



Review Article

Ethical Aspect of Infertility Treatment through Surrogacy based on Utilitarian Principle

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ABSTRACT

Background and Aim: One of the questions that may be raised about infertility treatment through surrogacy is the ethicality of this approach. There are many methods for the ethical clarification of the medical issues. If we accept the utilitarian philosophers' views stating that an ethical measure is beneficial to the community and individuals, we may come up with the question whether the actions of the infertile couples or surrogate mother are considered ethical since these actions are beneficial for both individuals and community. Regarding this, the present study aimed to evaluate the infertility treatment through surrogacy based on the ethical theories of utilitarianism.

Materials and Methods: This analytical-descriptive research gathered relevant data in a literature search. After a description of the fundamentals and definitions, ethical texts were subsequently analyzed and one of the viewpoints regarding of Infertility Treatment through Surrogacy Based on Utilitarian Principle was selected.

Ethical Considerations: Ethical principles were considered in searching and citing the literature.

Findings: According to the rule utilitarianism, the ethicality of an action is measured based on its collective benefit and its placement in an ethical principle framework. Therefore, we cannot treat surrogacy like an accepted ethical principle, such as sacrifice, and provide a general rule for the determination of the effect of different social, cultural, economic, and political factors on the people involved in this act. However, the use of this method in different situations and for various people could be very beneficial and be considered ethical.

Conclusion: Although the comprehensive investigation of the harmful use of surrogacy has not been accomplished, the various problems and factors affecting the evaluation of the overall profit and loss of this act grab the possibility of determining its morality as a valid rule in the rule-based ethics. However, such a provision is justified in the utilitarian and pragmatic ethical systems.

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Introduction

One of the strong desires of the human beings is to have children; however, some people are deprived of this blessing due to having physical disabilities or some disorders. According to the World Health Organization, 1-15% of the couples (i.e., more than 80 million)

have infertility problems and are in need of the assisted reproduction technique (ART) (1). The researchers and medical scientists have been longly engaged in finding a treatment for infertility. Accordingly, they have tested several solutions depending on the type of infertility and its progression. These solutions can be categorized in

three types, namely pharmacological therapy, surgical treatment, and ART. Since the first and second approaches have not been proven to be successful, the third one has gained much importance.

The ART refers to the techniques in which the sperms or eggs are manipulated to enhance the chance of pregnancy and childbearing (2). Although these treatments are of various types, they can be classified into two main categories, including in vitro insemination and intrauterine insemination (IUI). The utilization of each type of this therapeutic approach depends on the physical characteristics of the couples, gametes health, and progression of infertility; therefore, they are recommended to a special group of infertile couples.

The use of these methods has led to the classification of insemination as natural and artificial. The couples are naturally able to go through the reproduction process by having a sexual intercourse without any external assistance. On the other hand, the artificial insemination involves the inoculation of the healthy sperms and eggs out of the body. Nonetheless, in some cases, it is inevitable to use the sperms or eggs of an outsider.

Therefore, the ART (e.g., stimulating ovulation, IUI, in vitro fertilization [IVF], intracytoplasmic sperm injection, gamete intrafallopian transfer, and zygote intrafallopian transfer) helps the infertile couples having lost their ability for natural insemination. The birth of the first child produced by in vitro insemination in 1978 paved the way for the infertile couples to be hopeful to have their own children.

Surrogacy is another approach for the treatment of infertility among the couples, the application of which in different communities depends on the governing culture, religious beliefs, and laws. This method can be employed for the single men or women who want to have children without having a spouse, married women who do not want to experience pregnancy for various reasons, and homosexual families for whom it is not possible to have children.

Since the ethical review of the practicality and non-practicality of each of these cases requires examining a lot of variables, in this study, we attempted to investigate the efficiency of this method based on the Islamic and Iranian culture. According to the Islamic teachings, a family is formed out of the marriage institution between a

man and a woman with certain rules. Moreover, having children is possible only through this framework. Therefore, the other types of families that exist in the non-Muslim communities lack legality and legitimacy, and consequently are not recognized by Iran's civil laws. However, having children for the people who have no spouse or with the disaffiliation of the wife in the process of pregnancy and childbirth is not illegal.

Ethical Considerations

Since this study is a library study, there is no ethical problem in doing so; however, it has been tried to examine the issue of the use of Surrogate mother based on Utilitarian Principle without any partiality and Prejudice.

Materials and Methods

This study is an interdisciplinary research that includes both medical and ethical sciences. Identification and specification that pertain to methods to conceive a child by Surrogacy is an issue related to medicine. However, the application of which in different communities depends on the governing culture, religious beliefs, and ethics. Utilitarianism is a kind of consequentialism that is based on two components, including 'the principle of consequence', considering the teleological state of this theory and 'the principle of utility' taking into account the pleasure of the action. The authors study ethical books and Utilitarianism texts in the first and after library research and analytical analyses, this study has proven that the various problems and factors affecting the evaluation of the overall profit and loss of this act grab the possibility of determining its morality as a valid rule in the rule-based ethics.

Findings

a. Surrogacy

One of the treatments to infertility is surrogacy. The first case of gestational surrogacy was reported in the United States in 1985. Although this operation had been forbidden in Britain a year before this event according to a suggestion made by Warnock Committee, in 1985, it was approved to be used under specific conditions in the annual meeting of Britain Medical Association. However, in 1987, the physicians were again forbidden to use surrogacy. Finally, in 1990, IVF surrogacy was determined as an acceptable solution for the women who cannot have their own children due to medical disorders (3). Based on the scientific

documents, there are two kinds of surrogacy, namely genetic or partial surrogacy and complete or gestational surrogacy, which are described in the following sections.

Genetic or Partial Surrogacy

In this method, the gestational mother becomes pregnant by the sperm of the commissioning father using artificial insemination. Therefore, the pregnant mother is considered the genetic mother as well as the gestational mother; nonetheless, she loses her role as a social mother (4-5).

Complete or Gestational Surrogacy

Gestational surrogacy is performed through the implementation of insemination in the laboratory, using the sperm of the father and the egg of the mother, followed by transferring the embryo to the surrogate mother's uterus. Therefore, the pregnant mother has no genetic sharing with the embryo and just carries and delivers it. In this method, the host can be a family member, a relative, an intimate friend of the infertile mother, or a woman introduced by the charity associations (3,6).

The most important problem in using a surrogate mother in Iran is the legal problems for having the newborn by this method. There are legal gaps leading to wrong consultations and inappropriate justifications in the infertile couples and host surrogate before starting the surrogacy. Furthermore, the issue of informing the child about his/her birth through this method is one of the main problems that the infertile couples face (7-9).

b. Ethical utilitarianism

When the moral philosophers accepted the insufficiency of morals as the standard of right and wrong (i.e., correct and error), they suggested substitute standards, which can be classified into two groups, namely teleological and deontological ethics (10). The teleological theories (i.e., consequentialism) focus on the consequence of an action. Consequentialists believe that 'good and evil' and 'dos and don'ts' are achieved based on the results of the action (11).

Utilitarianism is a kind of consequentialism that is based on two components, including 'the principle of consequence', considering the teleological state of this theory, and 'the principle of utility' taking into account the pleasure of the action. Jeremy Bentham (1748-1832) and his disciple, John Stuart Mill, (1806-1873) are two great advocates of utilitarianism (12). The pioneers of teleology

consider pleasure and self-interest as the criteria for the evaluation of moral deeds and do not take into account their influence on the actions of others. However, utilitarians, such as Bentham and Mill, believe that the total results of an action determine its right or wrong state; therefore, the happiness and interest of others could be considered in addition to that of oneself.

Regarding this, one should take the interest and pleasure of others into account in addition to one's personal pleasure because human being has a social nature, and his social life is connected to the destiny of all the individuals living in a society. In the long run, keeping personal security, peace, and interest in a society is impossible without the establishment of peace and security in that society. To measure the amount of interest or harm of an action, all the results, including the immediate and delayed or direct and indirect consequences, of an action should be considered. Furthermore, there should be no difference between the human beings and other creatures, such as animals, plants, and immaterial ones (e.g., god, angels, and spirits) (13). Though all the utilitarianists agree that public interest is the criterion for measuring the ethical aspect of every intentional action, they have come up with different opinions in answering to the following two basic questions: How can we measure the common interest? Does common interest have intrinsic values or is it just a tool to achieve personal interest?

Therefore, utilitarianism in its general meaning can be divided to two main categories, namely act utilitarianism and rule utilitarianism. The act utilitarianism emphasizes on the action or approach (10-11). On the other hand, in the rule-utilitarianism, an action is considered morally valid only when it can guarantee maximum interest (pleasure) and minimum pain as a general rule (10, 14-15).

According to Jeremy Bentham as an agent of act utilitarianism philosophers, 'by principle, it is meant to measure any action based on its influence on the enhancement or reduction of one's happiness' (16). Therefore, he considered four principles as the basis for his utilitarianism ideas. Accordingly, he stated that only happiness is good and only pain is evil, and that happiness and pain can be measured. He believed that the goal of any individual is to achieve happiness and avoid pain. Furthermore, he argued that although human being seeks personal happiness and avoids personal pain,

it is necessary to take common interest as one's purpose (17-18).

On the other hand, by considering good/happiness and happiness/ pleasure (19-20) as one issue, Bentham believes that seeking common interest is to achieve personal interest. In this regard, the enhancement of the common interest results in the improvement of personal interest. In a similar vein, the presence of more common harm leads to more harm in the individuals. Considering others' interests benefits us as well; in other words, if we do not fulfill our commitments, we cannot expect others to fulfill their promises, and all these will harm ourselves. Furthermore, if we seek to harm others, we may hurt ourselves by being rejected from the society (21-23). John Stuart Mill and others, such as George Berkeley (1685-1735) and R. B. Brandt, are the advocates of rule utilitarianism. In his book titled 'Principle of utility', Mill defines the moral principle of utility in accordance with Bentham's idea stating that a principle that accepts beneficence or greatest happiness principle as the basis of morality means that the acts of human beings are right and qualified when increasing happiness and wrong when decreasing happiness. By 'happiness', it is meant the pleasure and absence of pain, and by 'unhappiness', it is meant the pain and absence of pleasure (24).

However, the problem of the Bentham's theory appears when it accepts the actions, which generally increase pleasure, but are not reasonable morally. For instance, a group of torturers as jailers hurt the prisoners; if the pleasure for jailers increases the prisoners' torture, the jailers' action is reasonable based on measuring pleasure. Accordingly, such measuring can be applied to confirm any immoral act (25). Therefore, three important improvements were offered for the Bentham's theory.

First, the originality of the social and common interests are more important than that of the personal interests (15,21,26). Second, the element of quality should be taken into account in the evaluation of pleasure, the higher pleasures are different from the lower ones (some pleasures, such as mental ones, are higher and more satisfactory than other types of pleasures, such as the physical ones), and higher pleasures are preferred to the lower ones (17,27). Third, attention should be paid to the rules of doing an action instead of the action itself to measure its advantages and disadvantages.

Instead of paying attention to personal treatments and measuring their advantages and disadvantages, Mill considers the dominant rules of people's actions. He believes that general rule is right as a moral principle, which is generally beneficial for the society. Though in some cases, the action has not been beneficial or even has been harmful, the general principle that is harmful for the public is considered as a wrong moral principle. This is due to the fact that the benefits gained from performing an action with a beneficial principle will be more than the losses that may follow it. Moreover, the losses resulting from performing an action based on a harmful principle is more than the benefits it may bring.

Therefore, the act of an individual is right when it is based on a principle leading to a collective benefit (11). Based on this view, we should always try to determine our duty in specific cases by exploiting the moral principles. Consequently, instead of seeking the act having more benefits, we should find the moral principle, which brings about the highest benefits for all the people (10,28).

c. Utilitarianism and Surrogacy

The use of a surrogate mother is one of the most controversial issues in medical ethics. The issue is whether a woman can be substituted for the original mother in pregnancy and hold the egg cells produced by the fertilization of the sperm and egg of other couples, and then give the newborn to the same couples after passing pregnancy and delivery. For example, suppose we have two families, namely A and B. In family A, the man cannot work due to physical disabilities, such as suffering from a chronic severe disease, and his wife has no skill, profession, or specific knowledge to earn their living. On the other hand, family B is an infertile couple, who cannot have a child due to the wife's uterine abnormality in holding the baby.

Now, the wife of family A wants to accept the role of surrogate motherhood of her own free will (i.e., not due to the husband's pressure or threat), and family B can have their own child using this method. Considering these conditions, is this act right? Furthermore, if the woman of family A decides to accept the infertile couple's embryo in her uterus regardless of materialistic motivations and only due to humanitarian reasons, is this act ethically right? Based on the act utilitarianism teachings, this act is considered as a good deed because it increases happiness and decreases the

pain of families A and B or that of the woman of family A and couples of family B.

However, the problem we encounter in the act utilitarianism is that a moral principle cannot be generalized from a specific case to other cases. Although the acts of the two mentioned families are morally justified, it cannot be the same for all cases. In some cases, the man makes his wife to accept the surrogate motherhood in order to quit his job and stop working or even sometimes, the homeless and vulnerable women are employed to accept this role for a wage. Consequently, performing such acts does not decrease the pains of the majority of the people in a society and cannot be taken as a right act.

Therefore, one cannot come to a fixed conclusion for the determination of the correctness or incorrectness of surrogacy despite the fact that it causes more happiness and less pain in some cases. As a result, the decision is made by a committee consisting of different experts, such as the moral philosophers, physicians, lawyers, sociologists, and psychologists, to examine the cultural, economic, social, and psychological conditions of the infertile couples as well as the surrogate mother and have a moral judgment regarding the correctness of this act (29).

However, we cannot ignore the validity of the moral judgments made by such committees regarding the decision made by families A and B. If the committee's decision regarding the impact of this act on the enhancement of happiness and reduction of pain is not consistent with what the two families' perceptions, this question arises that whether there are any criteria determining what the committee says is preferred to what the two families believe. Moreover, the levels of personal happiness and pain are dependent on the individuals' cognition, and nobody can determine them for others.

The absence of a consistent judgment about using a surrogate in the moral system of Bentham raises the question that how one can judge about it in the rule utilitarianism. However, before judging, we have to consider the following issues. First, in the examination of the advantages and disadvantages of using a surrogate, not only are the favorable or adverse impacts on the body important, but also the mental and spiritual consequences should be considered. Second, since Stuart Mill does not consider the society as a means of individuals' interest, he is concerned with the benefits and losses of the society without focusing on the

individual. Therefore, it is necessary to pay due attention to the social consequences of surrogacy when its correctness or incorrectness is to be proven.

Third, regardless of individual and case judgments about the surrogate and the other users, it is necessary to achieve a comprehensive rule about its correctness. Fourth, as Mill emphasizes, we have to resort to other factors in addition to the benefits and losses for making a moral judgment about surrogacy. In light of these four notes, if we are to evaluate the correctness of surrogacy within the framework of social utility, we have to make use of the experts in various fields and conduct a survey research on this issue and its social, psychological, religious, and legal consequences. Furthermore, we should take into account its influence on the involved individuals and social groups, such as the surrogate mother and her family, infertile couple and their families, as well as the child born by this method.

To the best of our knowledge, there is no such comprehensible research focusing on all the people involved in this act in Iran. This leaves us in doubt in answering the questions related to the use of surrogacy as a treatment of infertility. However, the specification of some considerations related to social groups engaged with this issue may be a viable solution.

Family of surrogate mother

There is no doubt that if the family of the surrogate mother suffers from economic problems, and there is no solution for their problem, they will accept the wife's (mother) suggestion of being a surrogate knowingly since it can be a way of earning living and fulfilling the needs of other family members. On the one hand, such a decision brings happiness for the family, and on the other hand, the elimination of the economic difficulties of the family leads to psychological peace. Accordingly, this decision can remove the possible moral and behavioral anomalies caused by financial problems. Regarding this, the society gains the maximum health causing maximum possible happiness.

However, if the amount of the money that the surrogate receives is not sufficient to provide their financial needs or if the surrogate does not wish to demand money for some reasons, her husband or other family members may disagree with her. Moreover, they may consider this act to be against religion, morality, or society. Regarding this, it

cannot be claimed that accepting other's embryo and holding it in the uterus causes the highest happiness for the family; as a result, the society does not obtain the maximum utility.

Surrogate Mother

It is clear that a woman who accepts the embryo of an infertile couple in her uterus, whether demanding money or not, would make them happy by giving them their own child and play an important role in making that family stable. However, the pregnancy with a child of others creates a deep emotional feeling between the embryo and surrogate mother. Therefore, despite the contract between the surrogate mother and infertile couple, she may refrain from returning the newborn to his/her genetic parents, or despite giving the newborn to the infertile couple, she may establish an emotional relationship with the newborn.

Therefore, in this case, this act not only unfulfills the social utility, but also changes to a factor increasing the social tension between the two families. Even if it is possible to separate the child from her surrogate mother by law enforcement using the contract between the surrogate and the infertile couple, it is impossible to compensate for the emotional and psychological harms with the happiness gained from earning money (6,30).

This condition mitigates the quality of happiness considered by Mill in his theory of utilitarianism, because the feelings of the surrogate mother towards the embryo cannot be ignored due to the fact that the absence of such emotions between her and the embryo puts the emotional and physical growth of the child at risk^{4,31}. On the other hand, the right of the infertile couple to have their own baby cannot be evaded as well. They embark on all the medical solutions, test various methods, and spend a lot of money to employ a woman as the surrogate mother (4).

Society

The most important and fundamental question in using a surrogate mother is whether such an act is related to the utility of the society or not. It seems that surrogacy spread in some societies considering the governing culture and religious attitudes may change to a social crisis in which the first person who will be hurt is the surrogate mother. If such actions become practical, general, and commercial, a competitive market will be opened for the women, then their wage will decrease, and they

have to succumb to easier conditions to have a higher chance to be chosen by the infertile couples. In these circumstances, the abuse and exploitation of the women will increase (7,32).

Furthermore, the development of surrogacy tradition paves the way for the bachelors to have their children out of the framework of a family, leading to the enhancement of family instability in the Islamic societies³³. Under this condition, how can we expect the genetic mother who has not passed the moments of pregnancy and developed no emotional feelings for her baby to have the same feeling for the child as that of the surrogate mother? It seems that the individual utility of having children for genetic parents is less than the social harms caused by instability in emotional and environmental relations in society.

Child

One of the most complex moral issues in infertility treatment by surrogacy is the right of the child born through this method. The principle of the information confidentiality regarding the use of surrogacy in some countries, like Iran, ignores the child's right to know how he/she was born and learn about the woman who has had the fundamental role in his/her birth. On the other hand, failure to observe the principle of information confidentiality and informing the children about their birth bring about mental and psychological harms and conflicts in their characteristics. The most important matter is that if the society is informed about the birth method of these children, in some cases, they may be deprived of the rights that the naturally born people have, or it may lead to social status instability in long terms. Such considerations raise doubt about the utility of using surrogacy for the society. It seems that the surrogate motherhood cannot be placed within the framework of all moral principles, or it cannot be called a kind of sacrifice or humanitarian act.

Conclusions

The confirmation of the validity of the morality of an act in the rule-based ethics requires the determination of the overall legal rule paying attention to all the consequences of that act and investigating it in light of its profits and losses. There is no doubt that accepting the role of the surrogate mother, whether motivated by humanitarian reasons or money, reduces the psychological distress of the infertile couples and satisfies some of the financial needs of the

surrogate mother's family. Therefore, this act can maximize profits for both families.

Nonetheless, it should be noted that the concept of benefit is not permanent and does not hold true for all cases. Consequently, we can consider it as a general rule and claim that it is beneficial for the society. The emotional ties between the surrogate mother and her child will remain forever. Moreover, there may be some perceived differences between the children born in this way and the naturally born children. Furthermore, the families whose spouse plays the role of a surrogate mother may lose their social status. Last but not the least, the possible nomination of different groups of women for this role, enhancement of women exploitation, and development of a financial market are also the issues of serious concern, suggesting that the spread of surrogacy cannot lead to a collective benefit.

Although the comprehensive investigation of the harmful use of surrogacy has not been accomplished, the various problems and factors affecting the evaluation of the overall profit and loss of this act grab the possibility of determining its morality as a valid rule in the rule-based ethics. However, such a provision is justified in the utilitarian and pragmatic ethical systems.

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Conflict of Interest Statement

The author declares that they have no conflicts of interest.

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