Limited Opening of Legal Rules for Surrogacy

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Abstract
The case of streaming star Zheng Shuang's surrogacy and abandonment has sparked a heated national debate over whether surrogacy should be banned altogether. Surrogacy, as a kind of artificial assisted reproductive technology, has become a difficult social phenomenon in recent years. Fully open surrogacy will not only breed a lot of criminal acts but also deviate from the basic principles of our marriage and family system and the basic system of monogamy. An outright ban on surrogacy would result in infertile families and those who have lost their only child could not realize their legal reproductive rights. The author believes that it is impossible to completely ban surrogacy, and surrogacy has its objective rationality. China should comply with the trend of The Times, face the current situation of surrogacy in China, and limit the opening of surrogacy. In addition, the whole process of surrogacy must be strictly controlled by the government to avoid a series of legal disputes and social ethical issues. For example, the government should improve the laws and regulations related to surrogacy; conduct a comprehensive review of the establishment and operation of surrogacy agencies; Through these means, limited surrogacy can play a positive role in a healthy and legal environment, and thus maintain social harmony and stability.

Keywords
Surrogate; Surrender; Reproductive Rights.

1. The Legal Responsibility of Abandoning the Surrogate Child

1.1. Civil Liability
Civil liability Abandonment of surrogate children involves many parties, but the case of Zheng Shuang involves foreign laws, so the situation is more complicated. Zheng Shuang and Zhang Heng registered their marriage in the United States at the end of 2018, and then they sought out surrogacy agencies in the United States, hoping to have their own children with artificial reproductive assistance. But their relationship began to falter in late 2019, when the fate of their two unborn children became a question mark. Zheng's idea was to abort the baby, but forced termination would have endangered the surrogate mother's life due to the size of the fetus, and aborting the eight-month-old fetus was a serious violation of humanitarian principles. The boys were born on December 19, 2019 in Colorado. The girl was born in Nevada on January 4, 2020. However, Zheng Shuang has always refused to admit the paternity relationship with his two children and is not willing to cooperate with many legal procedures. As a result, the two children have not been able to return to China. There is no doubt that Zheng Shuang's behavior constitutes abandonment. As for the civil liability of abandoning surrogate children, we should first clarify whether children born from surrogate children enjoy the same rights as children born naturally. According to the Interpretation I of the Civil Code of the People's Republic of China by the Supreme People's Court on the application of Marriage and Family, during the period of marriage, if both the husband and wife agree to artificial insemination, the children born shall be regarded as children born in marriage, and the rights and obligations between parents and children shall be governed by the relevant provisions of the Civil Code. Therefore, according to the principle of equal application of criminal law, children born from surrogacy
and children born from other human reproductive assistance technologies should be regarded as wedlock children and have the same legal status in law.

1.2. Criminal Law Liability

In our country, the crime of abandonment is a pure crime of omission. Abandonment itself is a kind of behavior that violates ethical code when the criminal has to fulfill a specific obligation. In addition, according to the principle of personal jurisdiction in criminal law, even if Chinese citizens abandon their minor children born out of marriage, stepchildren or children born through surrogate mothers abroad, or if the children remain abroad after they have returned to China and refuse to perform their due obligations, the circumstances are serious, they will still be punished by The Criminal law of China. Of course, abandonment does not necessarily constitute the crime of abandonment, in order to reflect the principle of forgiveness of the criminal law, not all abandonment behavior will be punished by the criminal law, only to reach the severity of the case, it constitutes a crime. In judicial practice, the bad circumstances of abandonment refers to: due to abandonment and the victim of serious injury, death; The victim has no fixed residence due to abandonment; The perpetrator repeatedly abandoned the victim so that the physical and mental health of the victim suffered great damage, etc. According to the case, although Zheng Shuang is not willing to raise the child, Zhang Heng, the father of the child, has been taking care of the child in the United States and has not let the child live in a fixed place or wander abroad, which is not a bad case. Therefore, Zheng Shuang does not commit the crime of abandonment.

2. Several Reasons for Limited Open Surrogacy

The public already has a prejudice against surrogacy, and Zheng shuang's case has turned the public against surrogacy, leading to criticism on the Internet. However, the author believes that surrogacy has some rationality and can only be effectively controlled rather than completely banned. In 2015, the Draft Amendment on Population and Family Planning (Draft) stipulated that "any form of surrogacy is prohibited", but this clause was deleted when it was officially adopted, which also shows that open surrogacy is reasonable and its legality needs further discussion. The following are the reasons for this [1].

2.1. Helping Others Fulfill Their Dreams of Parenthood

The mother carries the baby and the baby is born. This is how the human race is able to multiply on the earth. However, some women are unable to conceive offspring and become real mothers either by nature or by nurture. This is not only a pity for the couple, but also not conducive to the harmony of family and society. In China, infertility is a relatively common syndrome, according to statistics, China's infertility incidence of about 15. In recent years, due to environmental pollution, improper diet and other reasons, the incidence of infertility is on the rise. The growing demand for surrogacy comes as more and more families suffer from infertility. Many women of infertility can be through the adoption of the method as the mother of a nominal, but adopt a child, after all, there is no blood relationship with yourself in the realistic society adopted children in adulthood to reunite with their parents, and the father mother who in disregard of things also happen from time to time, the emergence of surrogacy solved this problem at this time. Surrogacy is a type of artificially assisted reproductive technology, in which a woman of childbearing age is unable to give birth naturally, sperm and egg are fertilized in vitro through reproductive technology, and then embryos are implanted into the uterus of a third woman for pregnancy and delivery. In this way, the children born through surrogacy and the client have a blood relationship, and the family relationship is more stable. Compared with the adopted children, the surrogate children can feel the warmth of the family, which is conducive to the healthy physical and mental development of the children and
in line with the best interests of the children. So surrogacy has been a blessing for some families, fulfilling their desire to become parents.

2.2. To Ease the Pain of His Wife's Pregnancy
Motherhood is a great act of self-sacrifice. 280 days may not seem like a long time, but for pregnant women, it is a long day and a long night. Pregnant women not only have to bear the psychological changes brought about by pregnancy, but also their physical state has undergone significant changes. Pregnant women also face great risks in the process of pregnancy. Many pregnant women are weak, or exposed to some harmful chemicals and radioactive substances during pregnancy, which affect the quality of embryos, and may also cause abortion, threatening the life of pregnant women. In addition, women's childbirth process has a high risk, there has been a folk saying that giving birth is like going through the death gate, the last stage of pregnancy directly affects the safety of the fetus and pregnant women. Therefore, Zheng Shuang is a typical example of the wives who choose surrogacy to save their time and energy and fear the pain of pregnancy. Before the surrogacy scandal broke, Zheng shuang bought a house worth 100 million yuan in Shanghai. It was her financial advantage that made her flout the law and choose to have a child in this way. Although surrogacy is banned in many countries, many couples still go to countries with open surrogacy environments to find surrogate women. It is undeniable that surrogacy has gradually become a social phenomenon that is difficult to contain.

2.3. Ensuring the Effective Realization of Reproductive Autonomy
As a basic human right, reproductive right has a long history [2]. The first recognition of reproductive rights came in the Tehran Declaration of 1968, which declared that all couples and individuals had the right to decide the number and timing of their children as they wished. This right is an epoch-making right in the history of human civilization. China also clearly stipulates in the Constitution that the reproductive right is a basic right of Chinese citizens, which is different from other political rights, such as the right to vote and the right of association, which are endowed by the Constitution and laws, and cannot be deprived at any time. The author believes that the complete prohibition of surrogacy is harmful to the realization of some couples' reproductive rights. In real life there are many reasons lead to people can not effectively exercise of reproductive rights, such as men often binge drinking, smoking, resulting in a decline in sperm vitality, women lack of congenital uterine or absolute contraindications to the pregnancy medicine cause infertility, husband and wife is too old, reduced fertility and reproductive rights cannot exercise important reason [3]. Since China's two-child policy was fully implemented, the post-70s and post-80s generation have joined the ranks of those who want to have children again, but many women are too old to have children. Surrogacy is a technology that satisfies older women's desire to have their own children and offers hope to families. Surrogacy allows some women to have children who are directly related to them through the use of a surrogate woman's uterus. From this perspective, surrogacy enables infertile women to exercise their reproductive rights. Therefore, the incomplete prohibition of surrogacy is conducive to guaranteeing the reproductive autonomy of infertile couples [4].

3. The Specific Path Analysis of Strict Regulation of Surrogacy

3.1. Legislation to Regulate Surrogacy
In China, the origin of surrogacy has a long history, but there has been a lack of effective legal control. In ancient times, another synonym for surrogacy was canon wife. As a kind of bad habit that seriously destroys women's body and mind. In ancient times, the ritual wife has become a social custom, and people have been used to it. From the preserved codes of the past dynasties,
there are few clear restrictions on the ritual wife. In modern society, due to the rampant surrogacy in the black market, China has made some provisions on surrogacy, but these are some more principled provisions, easy to cause the circumvention of law. Moreover, the legality of surrogacy is only involved in the original regulations of the health department, and there is a lack of effective provisions with high legal effect such as laws and administrative regulations. Therefore, in order to better regulate the phenomenon of surrogacy, the National People's Congress should speed up the legislation of surrogacy related issues, realize the effective control of surrogacy, and maintain social public order.

3.2. Strict Control Over Surrogacy Agencies

The emergence of surrogacy technology provides a remedy for natural reproduction, but it also brings a lot of complicated legal and ethical problems to the society. At the present stage, using public power to regulate surrogacy management agencies is an effective way to manage surrogacy [5]. Surrogacy is related to citizens’ health, civil parental rights, guardianship and other important legal interests. The establishment of surrogacy agencies must be subject to strict examination and approval, so as to prevent “black-heart” agencies from cheating money and violating citizens’ right to health and property rights by carrying out illegal and criminal acts. Compared with the huge profits of hundreds of thousands or millions on the black market, the punishment imposed by administrative authorities on medical institutions engaged in surrogacy is relatively low. The cost of breaking the law is so low that black-market surrogacy is rampant. Surrogacy technology also has great risks, every link should be strictly controlled, therefore, it is necessary to strictly supervise the establishment of surrogacy medical institutions. In order to minimize the risks of surrogacy surgery and ensure the safety of the people involved, medical institutions that can carry out the reproductive technology must have specific qualifications and set high and rigid standards for medical staff and related supporting measures. Medical institutions that meet the above requirements must comply with legal conditions and procedures before applying for approval from administrative authorities to carry out surrogacy operations. Both parties must also choose a surrogacy agency within the scope of approval, or it can be designated by the bureau. At the same time, the relevant administrative authorities shall carry out regular inspection of the medical institutions approved, correct within a time limit those that do not meet the requirements, and punish those that seriously violate the law.

3.3. Strictly Review Surrogacy Agreements

Surrogacy women are often forced to choose surrogacy because of poor economic conditions and inadequate food and clothing. Most of these surrogate mothers lack legal knowledge and do not know how to protect their own interests. In addition, being a surrogate mother is not an honorable thing, or even will be laughed at by others, so these women are ashamed to consult lawyers about legal issues when signing a surrogacy agreement. Thus, pregnant women in the surrogate agreement in a relatively inferior position, in real life, a surrogate motherhood was often the subject of surrogate agency press, can be seen in the exposure of a surrogate news surrogacy agency fees generally between 40000 and 1.5 million, surrogate motherhood after ten months of hard work can only get 100000-300000 yuan, These figures clearly show the reality of surrogate mothers being exploited. Therefore, the surrogacy agreement should be submitted to the relevant authorities for strict review to ensure that the legitimate rights and interests of the surrogate mother will not be damaged before the next operation.

3.4. Set up a Special Supervision Agency for Surrogacy

Since surrogacy involves multiple parties and is prone to interest disputes, China should control surrogacy from both the previous and post aspects [6]. There is an old Chinese saying; it is better to save for rain than to dig a well when you are thirsty. The supervision of surrogacy should also
be the same. Before the implementation of the surrogacy agreement, a special surrogacy supervision agency should review and approve the legality of the agreement. Only after the agreement is approved, can the parties proceed with the next step. For the legal surrogacy agreement, the regulatory agency should approve it; otherwise, if there are illegal clauses in the agreement, it should not approve it and explain the reasons for refusal to the parties. Post-supervision is the supervision and inspection of the performance of the surrogacy agreement by the regulatory agency, and the performance of the agreement will be terminated immediately once the violation of the law is found. The combination of prior review and post-supervision is conducive to minimizing disputes and maintaining social stability and harmony. Abandoning surrogate children is not only a violation of ethics, but also a serious violation of the law. But surrogacy is not absolutely impossible, but to strictly abide by the provisions of the law. How to guide the parties to normalize the implementation of surrogacy and maximize the protection of the legitimate rights and interests of the parties and newborns is the purpose of this paper.

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**References**


