirectly permit „altruistic" surrogacy, but „commercial or profit" surrogacy is prohibited. Only non-commercial surrogacy is allowed, commercial surrogacy arrangements are prohibited, and lawsuits against such arrangements are not allowed. Traditional surrogacy is prohibited in Australia, South Africa, and Israel.
- Cambodia, India, Nepal, Thailand, as well as Tabasco a state of Mexico are examples of countries that play the role of a center for international commercial surrogacy arrangements. Still, in recent times certain steps have been taken to limit such arrangements due to the increase in abuse of such arrangements.

- Ukraine, some US states, Kazakhstan, Georgia (Trimmings & Beaumont, 2013) and the Republic of South Africa regulates commercial surrogacy through national legislation.
- Argentina, Belgium, Guatemala, Ireland, and Japan, as well as numerous jurisdictions within some US states, have so far neither prohibited nor permitted surrogacy laws, leaving it up to the courts and authorities to decide.

Thus, surrogacy is illegal in France. Article 16-7 of the French Civil Code states: Any arrangement to give birth to a child on behalf of „another” or to carry a child for him is void. Moreover, according to the French law on Bioethics of July 29, 1994: „Any arrangement or contract made by a woman who consents to become pregnant, carry and give birth, even if compensation is not provided, and then refuses to do so, is subject to public regulations, and is contrary to the principle of the inviolability of the individual’s status and the human body”. Even though the law has been repeatedly amended and supplemented, the last version of 2021, which was adopted, retained the ban on surrogacy (France, 1994; France, 2021).

A similar approach is also observed in Germany: „artificial insemination or implantation of a human embryo into a woman (surrogate mother) who is ready to abandon her child after birth” is deemed a crime. The punishment is administered not to the biological parent or the surrogate mother, but to the doctor.

Legislative regulation of surrogacy institutions in Great Britain began in 1985 with the adoption of The Surrogate Arrangements Act which prohibited commercial surrogacy arrangements. Later, the Human Fertilization and Embryology Act was enacted in 1990 and its provisions have determined in detail the regulation of relations in this field. It was established that financial payments to surrogate mothers should be strictly justified and transparent. Also, through this act, a special mechanism was established in the United Kingdom and the act determined the possibility of determining the parental rights of the genetic parents of the child after his birth. Thus, before the introduction of this act, parental rights to the genetic parents or clients of the child born through surrogacy in the United Kingdom were only possible through adoption. The Human Fertilization and Embryology Act adopted in 2008 established the legalization of non-commercial surrogacy agencies. In addition, note that according to the norms established in the UK legislation, the mother of a newborn child is deemed to be the woman who gave birth to him (UK Public General Acts, 1985).

In the Netherlands, promoting surrogacy for commercial purposes is prohibited under the Penal Code. Websites advertising surrogacy on behalf of persons seeking surrogate mothers or wishing to become surrogate mothers, and social media mediation in this area are prohibited (Articles 151 b, 151 c). Here, in general, the commercial purpose of the surrogacy institution is deemed unethical.

Using the example of the United States, we see that different approaches to surrogacy are possible within a country. Four states have a blanket ban on surrogacy. Until recently, New York was among the states that banned surrogacy, but on 04.03.2020, an instrument legalizing surrogacy and providing a procedure for its application - the Child-Parent Security Act was enacted in New York. The document entered into force on February 15, 2021. The law only legalizes Gestational surrogacy and prohibits Traditional surrogacy. The document

also defines the mechanism of establishing parental rights of genetic parents. Surrogate mothers are also allowed to be compensated for „the medical risks, physical discomfort, and liabilities they incur in connection with their participation in assisted reproductive technology.” California is the state with the most loyal legal system in this field in the USA, which recognizes both commercial and non-commercial arrangements (New York State Department of Health, 2023)

In India, as we have already mentioned above, the 20202 legislation has eliminated this gap. Let’s review some norms from The Surrogate (Regulation) Bill (Svitnev, 2011). The Law provides for the establishment of surrogacy councils at both the national and state levels to ensure effective regulation. Ethical-altruistic surrogacy is allowed in Indian couples between the ages of 23-50 for women and 26-55 for men, and only Indian couples can opt for surrogacy in the country. Traditional surrogacy and commercial surrogacy are prohibited. A newborn child is entitled to enjoy all the rights and privileges available to a natural-born child. The law also regulates the activity of surrogacy clinics. All surrogacy clinics in the country must be registered with the relevant authority to perform surrogacy or related procedures. The law provides various guarantees for surrogate mothers. One of them is insurance coverage. Also, when it comes to surrogacy, gender selection is prohibited.

Post-Soviet states have different regulatory policies in this field. In some of them, the institution of surrogacy is regulated (Ukraine, Kazakhstan) by the law On the Protection of Public Health, and in others (the Republic of Belarus, Kyrgyzstan) by special legislative acts.

One aspect of the distinctive advantages of the Belarusian legislation on the use of reproductive technologies is the deeper regulation of the surrogacy institution. Surrogacy is not only a reproductive method used by couples. Everyone, including any single woman or man, should have the right to use this method. Factors affecting the legislative regulation of surrogacy, along with the need to treat persons with physical disabilities, who are unable to conceive, are the geographical position of the states, the level of economic development, the climate zone, the growth rate of the population, religious and moral views, etc.

Precisely the directions of solving those factors are specifically covered by the Belarusian legislation that we have mentioned. Three articles of the Law of the Republic of Belarus „On Assisted Reproductive Technologies” directly regulate the surrogacy institution. In Article 20 of the Law (Terms and conditions of application of surrogacy), the surrogacy contract is stated as the basis for the application of surrogacy (Law of the Republic of Belarus, 2012). In another part of the Article, the conditions for using surrogacy services are stipulated. It is noted that surrogacy services can be used only by those persons who are unable to carry and give birth to a child given physiological and medical reasons, or this use is related to the risk to the life of the woman herself or the child. Both her husband’s and donor’s spermatozoa can be used for fertilization of the genetic mother’s ovum. The surrogacy ART method is determined by the legislator through a written agreement. Thus, the terms of the surrogacy contract were envisaged by Belarusian legislation. However, there is a need for clarification in certain cases. The Belarusian legislature regulates the surrogacy contract (Article 21) quite extensively. A surrogacy contract is an arrangement concluded in writing and notarized between a surrogate mother and a genetic mother or a woman using a donor ovum. However, the statute of obligation of unmarried men is not included here. The

legislator only determines the terms of the contract depending on the marital status of the person. Married persons can enter into a surrogacy contract with the written consent of their husband or wife.

The Belorussian law stipulates that the Ministry of Health determines the medical indications and contraindications for surrogacy, the rules for conducting a medical examination of a surrogate mother, a genetic mother, or a woman using a donor ovum, as well as other related persons.

Legislation on the use of surrogacy and in general, assisted reproductive technologies in the Republic of Azerbaijan should be developed in more detail and a legal framework should be established in this regard. Because currently the surrogacy institution in the country is not regulated by any regulatory act. Article 46 of the RA "On Family Code" does not provide a definition of a surrogate mother and does not distinguish between traditional and gestational surrogacy, etc. and these gaps lead to incorrect interpretations of the regulatory framework and law. Thus, Article 46.4 of the Family Code of the Republic of Azerbaijan (Republic of Azerbaijan, 1999) it is states that if the parents who are married and have a written agreement on the application of artificial insemination or embryo implantation have a child as a result of those methods, they are registered as the child's parents in the birth certificate with the consent of the woman who gave birth to the child (surrogate mother). In this article, although the parents who are married and have a written arrangement on the application of artificial insemination or embryo implantation have a child as a result of those methods, they should be registered as the child's parents in the birth certificate with the consent of the woman who is one of the parents who gave birth to the child, the mixed writing of the terms, at the same time, the use of the term „surrogate mother" in the article may lead to the creation of a wrong court precedent by making the correct application of the article difficult. Thus, in Azerbaijan, the surrogacy institution is recognized under the national jurisdiction, but the normative regulation is not properly ensured.

For ensuring the legal regulation of the surrogacy institution in the country, considering the comparative analysis we conducted as in the case of the legislative system and practice of foreign countries, it is appropriate to introduce several norms that have already proven themselves in the international practice and court disputes of foreign countries into the legislation of the Republic of Azerbaijan and make proposals for the final draft law.

Since the surrogacy institution is a relatively new field, its comprehensive legal regulation is also impossible. Therefore, if there is a legislative gap in the surrogacy institution, bioethical norms should be used while applying the law, considering the child and family values. Given the legislative and judicial practice of foreign countries, in the draft law proposed by me:

Chapter I

- The following condition can be stipulated – "Legislation on the right to use reproductive technologies shall consist of the Constitution of the Republic of Azerbaijan, this Law, other legislative acts on health, international agreements that the Republic of Azerbaijan is a party to and bioethical norms on child and family values."

Chapter II

- The definitions of „gestational surrogacy „ and „traditional surrogacy „ should be

given and distinguished.

- „Traditional surrogacy „ ART (female egg donor also becomes a surrogate mother) should be prohibited in the country as it is against moral and ethical values and is a humiliation of human dignity.

- „Gestational surrogacy „ ART should be deemed legal and accepted not only as a reproductive method used by a married couple but also as an ART method used by a single woman or man.

Chapter III

- During surrogacy, it should be deemed acceptable to carry out „in vitro” fertilization using the ovum (oocytes) and spermatozoa of the genetic parent(s).

- If it is determined that it is impossible to use the biomaterial of one of the parents due to pathological and physiological reasons, the use of donor oocytes or spermatozoa should be deemed legal.

- In the case of fertilization of the donor ovum (oocytes), the use of spermatozoa of the man using the donor ovum (regardless of whether he is a couple or single) should be sanctioned. To prevent cases of incest, this case should be accepted as a legislative rule.

Chapter IV

- After the birth of the child, the mechanism for establishing the right of parentage (not guardianship) of the parent(s) who are his/her clients should be established.

- The surrogate mother, if there is no other agreement between them, should be identified only as a carrier, and the registration of the genetic mother as the official mother of the child should be determined by legislation.

Chapter V

- Official surrogacy clinics that will operate to implement surrogacy or procedures related to it should be registered and supervised by the relevant authority (Council, Committee, etc.).

- To prevent human trafficking, it should be established to prevent the use or advertising of the surrogacy institution as a source of income or to prohibit commercial mediation in this field.

- Reimbursement of costs to surrogate mothers for medical risks, physical discomfort, and liability incurred by them based on the mutual agreement should be allowed by legislation and should not be interpreted and defined as the term „commercial surrogacy.”

Chapter VI

- Obtaining the prior consent of the doctor, surrogate mother, and client (a couple or a single person) on determining the number of embryos placed into the mother’s womb and regulating it by legislation (that is, the retention or destruction (of abortion) of captured embryos) should be provided by law;

- Allowing clients (a couple or a single person) to use the surrogacy procedure only after their status in society has been fully determined (e.g., persons accused of domestic violence or women’s violence or convicted of serious crimes or used psychotropic, or narcotic drugs should be prohibited);

- After the surrogate mother gives birth to the child, the decision to transfer the child to the legally and physically intended genetic or non-genetic parents should be determined by the

law once and for all, not on her own will, but based on a contractual obligation, thereby the surrogate mother shall be deemed to have fulfilled her legal obligations under the contract after pregnancy and birth.

Chapter VII

- Punishment should be provided to prevent the surrogate mother from blackmailing or speculating to get money from the other party in the future.

- Penalty or a financial obligation should be provided for the clients not to refuse the born child.

Chapter VIII

- Mandatory material conditions of surrogacy contract form or written agreement should be established by legislation in a clear and comprehensible manner. Those contracts should be notarized.

For this purpose:

1. Rights of the surrogate mother under the surrogacy contract:
 - to be provided with the living standards necessary to fulfill this contract, with medical services, including the state and compulsory insurance resources intended for maternity in general;
 - to receive services under a non-commercial surrogacy contract, paid for by agreement of the parties;
 - to receive services under the surrogacy contract without compensation (unpaid, altruistic) in cases where the parties agree and the legislation allows;
2. Obligations of the surrogate mother under the surrogacy contract:
 - to inform the contract parties, including the couple who signed the contract, as well as the embryo owner in the absence of a couple, about all stages of the child's development;
 - follow all necessary medical procedures;
 - if the agreed time is determined, at that time, if the time is not determined, immediately after birth, handing over the child to the other party;
 - maintaining the confidentiality of the child and other parties, as well as the anonymity of the parents;
 - fulfill other obligations determined according to moral values;
3. Rights and obligations of clients (a couple or a single person):
 - Reimbursement of all costs of the surrogate mother during the altruistic, non-commercial surrogacy process (including the costs of all her clinical procedures, as well as the costs incurred by the surrogate mother during the period of carrying the child and, in general, the moral damage and physiological disorder that may affect the woman's body during the carrying and birth of the child);
 - Ensuring that the clients (a couple or a single person) do not refuse the born child and bear responsibility for it (financial liability, etc.).

CONCLUSION

The problem in the legal regulation of surrogacy lies in the lack of consistent laws and regulations, leading to confusion, ethical dilemmas, and potential exploitation. Given the

evolving dynamics of surrogacy arrangements, it is crucial for legal regulations to adapt, providing clarity and safeguarding the rights and responsibilities of all parties involved. To comprehensively address these concerns, this study delves into the existing legal framework governing surrogacy institutions, outlines potential challenges, and offers insights into the ongoing development of legal regulations in this complex field. Balancing the interests and rights of all parties involved, including the intended parents, surrogates, and the child, is essential in developing comprehensive and ethical legal frameworks for surrogacy. Efforts should be made to provide clear guidelines, establish safeguards, and ensure that surrogacy arrangements are conducted in a manner that is fair, transparent, and respects the rights and dignity of all individuals involved.

In cases where there exists a legislative void within the realm of surrogacy, it becomes imperative to employ bioethical norms as a guiding principle when applying the law. This approach places a strong emphasis on considering the best interests of the child and the values associated with family dynamics. To address these concerns, the introduction of a new legal framework is recommended, which can be titled as the „Law of the Republic of Azerbaijan on Regulation of the Right to Use Assisted Reproductive Technologies.” This proposed legislative act can also be accepted as a draft of international agreement or convention (as a model act), taking into account the legal and judicial practice of states.

The new legislation should encompass comprehensive definitions and elucidations of Assisted Reproductive Technologies (ART) methods, donation procedures, the institution of surrogacy, genetic motherhood, and other related subjects. This would involve defining the legal parentage of children born through ART, specifying the parties entitled to exercise these rights, outlining the state’s authority to establish regulations in this domain, and establishing the legal status of ova (oocytes) and embryos. Additionally, it should delineate the rights and responsibilities of donors and establish a unified state register for donor information. In line with ethical considerations, the legislation may permit the selection of a child’s sex only under specific and justifiable circumstances.

By enacting such a comprehensive and ethically informed legislative framework, the legal landscape surrounding assisted reproductive technologies and surrogacy can be substantially enhanced, ensuring the protection of all parties involved and the promotion of family values and the well-being of children born through these methods.

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