

# Surrogacy as a Big Business Industry

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**Abstract**—“Human should be used as an end not as a mean” (Kant).  
*What if, human is used as a mean for the existence of a new end i.e. a new life?*

*Surrogacy is defined as an arrangement or agreement regarding carrying of pregnancy of intended parents. If we take India as a frame of reference, still we need to altercate about the cosmopolitan entanglement. As in India, both altruistic and commercial surrogacies are legal and the recent maturing of Assisted Reproductive Technology Bill, 2014 created intense deliberation not only in public but in religious domain also.*

*In today's scenario children born out of Gestational Surrogacy i.e. a child genetically unrelated to surrogate is favored. Some assume "choice" as axiom behind surrogacy and others call it "exploitation". In this choice vs. exploitation debate, reality of women's experience, the issue of fair compensation, working condition and potential health risks should not be ignored. Therefore, the objective of this paper is to highlight the moral aspects regarding: (i) Surrogates (who hold the Gestational motherhood), (ii) Intended Parents (facing issue of parenthood), (iii) Child's Rights.*

*This paper we will try to answer the following perennial questions related to ethical, moral and social dilemmas to the subject.*

- *Is it right to conceal the identity of Gestational mother from the child?*
- *Who is at the losing end in mis-happening- the Intended parents, the Surrogate or the child?*
- *Who would be the deciding factor when it comes to abortion- the Surrogate or the Intending parents?*
- *What would be the moral obligation of the Intended parents if the child were suffering from deformity?*
- *Who will decide the terms and conditions under commercial surrogacy either buyer or seller?*
- *Does it reflect the economic inequality between rich and poor?*
- *Is the issue of gender inequality hidden in between the lines or is it trafficking of fetus?*
- *Is it ethical for the society to make women, contract about the use of body or is women's human right to make such contract?*
- *Does it look like contract of employment/labor or contract of slavery?*

**Keywords:** *Gestational Surrogacy, Commercial Surrogacy, Motherhood, Parenthood, Abortion, Child's right, Discrimination, Economic inequality, Gender inequality, Trafficking of fetus, Women's human right.*

## 1. INTRODUCTION

Warnock committee defined surrogacy “as the practice whereby one woman carries a child for another woman with the intention that after birth child will be handed over to other woman”. This implies that the carrying woman acts at the request of another woman who is unable to have a child by herself.<sup>1</sup>

## 2. TYPES OF SURROGACY

There are two types of surrogacy going on:

- 2.1 Commercial surrogacy-** In this type there is transfer of embryo created in IVF which is genetically unrelated to surrogate. Moreover, in this there is transfer of money from intended parents to surrogate. So, it becomes purely a business.
- 2.2 Altruistic surrogacy:** In this type the business factor lacks. A person out of benevolence provides her womb for other's child. These are very few in number.

This paper is basically dealing Commercial surrogacy.

## 3. COMMERCIAL SURROGACY

In this type of agreement three parties are involved- intended parents, surrogate mother and doctors/clinics/agents.

### 3.1 Intended parents

While thinking about nurturing a child two important relationships are accentuated i.e. mother and father. Generally, both are involved in caring of child but cases like "Baby Manji" created widespread pandemonium. This case involved baby Manji Yamada born on 25<sup>th</sup> July 2008, under surrogacy agreement executed between Japanese genetic parent and an Indian surrogate. The baby becomes focus of legal as well as diplomatic crises soon after her birth. Her genetic parents had divorced months before her birth. The genetic mother was refusing but the father and the grandmother did want the child.<sup>2</sup>

People holding gestational account of parenthood hold that gestation are necessary for parenthood. So men only acquire parenthood through marriage. Fatherhood is indirect relationship which is social rather biological. Rothman says,

*“If men want to have children they will either have to develop a technology that enables them to become pregnant or have children through relationship.”<sup>3</sup>*

### 3.2 Surrogate mother

We know motherhood as some actions and feelings associated with mother, who is one of the important figures of the basic unit of society called family. The concept of motherhood gradually evolved after introduction of Republican Motherhood and its consequence as a difference in their role in east and west. Mothering is a social practice of nurturing and caring for dependent children. It is typically associated with women since it is typically a woman who mothers their children. However not all women mother and mothering as nurturing caring work is not inevitably by exclusive domain of women. Mothering as a female role is a social construction that is highly influenced by Gender belief system. The concept, which is already biased by gender belief system, when assimilates with the commercialization, which further leads to accommodating corruption, gives us the complex structure of surrogacy. When the concept of surrogate motherhood enters the commercial market to fulfill the stigma of “something lacking” in infertile women is highly praised, but at the cost of another sexually and economically depressed section of society i.e. “surrogate mother” especially in India. This welcomes the third party i.e. Doctors, agents and clinics.

### 3.3 Doctors/clinics/agents

Ultimately the commercialization of surrogate motherhood presents to us a full-fledged billion-dollar business in India because, it costs 1/3 of American surrogacy, advanced medical technology and abundance of young women are ready to rent their womb.

In 2007, Dr. Nayana Patel, known for surrogacy revolution in Anand, Gujarat was featured in Oprah Winfrey show and is now world famous. The Guardian (newspaper) revealed that in her clinic a surrogate is paid about Rs.500000 for Indian couple, Rs.700000 for foreigner couple, 25% more for twins.<sup>4</sup> By calculating this we came to know that a surrogate earns Rs.1852 per day for an Indian couple and Rs.2592 per day for foreigner couple. According to Government statistics a normal daily wage male labor earns Rs.250 per day and a female labor earns Rs.160 per day. If we compare the wages of normal female labor and a surrogate, we can infer that it presents better deal to unemployed women. After all surrogacy would be a better way of paying bills than selling a kidney. If we read between the lines we can see that surrogacy does have the potential to exploit women. The voice of surrogates counter automatically presumptions of exploitation by showing that, a majority achieves a degree of appreciation through surrogacy that they do not get otherwise from family or society.

## 4. LEGAL SCENARIO ABOUT SURROGACY

Surrogacy is one in which woman carrying an embryo has been in a grey zone due to uncertain legal and compensatory protection. Recently the union cabinet has taken the step forward to regulate surrogacy. The Surrogacy (Regulation) Bill, 2016 proposes to regulate surrogacy in India by permitting it as an option for couples who cannot naturally have children, have a lack of other assisted reproductive technology options, are keen to have a biological child, and can find a surrogate mother among their relatives. Altruistic surrogacy, which means an arrangement without transfer of funds as inducement, is currently practiced in some centres in India, though the majority of surrogacy centres use women who are paid for their services. The child born through surrogacy will have all the rights of a biological child. Indian infertile couples between the ages of 23-50 years (woman) and 26-55 (man) who have been married for five years and who do not have a surviving child will be eligible for surrogacy. The surrogate mother should be a close relative of the intending couple and between the ages of 25-35 years and shall act as a surrogate mother only once in her lifetime. Implementation will be through the national and State surrogacy boards. Any establishment found undertaking commercial surrogacy, abandoning the child, exploiting the surrogate mother, selling or importing a human embryo shall be punishable with imprisonment for a term not be less than 10 years and with a fine up to Rs.10 lakh. Registered surrogacy clinics will have to maintain all records for a minimum period of 25 years.

The law, in line with the practice in several other countries, says commercial surrogacy will be prohibited. However, in order that “altruistic surrogacy” is available for the benefit of infertile couple who are presumably desperate for a child that is genetically their’s.<sup>5</sup>

## 5. THE UNDERLYING PRINCIPLE/ASSUMPTION BEHIND SURROGACY

Looking at the coin called “surrogacy” we can analyze both positive and negative of the underlying assumption. The negative assumption lies in the fact that we prefer surrogacy because somewhere our society is not ready to accept infertility of women and in order to hide this setback in our social system, we came up with a solution called surrogacy, in which a sexually and economically oppressed class of women is exploited. Even in Ancient Babylonian Legal Code of Hammurabi (18<sup>th</sup> Century BC). Surrogacy (traditional) was allowed for infertile women in order to prevent divorces<sup>6</sup>

The idea of child created in a test tube and carried by unrelated women is enough to drive fear into the hearts of people. The reason behind this is that so far the practical scenario is concerned, it is clear like crystal that reproductive scientists are able to accurately tell if a created embryo might carry a specific diseases and gender as well. Soon we may have the technology to determine hair and eye's color or even

skills and hobbies of our potential child. Even we may see in our lifetimes that scientists are able to clone a human being.

In general, the ethics behind the commercial surrogacy is that it helps those women who are naturally not in a position to become mothers. The positive assumption lies in the fact that surrogacy fulfills the deep-seated wish for a family or mother for their child with same genetic makeup. In this case there comes a question -Why not adoption? Which is again a debatable issue.

But the problem at the core is that we are having such a “genetic self-centered” attitude by means of which we can call embryo in other's womb as our and an already existing one as other's. We can say that we aim at creating international families whereby an Indian can have American fetus and this imported fetus is readily accepted rather than an American orphan. Morally asking, should there be any difference between child born out of surrogacy (genetically belonging) and an adopted child as far as the role of mother is concerned.<sup>7</sup>

## 6. SURROGACY: CHOICE VS. EXPLOITATION

In today's scenario where some people assume “choice” as axiom behind surrogacy forget that our choices are never free. We can never make our choices out of free will, they are always influenced by our surroundings and it indicates that many times it may be possible that our choices are imposed on us. Since, surrogacy as a business involves a profit making party and an exploited one. It may be the case that surrogates are earning more than usual labor but still they are at the losing end, may be at the ethical grounds. The use of surrogacy, especially the wide use, might lead to the cheapening of one's idea of what it is to be a person, to a decline in self-respect. It might cause future generation to think of human embryo or fetus as interchangeable parts, reproduction as mechanical process, and embryo as organ for rent. When VICE correspondent, Gianna Toboni (VICE is a TV series) interviewed some surrogates from slums, she encountered the fact that many times it happens that the amount of money they were offered was not given and is misplaced by the thugs or agents involved. A surrogate called Sheetal told that she was promised Rs.300000 but the amount handed over was just Rs.90000. This incident shows the level of corruption involved. In another encounter in Delhi she realized the fact that an agent can offer a newly born baby on dinner table.<sup>8</sup>

As a practice surrogacy involves the bodies of poor women, which in India's socially conservative culture, is cause enough for derision. Surrogates are treated as disposable objects and the surrogacy industry highlights the unnatural aspects of pregnancy and reproduction. Indians associate it with paid sex-work and thus comparison to prostitution, further stigmatizes the surrogate woman.<sup>9</sup>

In order to maximize the profit and ensure a final product, doctors are encouraged to implant multiple embryos in

surrogates, which can lead surrogate having to abort one of the fetuses or giving birth to multiple babies. If extra baby is born it isn't necessary, that he/she go with their genetic parents.

In 2014, an Australian couple that had twins born via surrogate in Thailand took one and refused other born with Down's syndrome. And the situation becomes more complex when factors like sex determination; neonate diseases, multiple organ failure etc. get clubbed. We can see the discrimination, one at the economic level, since most of the time surrogate is poor and intended parents are rich. It is never the other way round. So, we can infer that surrogacy does have the potential to become luxury for the Riches. It does suggest morally defective motive if it is done for economic convenience and comfort of couple rather than a desperate measure around infertility.

## 7. MEASURES

- Surrogacy with international parents requires special attention to addressing every country's needs and partnering with local organizations to provide a better solution for prospective parents before and after birth of the child otherwise it would be better to ban surrogacy altogether.
- Before any Act is passed by the Parliament some questions need to be answered like: Is it right to barter the rights of children and women? In case of any fall out of agreement, will it be a state's responsibility or personal responsibility?
- Any Act passed by the parliament should provide right to termination of pregnancy in case of mental as well as physical trauma.
- Agreements should be made in such a way that, surrogate should not be included in the agreement by means of coercion (coercion is very much possible in altruistic surrogacy).
- There should be tight control on the clinics, the intermediate agents, so that they cannot exploit the surrogate and intended parents on economical grounds.
- The most important measure would be providing sex education to the school students, so that they become familiar with the problems associated with sex, infertility and surrogacy. At the same time, they should be introduced with ethics as subject in their syllabi, so that they can critically analyze the moral/immoral implications of the social dilemmas in life interface.

## 8. CONCLUSION

At the end, we can conclude that Right to reproduce is a fundamental and an innate right. Further surrogacy is the only

way to conquer both biological and social infertility. It provides medically infertile couples as well as socially infertile individuals who are unwilling to get married with a chance to have a child. If you block every way for minority members to obtain treatment they desire, then it would be perilous because it could increase feelings of frustration, suppression and indignation.

From social point of view also women are being discriminated in the name of infertility (the stigmatization of infertility as curse in Indian society) and in order to cover up this stigma we come up with surrogacy as a possible solution. Looking at India's failure to administer the ban on organ donations and sex determination tests, it is easy to guess how effective the ban on commercial surrogacy will be. The question is whether it is as an evil as female feticide? If yes, then why not ban it altogether? How does it suddenly become acceptable the surrogate is a relative and uncompensated, besides being coerced, as women often are in intra family decision-making. We live in a country where cases of domestic violence remain unreported so isn't the case that there is a possibility of surrogacy becoming a cause of domestic violence and exploitation.

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