

Buddhist Ethics and Surrogate Problem in the Present Thai Society

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ABSTRACT

Surrogacy is still a controversial topic in Thai society. Surrogacy issue has come to the public attention through a recent case where a couple that, for some reason, cannot get their baby from the surrogate mother and then decides to find a solution by bringing their case to the court. Though viewed medically, from assisted reproductive technology, surrogacy is an achievement on its own since it can provide good hands to those couples in need; it is still enshrouded by ethical, legal and medical issue. Ethically, it is still debatable whether being a surrogate mother is morally permissible. Then, who are the rightful parents of child born from surrogacy according to the law is still unclear. This vagueness in terms of law, may create a loophole where the surrogate mother can be accused of selling a child. This article attempts to analyze and propose a Buddhist guideline to solve the problems of surrogacy in the present Thai society.

INTRODUCTION

Traditionally speaking, people strongly believe that the perfect family should be of the father, mother and child. As a result, once marriage is performed when a couple needs to have a child. Based on this belief, some couples whose infertility was medically discovered come to utilize the assisted reproductive technology in view of having a child. In this matter, as appeared in the Dhammapada that once upon a time a millionaire named *Mahāsuvanna* possessed a great deal of wealth, but unfortunately he was childless. He, while coming back to his home after taking bath, saw a big perfect tree being full of branches and leaves then he came to believe that such a tree could have a supreme potential deity. To protect and preserve it, he ordered his men to provide fences, arranging white sands and hanging the flag of victory and of clothes around the area as decoration. Upon finishing it, he made a certain wish that if he is given a son or a daughter then the luxurious offerings will be offered to the mentioned deity. Later on not so long his wife got pregnant and gave birth respectively (Dhammapada Aṭṭhakathā. 1.2)

By and large, the aforesaid idea has been influencing upon the institution of the family. Those who cannot meet with a child, and then they resort to the assisted reproductive technology whereby their hope would be actualized. However, some couples, despite using such a technique, cannot get the required pregnancy. To find the alternative solution, they come to look for the third person, another woman, who can get pregnant on behalf of them. In this case, a woman who agrees to bear such heavy task needs a certain contract or agreement on the legal ground that once giving birth is finished, then a child must be handed over to the owner of the given contract, this legally means that a woman who just gives birth must surrender her right to the child; she just did it for the sake of money only. This case has put the striking debate on surrogacy in three different dimensions as follows:

1. **Legal dimension;** it shows that this case involves the Civil and Commercial Code, 5th article concerning family wherein the meaning of father and mother is obviously prescribed that ‘the state of being parents and a child is a natural fact because a child cannot be born if there are no parents. In prescribing this state, the law considers various hypotheses and thereby assuming only the factual behaviours. As a matter of fact, a childhood belonging to any father and mother exists by such a fact, thing cannot be changed’ (Arcaravibulaya, C. and Chaidachsuriya, S., 1982).

As far as the legal problem on surrogacy is concerned, it also shows that parenthood and their son or daughter are not only concerned with marriage license but also concerned with the case when parents live together without such a license; both are called parents, a child whose birth is out of law is also a legal child of a woman who gives birth to that child. In this case, this woman is like a surrogate mother, a social father can accept that child through the required license as prescribed in the article 1588 that ‘a father can legally express his fatherhood over that child through license when the child and his/mother shows the approval, if not, such a legal procedure must be subject to judicial verdict’ (Arcaravibulaya and Chaidachsuriya, 1982).

The above-mentioned case shows that the legal problem on making the license to be a father and mother of a child wherein such a mother is not a biological mother is taking place owing to contract; this woman agrees to become a surrogate mother. Viewed from this angle, it appears that the right to become parenthood of a child is somehow precipitated the problem including the consideration of the given contract as to whether it is valid or invalid. This is a

chief concern by which society should pay careful attention to it. Besides, another concern is also raised over the business of surrogate mother that while signing the contract to be a surrogate mother, baby selling becomes unavoidable issue; this case is reasoned on the ground that if baby selling is morally accepted through such a contract of surrogacy, selling a baby in the market for being a slave is also morally permissible because both actions are similar to one another. Therefore, the child's right must be protected at all costs by law.

2. **Medical dimension;** we have been learning that the surrogacy is mainly concerned with the assisted reproductive technology where its main goal is to meet the demand of the couples who have been confronted with the problem of infertility. While this technology comes to play a crucial role in helping the needy couples meet their goal, some of medical ethics also need the revision to cope with the changing intractable problems. It says that 'the doctors in medical practices should not be motivated by the intention of having profit while performing the medical profession' (PhraBrahmagunabhorn (P.A.Payutto), 2008); the problems caused by medical doctors arise because of their improper utilization of knowledge where they are inclined by the complexity of dominant globalization or advertisement including proving certain information to gain various advantages and the complexity of technological advancement, this advancement helps human beings innovate a hefty number of technological equipment. By virtue of its potentiality, it can be claimed that we have the most updated technological tools in use as ever. However, they should be subject to ethics. With respect to this, if the propagation of the outcome made by sciences is done through various advertisement in spite of its deficiency, it is akin to a kind of moral lacking (Promta, S., 2007).

Apart from the mentioned fact, it becomes a well-known fact that the procedure in making a bay leads to the killing of an embryo and that is akin to the deprivation of a child's life. Though this is a moral debate, yet the proper attention should also be paid to by science as to whether or not the research on such an embryo should be conducted because such an act has paved the way for doing business on stem cell. In order to solve this problem, the bank of stem cell is established where the business on stem cell will not be manipulated (Michael J. Sandel, 2015). So far as medical ethics goes, careful consideration of the involved issues should be made.

3. **Moral dimension;** here the problem of surrogacy has been critically brought into a Buddhist ethical consideration and various dimensions were found that; sometime a child who is born by this process will be bewildered by the fact that who is the real mother, a woman who bears the pregnancy or a woman who provides upbringing for a child since the taking place of birth. In fact, legally speaking, especially Thai law, a child belongs to a woman who gives birth to it, but in considering from a child's feeling, it shows that what can be compensated by law in the case of tube-baby and thereby getting birth through surrogate mother (a legal mother); such a child no longer possesses genes or DNA from the surrogate mother in question, he holds genes given by an upbringing mother (the owner of egg). According to Buddhism, the latter is the real mother because of her egg, but, if a child is born out of the procedure of injection sperm into the womb of surrogate mother then it means that such a child has genes relating to the contracted mother and thereby becoming the real mother in accordance with the principle of law and Buddhism (Majjhimanikāya, I.265). In this case, if a child is expected to be a child of a woman who provides upbringing then such a child would

be confused and caused to show improper manner as to whom he should give a great deal of love like his/ her mother.

Furthermore, some problem with surrogacy is somehow caused by assisted reproductive technology; an embryo will be terminated. In this matter, Buddhists are of the certain view that an embryo is not only holding a simple life like general cells prevailing over the body or a tree's cell, but an embryo is a human being. This is strongly held by Buddhism that human being's life by nature arises with the moment of the first mind is taking its seat in the mother's womb. In other words, it actually arises since becoming 'Kalalarūpa' (Saṃyuttanikāya. 1.205) due to the arising of the first mind with three non-corporealities, *vedanā*, *Saññā* and *Saṅkhāra*. According to the scripture, *Kalalarūpa* is like the smallest light drop of water. Therefore, in the mentioned case, such embryo is far away from the development of *Kalalarūpa*. Terminating such embryo is amount to take human being's life and thereby falling into the first precept of Buddhism (PhraBrahmagunabhorn (P.A. Payutto), (2015). To find the solution, some standardization should be prescribed whereby the ethical violation will not be committed. So far as the problem of the surrogate mother is concerned, this research is purposely made to critically discuss the issue and to find an alternative solution provided by Buddhist ethics. In this research, the question is put that: what is the Buddhist ethical solution to the problem of surrogacy in the present Thai society?

METHODS

In answering the above-mentioned question, the qualitative research methodology is purposely used through the following steps:

1. Primary sources, *Tipiṭaka*, Commentaries, Sub-commentaries and Secondary sources, textbooks, books, academic works, contemporary scholars' works and related researches and articles concerning with the problem of surrogacy were employed.
2. In-depth interview of certain scholars, Buddhist monks, religious scholars, medical practitioners and lawyers were done to gain the relevant ideas of surrogacy.
3. In this research, the research tools were mainly concerned with taking data focusing on the contents of surrogacy in *Tipiṭaka* and Buddhist scriptures and related academic works. As regards the analysis and synthesis of those data, they emphasized the knowledge on the surrogacy in Thai society especially legal, medical and Theravada Buddhist dimensions.
 - 3.1 In the record documents, it was developed from documentaries concerning with the problem of surrogacy in Thai society focusing on legal, medical and Buddhist ethical dimensions.
 - 3.2 In an in-depth interview, it was developed to search for the existing case where the legal, medical and religious viewpoints were hinged on Theravada Buddhist perspective.
 - 3.3 Once research tools were developed and then examined by required experts provided by the Buddhist Research Institute, Mahachulalongkornrajavidyalaya University and then they were used to collect the data.
4. In the process of examination of data, it was carefully done at the time of data collection as to whether the data gained from In-depth interview and records were relevant to the existing facts or not.
5. In the analysis of collected data, once the collected data were correctly examined in the required each point then they were grouped in accordance with the set objectives of the

research. After that, the descriptive analysis was done in order to answer each objective of the research respectively.

RESULTS AND DISCUSSION

In answering the above-mentioned question, the qualitative research methodology is purposely used through the following steps:

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FINDINGS

In Thai society, firstly, the assisted reproductive technology obviously appeared when a couple whose infertility was medically diagnosed by a doctor came to utilize such technology to solve their problem. Later on, thing changed when some couple used it by injecting male's sperm into a surrogate mother's womb who have a contract in order to give birth to a baby for the benefit of the owner of egg and sperm. But after giving birth, a surrogate mother denied handing over a baby to the contractor in question and thereby raising the striking debate over the issue. Here, when it comes to Buddhist ethics and the problem of surrogacy in the present Thai society, three issues are found and needed to be carefully scrutinized as follows:

1. It gives rise to the legal problem; the question is asked as to who is the real father and mother and who have the right to take care of a baby?
2. The medical problem is caused; the question is asked that: is such a technique unnatural to birth of human being? And
3. It raises the ethical question that: is such technique morally permissible? If morality is purposely assigned to harmonize people living together in society, then if it means that such a technique is morally impermissible and thereby one should not be allowed to have the aforesaid technology because the utilization of it will violate other, a newborn baby's rights, for instance.

As far as the surrogate mother in Thai society is concerned,

1. The aforesaid problem should be solved through four sublime states of mind (Brahmavihāra), the principle of direction (Disā) and four bases of social solidarity (Saṅgahavattu). Based on these, it was found that Buddhist ethics has been practically recommended to bring happiness to those couples, lawyers, and medical practitioners who involve the case where they can cultivate the required virtue, sublime states of mind and under this virtue a child can be assured of parenthood because the word 'Brahma' is the name of a father and a mother, the word 'Purabācāraya' also signifies the name of parenthood, the word 'Āhuneyyapuggala' also refers to the name of parenthood in Buddhism because of their hefty advantages over their son and daughter and showing this world to them. In the principle of direction, parents by duty must support their son and daughter in the following five aspects: 1) to prevent them from doing evil, 2) to put them in the right direction, 3) to give them education, 4) to search for suitable partner for them, and 5) to hand over their heritage to them (Dīghanikāya. 3.188). According to Buddhist teachings, lawyers and medical practitioners are assigned to support society and thereby they should observe four bases of social solidarity and social responsibility is rendered. This means that all who involve the case should form an organization to monitor such a problem; it should not be ignored by allowing some private action. In this way, the institution family can be stabilized and this obviously appears in Buddhism that a father should do his duty rightly, a mother should do her duty rightly and a son and a daughter also should do their duty rightly. Through four bases of social solidarity, such a problem can be gradually solved wherein the social benefit is definitely expected to result in harmonious society as a whole.
2. To solve the problem in question, it has been recommended by Buddhism that one should renounce householder life (Khuddakanikāya Suttanipāta.58.). In this matter, it was found that when it comes to individual ethics where he/ she is facing with individual problem, two bases of wanting to a child are somehow concerned with: 1) it concerns with the problem of Kamma; one should consider that the birth of human being is suffering in some way and such suffering is dangerous in this world and by virtue of this understanding it is better to liberate oneself from the condition of birth wherein the condition of suffering is also got rid of. Viewed from renunciators' angle, they do not associate with lust in order to destroy the wheel of rebirth and move forward to the extinction of defilements (Vinaya. 3.20). Trying to solve the problem of infertility through the assisted reproductive technology is thereby amount to introduce new Kamma and at the same to create new suffering as well, 2) it is a social value; this has been suggested by Buddhist ethics that the social value needs certain relationship amongst people. While living together, man needs happiness. To achieve this, a man who lives together should also be made. Bear in mind that the real happiness created out of this

value no longer exists; it just becomes a value whereby one can get oneself developed leading to the end of suffering. Since family value has been emphasized by society through having the child then the concept of self is also established. To put an end to such suffering one intentionally renounces householder life and thereby realizing the concept of non-substantial self respectively. This kind of solution is done not taking a close look at the problem of the surrogate mother but the root cause and non-cause of it.

It should bear in mind that in the past in order to solve the problem of infertility, on the one hand, a couple might seek help from a mysterious entity, deity, for instance. In the present society, on the other hand, a couple resorted to utilizing the assisted reproductive technology. By virtue of these different ways, Buddhist ethics neither refutes nor disagrees about them because those are not against any reality. In fact, what Buddhist ethics is trying to do is that it suggested lays down certain guideline by pointing to the root cause of the problem and thereby providing a certain solution for whatever problem it might be. In the case of surrogacy, a couple should be fully aware that what is the real problem in desiring a baby by means of a surrogate mother, if the problem is clearly recognized and acknowledged and then the relevant solution can be made. In this matter, it appears that some couple needs a baby for the sake of existing fashion and through surrogacy, many babies were born and fewer responsibilities were properly taken. Consequently, those babies' rights, the right to be properly taken care of, for instance, were violated resulting in abusive manners.

CONCLUSION

In the present Thai society, assisted reproductive technology has been introduced to solve the problem of infertility wherein the surrogate mother has also been adopted in some way. Under this circumstance, some moral problems concerning surrogacy have been precipitated. In providing the alternative solution for the mentioned problem, the principle of four sublime states of mind, the principle of direction and the four bases of social solidarity are practically recommended by Buddhist ethics. By properly following these virtues, those couples will come to have a real understanding of their problem where the light to the way out will be thereby given respectively.

REFERENCES

- Arcaravibulaya, C. and Chaidachsuriya, S. (1982). *The Civil and Commercial Code Book V*. Bangkok: charalsanitwong publishing.
- PhraBrahmagunabhorn (P.A. Payutto). (2008). *Modern medicine in the Perspective of Buddhism*. (6th ed.). Bangkok: Sahadhammigga.
- _____. (2015). *Dictionary of Buddhism*. (31th ed.). Bangkok: Plitamma.
- _____. (2016). *Buddhadhamma*. (46th ed.). Bangkok: Sahadhammigga.
- Prabuddhakosathera. (2013). *Thai Tipitakas and Atthakathā*. Bangkok: MCU Press.
- Michael J. Sandel. (2015). *Public Philosophy: Essays on Morality in Politics*. Trans. by Achavanantakul, S. Bangkok: Openbook.
- _____. (2013). *What Money Can't Buy: The Moral Limits of Markets*. Trans. by Achavanantakul, S. Bangkok: Openbook.
- Promta, S. (2005). *Buddhist Philosophy*. (2nd ed.). Bangkok: Siam.
- _____. (2007). "The view of Buddhism in Human Cloning". *Journal of Buddhist Studies*. 14(2), 74

Vipassanā Research Institute. (1999). *Dhammapada Aṭṭhakathā, Dīghanikāya, Khuddakanikāya Suttanipāta, Majjhimānikāya, Saṃyuttanikāya, Vinaya*. Chatṭha Saṅgāyanā. Dhammagiri, Igatpuri, Nasik, Maharashtra, India. Program Computer Version 4.0.