Surrogacy comes from the Latin word “subrogare” meaning to substitute. In the state of New Jersey, United States, the issue of parenthood and surrogacy came to a head in the case of Baby M in 1987. Baby M was born to a commissioning couple via surrogacy. The surrogate mother had artificial insemination with the sperm of the commissioning father, and the contract dictated that the woman handover the baby at birth, to the commissioning couple. This was done in 1986, when Baby M arrived. Less than 24 h after handing over the baby, the surrogate mother demanded and collected back the baby from the commissioning parents. The couple consequently approached the court seeking legal custody. The supreme court of New Jersey, formalized the surrogate arrangement between the parties and awarded custody of the baby to the commissioning parents. The court was said to have acted “in the best interest of the baby”. The above in a way brings to the fore the issues relating to motherhood and parenthood in a surrogacy arrangement.

Surrogacy hardly forms a topic of public discourse in Nigeria, and studies have not documented any prevalence of surrogate motherhood in the country, though Bello et al. in Ibadan wrote that surrogacy forms part of the Artificial reproductive technique offered infertile couples in Nigeria (Bello et al.).[1] In that same study, almost 38% of women attending infertility clinic in Ibadan, Southwest Nigeria, would accept the surrogacy as a treatment modality.[1]

Elsewhere, surrogacy constitutes a thriving reproductive health tourism especially, in some countries like India, where it forms a multimillion dollar industry in some countries annually.[2]

Surrogate motherhood refers to a situation whereby a third party female elects or is commissioned to carry a pregnancy on behalf of another couple, delivers a baby and hands the child over to the commissioning parents at birth.[3] Two forms are discernible, depending on the existence or not, of the genetic link between the surrogate mother and the fetus.[4] When there is a genetic link, the surrogate mother is inseminated with the semen of the commissioning father or donor sperm, this is referred to as “traditional surrogate motherhood” and she is biologically the mother of the baby. When pregnancy is as a result In vitro fertilization in the woman, and she has no genetic contribution to the fetus, it is regarded as gestational surrogacy.[5]

The pronatalistic nature of the traditional African society means that procreation is invaluable, and infertility is viewed as a disability and a loss of something though invisible, but so tangible with attendant psychological and emotional challenges.[6,7] African womanhood is fulfilled through motherhood that also cemented her place in the family and society.[5] Surrogacy arrangement is deemed by many as advantageous given the dearth of children available for adoption and complexity of qualifying as adoptive parents; It may represent the only hope for some infertile couple to raise a family. A woman can undergo the surrogacy for altruistic reasons or pure commercial consideration. When it is altruistic, there is no financial gain involved.[2] Both forms are fraught with legal, social, ethical, cultural, and
psycho social issues. These issues surround all the principal characters in the business including the surrogate mother, the baby, the intending couples, the prior existing children in the separate unions, spouses, families, and societies at large.

**LEGAL ASPECT**

Surrogacy throws up legal issues pertaining to paternity, maternity and contract problems. These were exemplified in the case of Baby M above. Several countries have taken legal positions against, or for, surrogacy in its entirety or regarding certain aspects, procedures and practices.

Nigeria is yet to acknowledge legally, and thus, provide policy guidelines and legislation to formalize and regulate surrogacy in the country. It means also there are no laws prescribing or proscribing surrogacy in the country. To the best of our knowledge and belief, the topic has not come up for detailed discussion in any legislative chambers in Nigeria. This has created a void, which is being and can be filled by illegal commercial operators with news of baby factories, baby sale, baby swap rife in the country.

In England, surrogate arrangement is illegal and is banned by the surrogate amendment act of 1985. The surrogate mother maintains legal ownership of the child even in cases of gestational surrogacy, unless a parental order or adoption is made. Other counties, where it is illegal include Sweden, Finland, Japan, Saudi Arabia, and China. In Australia and Canada, whereas altruistic surrogacy is legal, commercial surrogacy is not permitted under the law. In Canada, reimbursement for attendant expenses is permitted but other payments are illegal. In South Africa, the surrogacy arrangement must be validated by the high court and the commissioning couple has the legal rights. In Ukraine, Russia and Georgia amongst others, surrogacy is legal. In the United States, legislation and legality of surrogacy varies from state to state.

There is a need in Nigeria, for legal provisions for or against surrogacy. Such laws must provide for the legality or otherwise of the different types and forms of surrogacy taking into consideration the social, traditional, cultural, ethical, and psychological climate in the country. It should be able to regulate the procedure and processes of commercial surrogacy to avoid exploitation of a vulnerable population by surrogacy agents, while serving the interest of all concerned.

**ETHICAL CONSIDERATION**

India is one of the most favored destinations for reproductive health tourism relating to commercial surrogacy yielding about $445USD annually. Economy is at the heart of this transaction, and the poor socio-economic conditions in the country tend to provide a fertile ground for this reproductive business. The commerce of surrogacy is aptly captured in the term “rent-a-uterus” occasionally used for it. This generates ethical questions regarding autonomy/vulnerability, coercion and undue influence. Ethical concerns also arise relating to the contract signed between the surrogate mother and commissioning parents possibly, through surrogate agent or agency in terms of degree of disclosure and confidentiality. For surrogate babies, to what extent would they be informed of their origin and parenthood?

**Autonomy**

Man, is an end in himself with self-worth and integrity, and not to be used as a means. One has rights to take their decisions in matters that affect themself. But to what extent does one have the right to commercialize any or part of one’s organs? In commercial surrogacy, expected financial gain is the driving force for the decision. If a woman does not foresee any monetary benefit, the surrogacy arrangement would not be in place. In many climes, commercial blood donors are discouraged and not permissible. How ethical then, is it to permit the commercialization of the uterus and pregnancy?

It is possible that the vulnerability status of the poor is gravely exploited in surrogacy arrangements. If not, why it the industry not thriving in industrialized countries? Majority of commissioning parents come from such countries. Is it ethical to exploit the vulnerability implicit in the economic differences between the commissioning parents and the surrogate mothers? One argument is that financial reward accruable to the surrogate mothers can shore up the family economy and status. But is this way ethical? Economic differences generate power difference in surrogacy contract arrangement and therefore skewed towards the intending parents. It is believed that the autonomy of most surrogate mothers is compromised by poverty and desire to make a living. The ethical question remains: Would they ordinarily have accepted commercialization of their uteri and pregnancy if they had the wherewithal? By getting a surrogate to carry their pregnancy, it might be interpreted that the intending couple is using a surrogate mother as a means to achieve their aim of pregnancy and childbirth. Though this might be countered with the argument of informed consent before a contract is sealed, but the validity of such consent may be questioned in view of the vulnerability of the surrogate mother. Additional protections for the vulnerable mothers need be considered in this reproductive health tourism.

Furthermore, how ethical is the rigidity and enforcement of a rigid surrogacy contract? What happens if the surrogate mother decides not to continue with the arrangement midway into the pregnancy? What would be the compensation
should she suffer severe maternal outcomes (mortality and acute morbidity) as a result of the pregnancy or labor? These are ethical questions seeking answers.

Coercion/undue influence
This is tied to the issue of autonomy. Coercion here does not necessarily imply the influence of another person on the surrogate. One may be coerced or forced into a surrogate agreement by his compromised economic condition. The desire to alleviate her suffering or the family’s may be a motive. It might also be possible that the male spouses may unduly influence or coerce the surrogate mother into the agreement, considering the huge financial benefit implicit on it. Who determines the financial package involved in a surrogacy arrangement? Some, if not all of the surrogacy arrangements are made by an agency driven by profit. Many interests are served by the arrangement, all dependent on the acquiescence of the surrogate mother. She might thus be influenced unduly by overblown financial packages. It is also possible that surrogacy agents may exploit the vulnerability of both surrogate mothers and intending parents. Safety standards may also be lowered for economic considerations. Ethical discourse justifying commercial surrogacy based on the premise of rational choice and mutual benefit ignores social and cognitive conditions in a structurally unjust society.

Disclosure/confidentiality
Involvement of a third party in the surrogacy arrangement means the privacy and security in a two party arrangement are compromised. Surrogacy arrangement also entails total disclosure of personal medical history and conditions by the potential surrogate mother to the physician during evaluation, who may subsequently disclose same to the intending parents. In so doing, confidentiality between physician and client may be breached, where the potential mother may not want some aspects revealed.

Children from surrogacy may want to have full disclosure of their parentage in later years. Would it be ethically correct not to fully disclose their origin to them, including who carried them “in utero”? Such disclosure especially when there is a genetic link may be medically invaluable. Complications may arise where the surrogate mother declined such disclosure ab initio at the contract level, or where all contact links between the parties were severed.

PSYCHOLOGICAL ISSUES
In a surrogacy arrangement, the private act of love, intimacy and secrecy of creating a child becomes “public act”, commercial transaction and a professional managed process. This surely may impose a huge psychological burden on both the surrogate mother and intending parents. The 9 month journey of pregnancy is fraught with many medical and psychological difficulties that require attention and adaptation by the mother. Pregnancy complications may arise including operative deliveries. To realize that one is undergoing such complications preparatory to a delivery of a child that would be handed over to another couple, may have a psychological impact on the surrogate mother. In a survey of 3412 participants in Japan, perception of pregnancy related complications influenced participants’ attitude toward gestational surrogacy and disapproval of the technique. Adequate counseling for potential surrogate mothers is advocated. There may also be psychological impacts consequent upon breastfeeding difficulties, and neonatal care. Other sources of potential psychological stress for the surrogate mother would include, guilt feelings that pregnancy is carried for money as well as social isolation and stigmatization. Relinquishing the child at the agreed time may also impose some psychological stress on the surrogate mother.

SOCIO-CULTURAL ISSUES
The Nigerian Nation and African continent in general have rich cultural traditions relating to family issues. These cultural systems did not foresee births via surrogacy, hence, creating some discomfort at trying to situate such births in the family and society. The African society has a vertical conception of family that dates back to ancestry and projects into the future. The family comprises ancestors, the present generation and the unborn, all blood related in an unbroken sequence. Commercial surrogacy threatens the sanctity of this lineage and changes the way children are valued, from being loved and valued by their parents and others to being used as the case may be, as an object of commercial profit-making. Children are not treated as commodities in African culture. How this would be culturally situated should form a topic for anthropological research. Of particular and practical relevance of this question in Africa is the issue of inheritance, especially, if the surrogate offspring arrives in a family where other children existed before or after them.

Pregnancy is celebrated in Nigeria, as much as in other African countries. Pregnant women move around with joy in the community displaying their fertility. Passively and actively, her delivery is awaited at the end of gestation by the community. For communities, where surrogacy is not entrenched or accepted, it might be construed as an abomination to deliver a child and hand over to “strangers” for money. The surrogate mother may be culturally and socially stigmatized. Some surrogate mothers may be forced into social isolation to prevent this.
mother. Jadva et al. evaluated the experiences of 34 surrogate mothers and found that 32% of the women reported some difficulties in the weeks following relinquishing of the child to the commissioning couple, 3% experienced moderate difficulties and none experienced major difficulties. A year later 94% had no difficulties and only 2% had moderate difficulties. It implies that surrogate mothers adapt well to relinquishing of the baby especially as times wears on.

On the other hand, surrogacy may bring joy to many. Blyth and van der Akker found that most surrogates enjoyed pregnancy and childbirth, felt fulfilled and experienced, and increased feelings of self-worth and self-confidence. Some developed strong friendship with the commissioning parents, particularly the commissioning mother. For some, however, relinquishment of the children threw up mixed emotions of happiness and sadness.

The intending parents may also face psychological difficulties. The intending mother may feel guilty and lose self-worth at another woman being able to do what she could not and this may affect bonding with the baby. She may also not be psychologically prepared to undergo all the discomforts of a new born. This may continue for some time. At 7 years, Golombok found a less positive mother-child interaction among surrogate families than natural conception mother-child dyad.

RELIGIOUS VIEWS

Nigerians have different religious inclinations. The acceptability or not, of the concept of surrogacy and issues consequent upon that, may vary from one belief to the other. Opinions among Christian groups differ. For the Catholic Church, a child is a gift, and not a right and procreation can only result from the conjugal love of married people. She describes as “gravely immoral” any technique that entails the dissociation of a married couple, by the intrusion of a person other than the couple including gamete donation and surrogacy. The church further states that surrogacy violates the dignity of the child. Protestant denominations have a more liberal attitude to infertility treatments and surrogacy, express reservations about probable challenges arising from it such as future psychological problems for the child and questions regarding ownership of the child.

Islam has varying views on surrogacy. Some Muslim scholars tend to view surrogacy through the provisions of the Shariah law, while some judge it as similar to prostitution as it entails an alien woman carrying a child who is not her legal husband’s own. It implies that such a child may be deemed illegitimate. For some, however, the responsibility of humans to procreate and preserve the human race makes surrogacy permissible for infertile couples.

CONCLUSION

Surrogacy appears to be practiced in Nigeria but is unregulated and has no legal backing. Surrogacy may be the hope of the infertile couple especially where natural conception is impossible like in hysterectomized women or women with severe uterine factors. Opinions are divided on the morality, legality and ethics of surrogacy. While proponents point to the validity of informed contract between surrogate mothers and intending couples as well as the hope given childless couples, opponents opine that the practice is dehumanizing and exploits a vulnerable population.

REFERENCES


