

## Surrogacy: An ethical and legal quagmire

**This method of giving parents a much-wanted child has its pitfalls, but a proposed new law seeks to lay fears to rest**

Published: 24/06/2010 at 12:00 AM

Newspaper section: [MyLife](#)

It is almost life's ritual: growing up, getting married and having children. We can't think of a family without those small people in it. After all, they are what makes life beautiful and worthwhile.



However, for some women, making babies seems to be a more laborious task than finding the right man to make them with. Women all over the world share the same woe of reproductive challenges - ovulation problems, tubal blockage or other age-related factors.

Women aged between 35-39 are nearly 50% less likely to become pregnant during a cycle than women under 27, according to the Harvard Medical School's Family Health Guide.

The good news is there are plenty of options available for women who are reproductively challenged.

The most famous ones being IVF (In Vitro Fertilisation), IUI (Intrauterine insemination) and GIFT (Gamete Intrafallopian Transfer).

IVF is a process in which sperm and an egg are fertilised outside the womb in a fluid medium before being transferred back into a woman's uterus. A child born via this procedure is also known as a "test tube baby".

IUI is an approach which sperm is injected directly into a woman's womb for fertilisation.

Although GIFT is very similar to IVF, it is quite different in that the gametes (the sperm and the egg) are immediately placed into the woman's fallopian tube. Consequently, the fertilisation occurs inside, not outside.



The bad news, however, is that despite a series of hormone fluctuations and mood swings, these miraculous procedures don't work for everyone.

Science can only do so much, but if your ova, uterus, and fallopian tube are not in good health, chances are you might not end up a mum.

This is where the idea of surrogacy comes in.

Surrogacy is an arrangement where a woman (a surrogate mother) agrees to conceive and deliver a child for a contracted party. Such agreements are gaining popularity among reproductively challenged women who view it as their last resort.

Methods used in getting the surrogate mother pregnant are the same, which are IVF or IUI. The success rate varies accordingly to the surrogate's health - a factor which you can choose.

Due to the high cost, surrogacy is not an ideal option for everyone who wants to have a child. The whole procedure can cost about 2.5 million baht.

There is also the legal aspect to consider. By virtue of the Thai Civil and Commercial Code, an agreement of any kind can be agreed upon and is legally binding as long as it is not vividly prohibited by law or impossible, or is contrary to public order or good morals.

Surrogacy contracts, and there have been a few, remain controversial in Thai law. Noted scholars in many fields have their own opinions about the matter.

"Personally, I do not think a surrogacy contract is contrary to public order or good morals. It is a private matter done by people who want to have a biological child of their own," says Thawat Damsa-ard, a partner at international law firm Tilleke and Gibbins.

Another thing to consider are the legal complications after the child is born.

Due to Thailand's default legal assumption that a birth mother is the legitimate mother of the child, your chances of beating the surrogate mother in a custody battle are pretty slim.

"So far there has not been a court case concerning conflicts arising from a surrogacy contract. And the Council of State has rendered its legal opinion stating that a birth mother should be the lawful mother of that child. Should a conflict occur, however, it is completely contingent on the court to accept the Council's legal judgement or to come up with a new one," explains Thawat.

He also observes that if the court does, in fact, grant custody to the birth mother, there is certainly a more difficult question to answer; the genetic bond between the child and the biological parents.

Surrogacy contracts are not entirely impossible. On March 12, the cabinet approved the draft "Protecting Children Born Through Assisted Reproductive Technology Medical Act" which has yet to be endorsed by the House of Representatives. This must be done before it takes effect.



### What the future holds



According to the draft "Protecting Children Born Through Assisted Reproductive Technology Medical Act", surrogacy is a technology-assisted pregnancy in which a woman, older than 18 and who has experienced at least one childbirth of her own, makes an agreement with legally recognised spouses to become pregnant and deliver a child to the contracted parties.

The draft act also states the method to be used for the surrogacy. The preferred method is the use of the intending parents' own sperm and egg, while another method is the utilisation of donated sperm or eggs, with the exception of the surrogate's egg.

Unlike the status quo, a child born once this law takes effect will automatically become a child of the intending parents, not the surrogate mother's, and so will have no legal bond whatsoever with the sperm or egg donor, which means one or two child custody lawsuits spared.

"The draft bill was designed to support the practice of surrogacy, protect surrogate children, and solve possible legal problems. It is doubtful, however, if the draft bill can resolve real problems such as a maternal bond between the surrogate mother and her surrogate child," says Thawat.

### When mummy and daddy met Nathawadee

Surrogacy, to many academics, is a complex and delicate matter. Some view it as an unethical practice which should be regarded as illegal. Some even go further saying it is a form of selling humans.



Thawat Damsa-ard

To Nathawadee Sanwongtha, 25, a surrogate mother who has two children of her own and knows well about the magic of a childbirth, it's quite simple. She believes surrogacy is a gift of life.

"I view it as a practice of making merit," she says.

Her experience was like a normal pregnancy with a twist.

"I am just an oven," she says. "The child inside is not mine nor related to me in any way."

To a scientific mind, Nathawadee was a gestational carrier, a platform from which a couple's embryo grows. The egg and sperm were those of the married couple, but the wife could not conceive after having her uterus removed.

"Her body was still producing perfectly healthy eggs, she just did not have a uterus. She came to me as her last hope," the surrogate mother explains.

Nathawadee agreed to carry a child for the desperate couple. Although there was compensation involved, it was not the sole reason she agreed to go through nine months of pregnancy. It was something so much more.

"It was more of realising a hopeless dream than making money. You possess the ability to give life to two almost resigned parents," she said.

When asked if she thought it was unethical, Nathawadee said no.

"It's science. Personally, I don't think it is unethical. To me, it is about helping people."

Nathawadee gave birth to a healthy baby boy. It's been a few years, and she still gets visits from the couple and the child often.

"I did not have any maternal bond with the child. I never deemed myself as his mother in the beginning, but it's nice to see them every now and then," she says.

She found the experience empowering, and would not hesitate to go through it again.

Nathawadee is also a regular egg donor and her aim is to fulfill other women's dreams of becoming a parent. As for herself, she said she has had enough of raising children.

"I have two beautiful children of my own. I think I am done," she chuckles.

### About the author

Writer: Tanrak Chientong

#### Keep this article in your social bookmark:

[Delicious](#)   [Digg](#)   [Reddit](#)   [Stumbleupon](#)  
[Technorati](#)   [Twitter](#)   [Republishing permission](#)  
[Print this](#)   [E-mail this](#)

Bangkok Post : [News](#) | [Business](#) | [Opinion](#) | [Travel](#) | [Leisure](#) | [Tech](#) | [Entertainment](#) | [Auto](#) | [Life](#) | [Teen](#) | [Guru Bangkok](#)  
 Services : [Article search](#) | [Job search](#) | [Forum](#) | [Classified](#) | [SMS news](#) | [Read e-paper](#) | [Digital print page](#) | [Read Bangkok Post](#)  
 Post Today : [Home](#) | [Local news](#) | [Finance](#) | [Investment](#) | [Leisure](#) | [Business](#) | [International](#) | [Sports](#)  
 Post Publishing PCL : [Corporate info download](#) | [Subscribe newspaper](#) | [Online advertising](#) | [Web suggestion](#) | [Corporate contact](#)  
 © Copyright 1996-2008 The Post Publishing Public Company Limited | [Privacy policy](#) | [Help](#) | [Sitemap](#)