

SURROGACY – A CONTEMPORARY SOCIAL ISSUE IN INDIA

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Abstract: Marriage, as social institution is socially accepted as a direct means to reproduce child. But when it comes to the couple who are infertile, this desires remain unfulfilled (Adhakari, 2012). In Indian society, infertility is considered as a problem and a matter of shame and in this situation Surrogate motherhood is the last option left with, which can provide some hope to the couple in a means that the child is been related to at least one of them (Stuhmcke, 1995).

Surrogated motherhood has increasingly become an issue of national and international public debate. Growth of infertility, declining number of children available for adoption and development in scientific technologies have resulted in increasing demand and interest of agreements between infertile couples. The fertility market is estimated at Rs. 25,000 crore today, with reproductive tourism and in the past two years it has been noticed that there is a 150% rise in surrogacy cases in India (Sarojini and Sharma, 2008). The commercialization of surrogacy has however created several social conflicts rather than resolving a few. Anand district of India, which is a hub of surrogate mothers is emerging as a favourite destination for childless couples across the world and has become the first preferred choice for infertile couples because of easy availability of surrogate mothers, weaker laws, less charges and lack of ART clinics. This commercial surrogacy raises a multidimensional concern related with moral, ethical and legal aspects. It is a matter of social issue as well, when surrogates are mostly from socio-economically weaker sections. There is no law governing surrogacy in India and only a 126 page document regulating the technologies use. The technological solution for infertility has become a blessing for many families but it has also become a social issue when it comes at the part of surrogated mothers. Surrogated mothers are adversely affecting by this process in many ways, either it is emotional issues, health issues, psychological, familial or socio-cultural issues. Thus, from the perspective of surrogated mothers in India, commercial surrogacy is operated in unethical conditions, even though it is been considered as the decision of their family and of themselves. Surrogacy may offer financial betterment which is temporary in nature, but it does not offer an opportunity for the empowerment of women. Surrogacy is becoming a contemporary social issue in India which need an alarming and conscious action to be taken from side of the Government, Non- Government organisations and people working in the field for gender equality and women empowerment.

Introduction: Marriage is a social institution and is socially accepted through which married couple wish to reproduce child. But when it comes to the couple who are infertile, this desires remain unfulfilled. Earlier this desire of unfertile couple is been satisfied by child adoption and the law of adoption is universal in foreign countries especially in the western countries. But the adoption law in India is not universal but only applicable for Hindus only. The Hindu Adoption and Maintenance Act 1956 provide some relief in adopting a child (Adhakari, 2012).

In Indian society, infertility is considered as a problem and a matter of shame and in these kind of situation Surrogate motherhood is the last option left with, which can provide some kind of hope to the couple because the child is related to at least one of them (Stuhmcke, 1995). The concept of Surrogated mother can be described as an arrangement where a woman agrees to become pregnant and can bear a child for another couple to whom the guardianship of the child will be transferred directly after birth.

It is evident through various publications that surrogated motherhood has increasingly become an issue of national and international public debate. Growth of infertility in modern society, declining

number of children available for adoption, development in scientific technologies such as in vitro fertilization etc. have resulted in increasing demand and interest of agreements between infertile couples.

Surrogate mothers are not a new concept or solution to the old problem of infertility to reproduce children, but in ancient Hindu society there exist a practice known as Niyog Pratha, in which a women who is childless because of her husband's impotency, was allowed to conceive through her brother-in-law. The child belongs to the couple and the brother-in-law won't have any say over the child. Basically it was a form of surrogated fatherhood [ibid]. If we compare the old traditional practice to the present practice of surrogacy, the old practice was much less complicated, both legally and emotionally, than surrogate motherhood. In Islam, scholars have pronounced a Fatwa that surrogacy is illegal and immoral for a woman who carry the child of another man expect her husband. The bible promotes the idea of surrogate motherhood, but earlier it only promoted surrogated fatherhood. Earlier it was meant to help barren women to have children but

later it becomes the usual means of achieving pregnancy (Genesis (n.a); Deuteronomy).

Surrogacy in Indian Context: If we look into Indian context of surrogacy, one cannot deny since The Transplantation of Human Organ Act, 1994 enacted, it banned the sale of human organs, organ loaning, but in fact, it is a difficult and risky course of action which is indirectly being promoted through paid surrogacy. This also initiated so called “Reproductive Tourism and Medical Tourism”, even when infertility is a very small segment of familial priorities.

Surrogacy has gathered much attention of late due to the increase in the number of couples opting for surrogacy as well as of women acting as surrogates. Sarojini and Sharma (2008) in their study describes that the fertility market is estimated at Rs. 25,000 crore today, with reproductive tourism and in the past two years it has been noticed that there is a 150% rise in surrogacy cases in India. Anand, a town in Gujarat state of India is a hub of surrogate mothers. India and especially Anand has become the first preferred choice for infertile couples from all parts of the world because of lower cost, less restrictive laws, lack of ART clinics and easy availability of surrogate mothers. But, if we look into the deeper context, in India, surrogacy arrangements are becoming a matter of social issue especially since surrogates are mostly from socio-economically weaker sections.

When India is emerging as a favourite destination for childless couples across the world, commercial surrogacy raises a multidimensional concern related with moral, ethical as well as legal issues. Recently as reported in Times of India (2010) Mahapatra, (2016) discussed that, Supreme Court has also entered in to the debate. Supreme Court heard a petition filed by German couple (Jan Balaz and Susan Anna) with regard to grant of Indian Citizenship for their surrogated twin which had raised pertinent quires. The twins were born in January 2008, through a surrogated mother, were become stateless citizen, having neither German nor Indian citizenship. The German government refused to give the citizenship to the twins on the ground that the state law did not recognize surrogacy as a means of parenthood. Other the other hand, the Indian government was refusing to grant the kids Indian Citizenship on the basis that they are surrogated children, but with the interference of Supreme Court also played a crucial part in arranging inter-country adoption process (Palattiyil, Blyth, Sidhva, & Balakrishnan, 2010; Times of India, 2015)

During this entire process, the Supreme Court also echoed concern about the absence of law regulating surrogacy, so that there should not be any such repetition of these kinds of cases. Although, with the time being, the issue of surrogacy remain complex and becoming more difficult to handle in present

scenario. In has also been witnessed that the surrogacy is seems to be thriving, particularly in Anand (Gujarat) that has recently come to be known as India’s surrogacy centre. The country is becoming a hub of fertility tourism and unofficially entitled as “surrogacy capital of the world” and cannot afford to put the interest of children as well as surrogate mothers (Malhotra, 2008 ; Anderson, 2016). It had been witnessed that rights of not only children but also of surrogate mothers, are often exploited are in need of a whole array of concern, including health risks as majority of them belongs to the underprivileged sections of society. There is no law governing surrogacy in India and there is only a 126 page document regulating the technologies used. The Indian Council of Medical Research (ICMR) issues national guideline for Accreditation, supervision and regulation of ART clinics in India in 2005 but the guideline is legally non – binding. There are many leading factors of surrogacy tourism in India, such as patriarchy, poverty, lack of livelihoods, needs for biological child to stigmatisation of infertility etc.

Surrogacy as A Social Issue in India: Surrogacy has become divisive since it has involved money and has now become a big commercial activity. It has started including lawyers, contractors highly paid go-betweens and many unidentified payers. Due to these reasons nowadays Surrogacy is often called ‘baby selling’. It is been observed as a way of exploiting women for the benefit of men who ensure that the baby has their genes (Karkal, 1997). The commercialization of surrogacy however creates several social conflicts rather than resolving a few.

Trials of the Surrogate Mother: The patriarchal society has constructed man’s protection through his position in family, so that it can be assured that his name will be continued and property will pass to his successors. In Surrogacy, one man purchases the rights of another. Some men considered it as an “encroachment” on their rights. Women who were involved in surrogacy responded in a study done by Karkal, 1997, that earlier their husbands agreed to their undertaking responsibility, but later the relationship between them become complex [ibid.].

In an another study done by various researcher like Karkal, 1997, Palattiyil et al., 2010 and Khadav, 2015, it has been reported that the husband of the surrogate mother, her inlaws and relatives usually started caling them whore and prostitute who rent her womb. On the other part, children also become victims as they generally teased and tortured by thier friends and they felt shame at what their mothers did.

The surrogate mother is also been under the forced contract that without seeking permission from the contracting couple she cannot go for aboration even if it is affacting her health or either her life is in danger. Also, the couple who are involved in surgacy

have to face criticism from the people who are not agree with what they are doing and this directly affect and create emotional strain on surrogate mother which comes from these kind of unusual pregnancy (Karkal, 2007).

An Unequal Bargain: The benefits of surrogacy are created by a patriarchal society. It is also believed that there is an equal exchange of money for the service provided, but the fact is the woman gives more than her egg in order to give birth to a child. Within this broader structure the contract is been biased on the financially strong couple rather than seeking that the couple having infertility factor which is an emotional act. Although in this entire process, freedom of surrogate mother is an illusion. The negotiation based on the rights hinder the core element of social and human rights, which make surrogacy contracts possible (Karkal, 1997).

Effects of Surrogacy on Mothers: A surrogate mother has to experience conflicting pressure of social mores of pregnancy. She has to live in a secrecy, she also have to make up stories about her pregnancy and sometimes surrogate mother have to leave her home for labour and delivery which is not possible in the social setting where she lives. It sometimes also depends on the choice of the contract couple where they want the birth of the child would take place. In a country like India, the process of pregnancy and childbirth is very much social, rather than personal even, where both the families (parents and in-laws) are involved in traditional ritual practices. Displacing surrogate mother from her family and children during her pregnancy may adversely affect her own psychological health as well as of her children. This act of uprooting, may also result in depression and after giving birth to the child it may also leads to a sense of emptiness as a result of being unable to breastfeed the baby as bearing a child is an emotional issue (Palattiyil et al., 2010; Xlviii, Technology, Ministry, & Development, 2010).

The negative aspect of this process which is need to be considered is, it give rise to new class of intermediates whose business would be to offer monetary incentives to the poor women and her family and can easily exploit their vulnerability in the same manner in which nowadays Kidney organ Racketeers have done. It may result in making women and the entire nation as 'baby factories' [ibid.] It generates the family pressure on pure women to offer their wombs for a price. This makes their economic exploitation much easier for the agents for commissioning parents. The surrogates often face the dilemma that being a surrogates is socially unacceptable when the frankly accept monetary consideration. So rather than tell their neighbours that they gave away their child, they tell them that the baby died (Nair, 2015).

In case of surrogacy in India, it is hard to tell that whether these women are exercising their own personal rights or whether they are forced to become surrogate mothers due to their mother-in-law's or husband's desire to fulfil material and financial needs. The payment for bodily services dehumanizes the surrogate mother and exploits her reproductive organs and capability for personal gains of the wealthy. Currently, there is no law to protect the surrogate mother in case of birth complication, forced abortion etc. Since 2002, commercial surrogacy has almost become legal in India and India has become a rising leader in it (Qadeer and John, 2009; Khadav, 2015).

Feminist Perspective on Surrogacy: The preliminary argument given by a majority of feminist thinkers in the area of surrogacy is that it is used against disproportionately poorer women who are thus exploited by richer. This argument may be partially applicable to Indian conditions, which is the part of these theories stating that women of deprived sections may be exploited and this is already happening in our country which seems to have become new cheap destination for surrogacy services for couples from other developed nations (Kush, 2010).

Feminists gives an another argument against surrogacy, that child may be commoditised if there is no proper law that regulates these arguments, thus there is need for legislation so that surrogacy does not turn into a baby selling market, instead it should act as a boon for the unfortunate couples who cannot bear children or other single parents who want children in their lives (and cannot make it difficult for single parents to adopt due to stringent provisions in the Indian Law).

Further the feminists believe that there is a threat to the health of the surrogate who is being used as a child making machine and might be unaware of the risks to her health and also the pain of giving away the child at the time of making the agreement. The infertile woman may be devastated by her inability to become pregnant; on the other hand, the fertile woman may be devastated as a result of relinquishment of her child. There are also several physical changes in normal pregnancy that may be potentially harmful to the woman. Some of the more underlying occurrences include low blood pressure, high blood pressure, skin changes, swelling in the extremities, anaemia and problems with the digestive system.

Many of the surrogate mothers are poor and thus not very highly educated and thus might not know of the above mentioned risks to their physical health and it is also asserted by certain thinkers that women cannot judge the emotional loss they might feel while parting with the child at such an early stage.

However, not all feminists oppose surrogacy. For instance, liberal feminists and their supporters defend a woman's right to use her body as she chooses, even if that means being a surrogate (Markens, 2007).

Commercial surrogacy though has been viewed as a means of providing women with greater control over their bodies, it has also been argued to prove as how it does not empower women. Instead it provides an opportunity for women to sign away their rights. Until the twenty first century, women lacked many rights, including the right to legal custody of their children thus no need for commercial surrogacy arose because the father already owned the child, and commercial surrogacy now provides a convenient vehicle with which to step back in time (Vossmeier and Celeste, 1998). Thus as can be seen feminists in totality are divided in their views on surrogacy, but the criticism of surrogacy put forth by them to a large extent probable and should be considered while making laws regarding surrogacy.

Conclusion: In today's world, which is full of technological advancements, a woman knows the fact the woman who is carrying her child (know as surrogate mother) will never had any relations with her spouse. If it had been happened in the past, this

may had lead to battles between the people involved. The technological solution has saved an awful lot of heartache for many families, and this solution has become a blessing for many families now. But we cannot deny with the fact that it is also becoming a social issue when it comes at the part of surrogated mothers. Surrogated mothers are adversely affecting by this process in many ways, either it is emotional issues, health issues, psychological, familial or socio-cultural issues. Thus, from the perspective of surrogated mothers in India, commercial surrogacy is operated in unethical conditions, even though it is been considered as the decision of their family and of themselves. Surrogacy may offer financial betterment which is temporary in nature, but it does not offer an opportunity for the empowerment of women. Thus, women experiencing poverty are used and abused in commercial and corporate in its nature, even though incidentally there are benefits to some in the process and by looking into all the aspects, Surrogacy is becoming a contemporary social issue in India which need an alarming and conscious action to be taken from side of the Government, Non- Government organisations and people working in the field for gender equality and women empowerment.

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