



## Surrogacy as a Modern Form of Emerging Exploitation- A Time to Think

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### Abstract

The commodification of the human body has been drawn into sharp focus over the last several years as issues such as human trafficking for organs and sexual servitude have gained international attention. Unfortunately, another form of trafficking has evaded the same level of attention and outrage of the international community: surrogacy motherhood. Though many issues of human trafficking and exploitation have received international attention, some, like surrogacy, have been overlooked. Surrogacy commodifies both the surrogate mother and resulting baby, resulting in exploitation of the surrogate and a parental situation that is not in the best interest of the child.

Trafficking wrenches the term surrogate mother out of its present context of rearing women and highlights that women are the objects of international exchange. Trafficking situates surrogate arrangements in the system of gender inequality - as practice that enhances the subordination of women by making women into reproductive objects of global exchange. Much more damaging and unnatural factor is that it adversely affects the surrogate mother psychologically as she is required to surrender the child as soon as it is born which was part and parcel of her body. The entire process of reproduction involves not only bearing and begetting but also rearing of the child. Indian women are vulnerable. The poorer the country, the more is the fear of exploitation. The combination of poverty,

illiteracy and lack of power that women have over their own lives will land them in difficulties. However the proponents argue for it as they emphasize on individual freedom of choice and reproduction. This ideological clash warrants legislative action to manage the situation and prevent exploitation of women by either banning this practice or by strictly regulating it.

### I. Introduction

The commodification of the human body has been drawn into sharp focus over the last several years as issues such as human trafficking for organs and sexual servitude have gained international attention. Unfortunately, another form of trafficking has evaded the same level of attention and outrage of the international community: surrogacy motherhood. Surrogacy motherhood is a commodification of the human person: the child becomes the mere object of a convention, while the surrogate mother is used as an incubator. Such commodification in itself violates the dignity of both the surrogate mother and the child.

Mother is such a sacred body who is always adored, loved and worshipped by her children for her unique capacity to give and rear life on the earth. Motherhood has always acquired highest place amongst all the states of life. She gives birth to new life, nourishes it and sacrifices her own life for the welfare of the child. Such wonderful opportunity is not available to all women on the earth. Many are suffering from the problem of infertility or some diseases due to which they cannot beget children. They are longing to have a child of their own. Often adoption was the practice adopted by such people. Since it cannot provide them



genetic connection with the child development in new reproductive technology has given a new ray of hope to such couple especially in the form of surrogacy. Though it was not so easily accepted by many in the beginning it is now widely used to fulfill their desire to have their own genetic offspring. Various reasons can be attributed to the growth of this practice.

Though many issues of human trafficking and exploitation have received international attention, some, like surrogacy, have been overlooked. Surrogacy commodifies both the surrogate mother and resulting baby, resulting in exploitation of the surrogate and a parental situation that is not in the best interest of the child. As news stories about illegal surrogacy rings continue to break, we are learning that they are, indeed, just the tip of the iceberg. Even surrogacy arrangements that seem to be voluntary and motivated by altruistic ideals are, when one is willing to look beneath the surface, a violation of the human dignity of mother and child. Surrogacy inherently transforms a woman's body into a bread oven, a commodity, to be used and cared for while it is useful, and to be forgotten once the "contract" is fulfilled.

This growth has increased the demand for women with healthy uterus to beget children for them. India being country with more number of poor people has become the popular destination for such aspirants as the medical expertise, surrogate women, and other facilities required are available at a very low cost. Foreigners fly to India for realizing their dream. This practice has grown to such an extent that it is labeled as womb outsourcing industry and being calculated in terms of billion dollars. More

than any other medical technology this reproductive technology has given significant powers to human beings over reproduction. The surrogacy arrangements allow the creation of non-traditional families. Surrogacy may affect the society, the country as a whole because of its impact on the family structure, which is the primary institution of a society. Disruption of family structure has manifold effects on the education, health and welfare of the children. Procreation has been taken to the marketplace. Motherhood is for sale. Baby factories and mother machines are available to get an offspring. It not only raises fundamental questions pertaining to procreation, its foundation and the procedure involved, but also creates dilemma as to its socio-economic fit. The body politics and its manipulation through technology has been the matter of serious discourse. It involves various ethical, moral, legal, social, economic, psychological and political issues that need to be determined and analyzed in the context of fast growing surrogacy industry in India. Now the practice of surrogacy has taken the form of a source of livelihood for poor women in India. The apprehension in this regard is that a woman who is easily susceptible to abuse may further be exploited. Though there are arguments to favor this practice on the ground of freedom of woman to choose as to the use of her body it is very difficult to imagine such an independent status of woman in India where she is regarded as second class person or considered always subordinate to male member of the family. In this connection it becomes very essential to debate on the concept of surrogacy, its practice and its implications on women.



## II. Meaning and Concept of Surrogacy

The word 'surrogate' has its origin in Latin word 'surrogatus', past participle of 'surrogare', meaning a substitute, that is, a person appointed to act in the place of another. Thus, a surrogate mother is a woman who bears a child on behalf of another woman, either from her own egg (traditional) or from the implantation in her womb of a fertilized egg (gestational) from other woman. This arrangement involves an agreement between commissioning parents and the surrogate mother through which surrogate agrees to bear, beget and relinquish the child of commissioning parents after carrying it to full term. In return she may agree to get compensation or she may do it for altruistic purpose. Surrogacy can be classified in different ways. It can be altruistic if no compensation is involved in the arrangement whereas it is commercial surrogacy if compensation is paid to the surrogate mother.

It is traditional or partial surrogacy if surrogate's egg is used and she is artificially inseminated with the sperm of the donor or biological father. It is gestational or full surrogacy if done through TV process, by implanting embryo in her womb and her eggs are not used. In IVF process fertilization takes place outside the womb whereas it is happens in the womb of Surrogate in GIFT procedure. This arrangement leads to the creation of multiple fathers and mothers' namely genetic mother (egg donor), gestational mother (surrogate), commissioning mother (social mother who is entering into contract with surrogate), genetic father (sperm donor) and commissioning father (social father who is entering into contract with surrogate).

India's gestational surrogacy market utterly fails to uphold the four principles of medical ethics. In fact, it further oppresses a class of women who desperately need empowerment. And though India's surrogacy market provides Indian surrogates with a significant source of income that they could not otherwise obtain in such a short amount of time, this benefit is starkly outweighed by the harms associated with commercial surrogacy the commodification and exploitation of India's poor uneducated women. However, India is not without options to reduce the harm its gestational surrogacy market causes.

## III. Historical Roots

Surrogacy is an ancient practice. Traces of its practice can be found during ancient period in India as well as in the west. In Mahabharata there are various instances of in vitro fertilization and womb transfer. Great sages of ancient India debated and successfully conducted experiments to reproduce offspring. Parthenogenesis<sup>1</sup> in human beings was known to our sages. A child can be produced without sexual intercourse between man and a woman. Gandhari, wife of King Dhritarashtra, conceived but the pregnancy went on for nearly two years; after which delivered a mass (mole). Bhagwan Vyasa found that there were 101 cells that were normal in the mass. These cells were grown in vitro (Ghruta Kumbha) till full term. Of these 100 developed into male children (Duryodhana, Duhshasana, and other Kouravas) and one as

<sup>1</sup> Parthenogenesis means reproduction from an ovum without fertilization, especially as a normal process in some invertebrates and lower plants.



a female child called Duhshela<sup>2</sup>. Dr. P. V. Vartak convincingly argues that all the Pandavas were born through parthenogenesis system<sup>3</sup>.

Another instance from Mahabharata is the embryo transfer from the womb of Devaki to Rohini to protect the child (Balarama) from being killed by Kansa. It has been mentioned both in the Bhagvata Purana and the Vishnu Purana that birth of Balram took place due to embryo transfer from Devaki's womb to the womb of Rohini. Even Lord Krishna was begotten by Devaki but reared by Yashoda, who is referred to be surrogate mother by today's surrogates themselves<sup>4</sup>. It is believed that 24th Tirthankar Lord Mahavira was born after an embryo had been transferred from one woman's womb to another one's. During Biblical times an interesting story that runs around Sarah, the wife of Abraham, could not have children in the beginning. She instructed her maid Hager to go to Abraham to produce them a child. Hagar gave birth to a son called Ishmael. Ishmael was the first child in history of western countries where Christianity is their religion born due to the so-called traditional surrogacy program<sup>5</sup>. During medieval periods services of wet nurses and concubines were used. This situation prevailed until the final decades of the twentieth century, when a series

of technological developments re-created the option of farm's length conception.<sup>6</sup>

#### IV. New Era of Modern Reproduction

The past half century has witnessed a revolution in human reproduction. With the birth of Louis Brown (first test tube baby in the world) in England in 1978 and Kanupriya (first in India during the same year) in India the new reproductive technological era began. Various treatments were made available to infertility problems viz. Artificial Insemination, oldest Artificial Insemination by donor - AID & Artificial Insemination by Husband- AIH), In vitro fertilization, GIFT (gamete intrafallopian transfer), ZIFT (zygote intra fallopian transfer), super ovulation with fertility drugs, TUDOR (trans vaginal ultrasound-directed oocyte recovery), embryo transfer, and surrogacy. AID and AIH are solutions to male infertility problems whereas IVF and embryo transfers are solutions for both male and female infertility problems. Procreation has been made possible without sexual intercourse with the help of modern technology. First successful birth through gestational surrogacy in the world took place in the year 1984. In India it happened ten years later, in Chennai, for the first time. In 1997, an Indian acted as a gestational carrier, in order to obtain medical treatment for her paralyzed husband. India witnessed a steep increase in surrogate births after Oprah Winfrey's show in which a couple was interviewed who got their child through surrogacy in Anand, India during October 2007. Dr. Nayana Patel's clinic became popular worldwide. In years, the number of births through surrogacy doubled with

<sup>2</sup> Dr. Padmakar V. Vartak Swayambhu – Vyasamahabharata Vijnananishta Samshodhane 213 trans into Kann (Pracheta Book House 2008).

<sup>3</sup> Ibid. at 215-223.

<sup>4</sup> SAMA – A Resource group for women and health Birthing A Market: A Study on Commercial Surrogacy' available at [www.samawomenshealth.org/downloads/Birthing%20A%20Market.pdf](http://www.samawomenshealth.org/downloads/Birthing%20A%20Market.pdf) (last visited on Dec. 21, 2014).

<sup>5</sup> The Book of Genesis, Chapter 16

<sup>6</sup> Debora L. Spar, For love and money: The political economy of commercial surrogacy, (12:2 May 2005 Review of International Political Economy)



estimates ranging from 200 up to 350 in 2008 alone<sup>7</sup>." With the popular film stars Amir Khan and Shah Rukh Khan of the Bollywood adopting this method to get children now it is being widely accepted which was opposed earlier on the ground of ethical considerations.

All these circumstances prove that by any chance surrogate motherhood bears the mark of women exploitation, instead of being the landmark of women empowerment. It is a logical paradox. When a group of women (so called empowered) enjoys freedom over their body and mind, the other group (sells herself in terms of surrogacy) are being exploited for the same reason.

It is very difficult to arrive at the exact statistics pertaining to the existing surrogacy industry in India the sharp growth in the industry is evident from various reports published by the research institutions, newspapers and governmental organizations. As on 2005, there were an estimated 250 IVF clinics in India<sup>8</sup>. To regulate the activities of the ART clinics National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India were issued by Ministry of Health and Family Welfare, Government of India and ICMR, New Delhi during the year 2005. Now ICMR has taken an initiation to create

a registry of ART clinics for which it has called for submission of information by all the clinics and at present only 274 Assisted Reproductive Technology clinics in India are registered with Indian Council of Medical Research, New Delhi under National Registry of ART Clinics and Banks in India<sup>9</sup>."

According to National Commission for Women, there are about 3000 clinics throughout India that offer surrogacy services to not only Indian infertile couple but foreign couple as well. India's reproductive tourism industry promoting surrogacy is estimated to be worth more than 2000 Crore today<sup>10</sup>." India is a favorite destination for commercial Surrogacy as these services are available at a very low cost as compared to other developed countries viz., USA, UK, and Canada etc. Lack of regulation, shorter waiting time, the possibility of close monitoring of Surrogates by commissioning parents, availability of large pool of women willing to be surrogates, infrastructure, access to cheap drugs, cheap labour, best medical expertise comparable to international standards and commercialization of surrogacy are so the other reasons that promoted this industry in India.

In addition to the clinics there are various other agency services available in India like National and International health care consultants, travel agencies, law firms,

<sup>7</sup>Centre for Social Research, New Delhi. "Surrogate Motherhood - Ethical or Commercial' 34 available at <http://csrindia.org/index.php/publications> (last visited on Nov. 29,2014)

<sup>8</sup> Ministry of Health and Family Welfare, Government of India and ICMR, New Delhi, National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India' issued in the 4-5 (2005) Available at: [http://icmr.nic.in/art/Chapter%20\\_1.pdf](http://icmr.nic.in/art/Chapter%20_1.pdf) (last visited on Dec. 21, 2014).

<sup>9</sup> Available:[http://www.icmr.nic.in/icmrnews/art/New%20list%20of%20approved%20ART%20Clinics\\_02.12.2014.pdf](http://www.icmr.nic.in/icmrnews/art/New%20list%20of%20approved%20ART%20Clinics_02.12.2014.pdf) (last visited on Dec. 11, 2014).

<sup>10</sup> Anil Malhotra and Ranjit Malhotra, Surrogacy in India – A Law in the Making, 8(Universal Law Publishing Co. New Delhi, 2013).



surrogacy agents, surrogacy hostels, and tourism departments' etc.<sup>11</sup>. India has become popular in this industry because of the prohibition or stricter regulation of this commercial surrogacy in most of the countries. Another factor that contributes towards the rise in popularity of surrogacy industry is that people in India (doctors, agents and even some surrogates) are fluent in English language. There is rapid growth of this industry which is evident by the fact that it was worth \$445 million in the year 2008 but now it is worth \$ 5000 million. Earlier these services were available in few cities including metros like Anand, Surat, Jamnagar, Mumbai, Delhi, Bangalore and Chennai but now almost every smaller city offers this service namely, Jalandhar, Indore, Bhopal, Kochi, Madurai, Ahmedabad, Pune, Lucknow so on. Anand in Gujarat which is already popular for milk revolution has become world's surrogacy capital<sup>12</sup>.

This arrangement costs \$11,000, (approximately Rs.5,00,000/-) in India, while in the US, surrogacy alone, excluding ART charges, costs \$15,000/- (approximately RS.6,75,000/-). A similar arrangement in the UK costs about £10,000/- (approximately RS.7,00,000/-). According to another research study conducted by Centre for Social Research, New Delhi, the fees for surrogates are reported to range from \$2,500/- to \$7,000/- in India with \$20,000/- to \$25,000/- in

comparison in United States of America. The total costs can be anything between \$10,000/- and \$35,000/-. This is a lot less than what intended parents pay in the United States, where rates fluctuate between \$59,000/- and \$80,000/-<sup>13</sup>. Following observations can be deduced after analyzing all these statistics presented and the research data published by Centre for Social Research, New Delhi<sup>14</sup>.

1. Surrogate mothers are available at a very low cost and receive very meager amount of money for the services they render compared to their counterparts in foreign countries, especially United States of America.
  2. Almost all surrogate mothers decided to go in for surrogacy due to their poverty.
  3. Majority of them are illiterate and are employed as domestic helpers, house maids, construction workers and earned very low income with less than Rs.3000/- p.m.
  4. Most of them belong to nuclear male dominated family and husbands do not mind to allow them to be surrogates.
- These statistics, inferences and rapid growth of this industry make us to ponder over the aspect of surrogacy from the point of view of women's rights.

#### V. Surrogacy as a new mode of exploitation

<sup>13</sup> Supra note at 7. Also see Usha Rengachary Smerdon "Crossing Bodies, Crossing Borders: International Surrogacy between United States and India" 39:1 2008 Cumberland Law Review p.32 and Sharmila Rudrappa "Mother India- Outsourcing Labor to Indian Surrogate Mothers" in Sayantani Dasgupta and Shamitha Das Gupta (eds.), Globalization and Transnational Surrogacy in India-outsourcing life 125 (Lexington Books, Plymouth UK, 2014)

<sup>14</sup> Supra note at 7.

<sup>11</sup> Supra note 4 at 7, Also see : Preetia Nayak "The Three Ms. of Commercial Surrogacy in India" in Sayantani Dasgupta and Shamitha Das Gupta Globalisation and Transnational Surrogacy in India – outsourcing life 3 (eds.3 Plymouth, UK: Lexington Books, 2014).

<sup>12</sup> Ibid. at 2.



The present form of surrogacy prevalent in India is suffering from many anomalies and is not sufficient to deal with various problems coming from surrogacy. It is correct that every person has a right to start a family and surrogacy is one such way through which infertile couples can fulfill their dreams but it is not accepted that just to fulfill their dream life and health of another person has to suffer so much. One of the anomalies suffered by the surrogacy practices in India is the lack of any post and pre pregnancy counseling of the surrogate so as to make sure that the surrogate mother is fit, both mentally and physically to carry a child for another person, this counseling is also necessary to make sure that the consent is free from any kind of influence and the act is a voluntary act of the surrogate mother. This counseling will help her in measuring the pros and cons of the action so as to avoid any future tribulations.

Family is the primary institution of the society. It is the family, more particularly mother, plays a vital role in creating future citizens. She nourishes, nurtures, socializes the child. It is this family, the bonding; the upbringing makes future of the country. Therefore it becomes essential to see how families are made, what policies and practices govern the structure of the family. The responsibility of the state to control the lives of members of the family and to determine the structure of the family is equally important. In this connection various arguments are proposed mainly accusing surrogacy as a new form of exploitation of women. Hence it has become important now to find out a way to secure rights of surrogate Women. New reproductive technologies have made the body a property that can be bought, sold and hired. In the

absence of legislation abuse of rights of the vulnerable groups is very much possible.

Commodification itself is an attack on the dignity of the child, the surrogate mother and the commissioning parents and everyone else. Children and the surrogate mother are objects here in the surrogacy arrangement to be bought or hired.

"Surrogacy compromises the dignity of the child by making the child the object of a contract-a commodity. It further compromises the dignity of the mother, even if her participation is voluntary, by merely treating her as a 'womb for hire'.<sup>15</sup>"

Hence, dealing with human body as a commodity is prohibited under the Constitution of India. Trafficking involves exchange of human beings, their body and its parts. It also includes exchange of bodily capacities<sup>16</sup>. Trafficking benefits men, who in the guise of doctors, lawyers, brokers or Parents carry on the exchange of women's bodies for surrogate contracts. Janice Raymond observes:

"Trafficking wrenches the term surrogate mother out of its present context of blaming women and highlights that women are the objects of international exchange. Trafficking situates surrogate arrangements in the system of gender inequality - as practice that enhances the subordination of women by making women into reproductive

<sup>15</sup> A paper by the Iona Institute "the ethical case against surrogate motherhood: what we can learn from the law of other European countries' available at [www.ionainstitute.ie](http://www.ionainstitute.ie) 5 (last visited on June 17, 2015)

<sup>16</sup>Janice Raymond, *Women as Wombs* 139 (New York, Harper Collins Publishers, 1994).



objects of global exchange<sup>17</sup>. Trafficking in women and children is an offence both at national and international levels. It is argued that women are forced to become surrogates and their free consent cannot be termed free as they are driven by the situation of poverty and large sum of money is involved. It is apprehended that it also amounts to baby sale and babies are trafficked across international borders though there are various arguments that agreement is entered into even before the child is born hence it is not sale of babies.

Another serious objection to surrogacy is that it amounts to prostitution. Prostitution is also a form of exploitation of women. Though it is not prohibited in India any activity that promotes prostitution is an offence. Both are equated for the reason that sale of reproductive organs of the body is involved in them. The compelling reason behind women's decision to opt for prostitution or surrogacy is same.

Much more damaging and unnatural factor is that it adversely affects the surrogate mother psychologically as she is required to surrender the child as soon as it is born which was part and parcel of her body. The entire process of reproduction involves not only bearing and begetting but also rearing of the child. Surrogate bears and begets the child and commissioning mother has to continue with rearing of the child which is described by many as deconstruction of motherhood. In this process both the surrogate mother and the child are at loss. The greatest harm caused in this process is that it adversely affects a woman's physical health. As it is well said and known that

whenever a mother gives birth to a baby it is a rebirth for her as well. That is the extent of risk involved where her life itself will be threatened. Moreover risk of failure is there in every stage of this treatment. Only about 60 to 80 percent of IVF attempts at fertilization are successful and most of those do not result in pregnancy<sup>18</sup>. In order to ensure success more than one embryo is placed in the surrogate's womb which may result in unwanted multiple pregnancies leading to health hazards for the surrogate. The possible risks of multiple pregnancies are increased chances of miscarriage, obstetric complications, premature deliveries, and birth complications. Fetal reduction may cause bleeding, perforation, infection, premature labour, and loss of all fetuses<sup>19</sup>. Repeated IVF procedures leave surrogate exhausted and it is very painful<sup>20</sup>. It is also very much likely that a surrogate might get infected with HIV or Hepatitis if the donors or commissioning parents have these transmitting diseases. However, it can be controlled by thoroughly testing the sperm and ovum before fertilization.

In spite of all these adverse consequences, if women opt for being surrogate there must be some strong reason behind it. The reason may be either to help them (i) voluntarily; or (ii) to submit themselves voluntarily out of necessity or compulsion; or (iii) involuntarily out of force, intimidation or coercion. Only those people with too much of love care and compassion towards others will be ready to help infertile couple

<sup>18</sup> Stacey Sutton "The Real Sexual Revolution: Posthumously Conceived Children" 73 St. John's L. Rev. 857 available at "westlaw.com (last visited on Jan. 21, 2012).

<sup>19</sup>Supra note 4 at 65.

<sup>20</sup>Supra note 7 at 36

<sup>17</sup>Janice Raymond, *Women as Wombs* 139 (New York, Harper Collins Publishers, 1994).



altruistically the instances of which are very rare. Only poor women will be ready to take such risks out of compulsion or due to coercion. Poverty is the driving force for women to go in for this practice. There are various situations which make a woman's life vulnerable. She is susceptible to attack and infertility is one in which she may be exploited. Her position, whether commissioning mother or surrogate mother, is equally under threat. This is true throughout the world. As per previous reports published worldwide and in India a woman is still not an independent sole but acts under the control and influence of male member of the family or society. Though many women regard pregnancy as creative and positive experience<sup>21</sup> and become ready to be surrogates to help infertile women, they do so out of economic compulsion<sup>22</sup>. Their freedom of choice is controlled by various social and psychological concerns. It may be a woman's private choice but it is argued that it is publicly sanctioned violence against women<sup>23</sup>. Moreover, most of the women who engage in surrogacy are usually poor. They are from lower middle class strata predominantly uneducated, married, often engaged in casual work, and in need of quick money (that would otherwise take many years to earn) to solve their poverty issues. The need for money is so much that infertile couple bargain a better price favorable to them as a result of competition among surrogate women. Some of them

have chosen it as last decent resort to earn money after suffering lot of trauma due to their poverty.

All these arguments are supported by the data collected by research study<sup>24</sup>. It interferes with the nature and leads to exploitation of poor women in underdeveloped countries who sell their bodies for money<sup>25</sup>. There is evidence that most of the surrogates are uneducated, unemployed or employed with very trivial wages, unsupported by their partner and are responsible for children and family. According to the study<sup>26</sup>, it is always the surrogate woman who has to compromise and bear the burden if there is any problem. First of all, she would like to remain anonymous due to social stigma attached to it. She is not paid properly the promised amount or under paid and she has no means or capacity to fight for her right. Benefits can be derived only when there is equal exchange – money paid for the service rendered. But in reality there is a contract amongst unequals. She is neither aware of the terms of the contract nor is explained of various risks involved in the process. The contract is always biased in favour of the financially sound commissioning parents and freedom of the surrogate is an illusion. All the surrogates belong to the male headed/dominated nuclear family which means that they become surrogate mother

<sup>21</sup>Barbara Winters "Engineered conception: The New Parenthood" I Jna Zimmerman The Technological Woman: Interfacing with Tomorrow (eds) 230 (Praeger Publishers, New York, 1983).

<sup>22</sup>Almost all the women are poor and opted for being surrogates out of economic necessity as per the study conducted by CSR, New Delhi. See supra note 7.

<sup>23</sup>Supra note 16 at 8.

<sup>24</sup>Supra note 7 at 29.

<sup>25</sup>Dr. Justice A. R. Lakshmanan, Chairman, Law Commission of India address on "Surrogacy: The Future of Children" at Faculty of Law, Punjab University, Chandigarh. (2009) 2 MLJ p. 10.

<sup>26</sup>Two research studies conducted by Centre for Social Research, New Delhi in five cities namely Anand, Surat, Jamnagar, Mumbai and Delhi (which are main cities offering surrogacy services in India) See Supra note 7.



with the approval of the husband. Their choice is not free and they act out of compulsion. They are exploited by the clinic as well by not paying their due. Surrogates even had to lose their daily wages to travel to the clinic for IVF attempts. They are compelled to stay at hostels away from home throughout the period of pregnancy<sup>27</sup>. These are some of the instances of their exploitation. Weaker section is always liable to be exploited. The more astonishing fact that the contract between the surrogate mother and the commissioning parents is entered into after the confirmation of the pregnancy during the second trimester of the pregnancy<sup>28</sup> gives account of extent of exploitation. She is compelled to sign the document as she is already four months pregnant forcing us think to that is nothing but slavery. Neither she nor her husband are able to read or write and are explained the terms of the contract which is beyond s and cannot refrain back. Thus it is similar to slavery as slaves do not have self-ownership and are bound by the orders of the masters. Surrogate mothers are used as an instrument or object to achieve the desired child i.e. child. Hence it is seriously objected as it amounts to slavery.

Even in case of abortion decision due to abnormality of the fetus it is the commissioning parents who decide on the issue not the surrogate. In such case the compensation is not paid in some places where as in other places it is claimed that half the promised amount is paid. It is disturbing to note that most of the cases the money paid to the surrogates is coaxed by their alcoholic husbands and surrogates position remains same as before. She has to

surrender her body completely to doctor and cannot refrain back.

These states of affairs explain the extent of exploitation that takes place in surrogacy arrangement. It is the clinics in majority of the cases that exploit these poor women. It is quite natural that in a country where domestic violence is deep rooted in every household woman may be forced to become Surrogate. All these accounts make it clear that surrogacy brings new mode of exploitation of women which may be successfully practiced in the absence of any legislation.

This practice has every potential to exploit surrogates as they belong to poor families, are illiterate and are not aware of their legal rights. Exploitation is unethical and selfish use of human beings for satisfaction of personal needs or desires which may be in the form of human trafficking, bonded labour, slavery, forced labour, prostitution, economic exploitation, child labour etc. Though all these forms of exploitation are prohibited under the Constitution of India and various laws there is need for specific legislation to clarify and control exploitation in the form of surrogacy as it is allowed since 2002 in India. Every person has right against exploitation. Surrogacy is opposed on the ground that it amounts to human trafficking, slavery and there is economic exploitation.

The term exploitation implies harm. Lot of harm physically and mentally is caused to the Surrogate Women as she has to bear the consequences of the physical labour by giving birth to the child, hormonal changes and mental agony suffered by staying away

<sup>27</sup>Supra note 7.

<sup>28</sup>Supra note 7 at 40



from her own family and handing over the child soon after the delivery.

Exploitation involves coercion and deception in variety of forms. It may be in the form of giving misleading information about their rights and privileges in order to keep them in the position of dependency. The same kind of activity can be seen in surrogacy practice wherein they are compelled to sign the contract documents and are not notified about the terms of the contract, health hazards involved in the process etc. Financial inducements are softer threats that are used to coerce a woman to be surrogate. The exploitation may be both consensual and nonconsensual. Here even if consent is given surrogates allow themselves to be exploited to as they do not have viable options and is given in the circumstances of financial desperation<sup>29</sup>.

Even though some opine that surrogacy should be treated as a means of earning a livelihood and the body as a resource and productive asset can be utilized; absence of free consent or lack of independence among Indian women make the opponents to strongly resist it. A market created where people are willing to buy commodities and sell body parts further worsens the exploitation situation of women who are already oppressed<sup>30</sup>. It exploits socio-

economic class differences. Financial and emotional needs of the surrogate and couple are used as currency. It is a form of medical violence against Women which is dangerous, destructive, debilitating and demeaning.

## VI. Conclusion

Infertility is an age old problem that causes mental agony and trauma to the infertile couple. Though it is not life threatening this problem creates a sense of useless life in the minds of the couples especially the female. Barren Women are treated as incomplete women and face social exclusion. Adoption was resorted to as a last resort earlier. Now the availability of IVF technique using which couple can have their own genetically related child has given a new ray of hope and has acquired the place of adoption successfully. But in a country like India where women are subject to violence, abuse and exploitation to a greater extent surrogacy can be viewed as a new social problem. In this context, surrogacy may pave the way for further exploitation of women. Indian women are vulnerable. The poorer the country, the more is the fear of exploitation. The combination of poverty, illiteracy and lack of power that women have over their own lives will land them in difficulties. Even Law Commission of India in its 228<sup>th</sup> report has stated that a woman is respected as a wife only if she is mother of a child, so that her husband's masculinity and sexual potency is proved and the lineage continues.

The interest of the intended parents need to be given adequate attention due to the fact that, surrogacy is the last option available to

<sup>29</sup> 3rd Annual legal wise international family law conference Sep 17-20, 2014 by federal circuit court of Australia on "Parenting and Children's Issues: International Commercial Surrogacy and the risk of abuse" Available at [http://www.abc.net.au/financialreslib/201409/r1332410\\_18536962.pdf](http://www.abc.net.au/financialreslib/201409/r1332410_18536962.pdf)

<sup>30</sup> Sarojini N. B. and Dharashree Das «ARTS: Voices from Progressive biae sae and Assisted Reproductive Technologo"India" (eds.) Movements" in Sandhya Srinivasan "Making Babies: 36 (Zuban, New Delhi 2010).



them and any failure in the arrangement would be detrimental to them. Unfortunately, most of the countries have not considered the issue of various rights and duties of intended parents seriously. However, a close examination of many surrogacy arrangements, legal provisions and case laws indicates that, the intended parents are entitled to the following rights, such as right to select a surrogate mother; right to impose restrictions upon surrogate mother; right to information and visit surrogate mother during pregnancy; right to custody and parentage of child; right to maternity and paternity leave for intended parents.

In the absence of any legislation it is difficult for the courts to decide the legality of the Surrogacy contract, rights of the surrogate, child and commissioning parents. Courts started determining taking into consideration the best interest of the child. Various committees worldwide were constituted to study the implications of this new technology. Most of the countries either prohibit or strictly regulate surrogacy. Very few countries have allowed its practice. The thought that it destroys the family structure, values, mental and physical health of human beings consequently resulting into unhealthy society has made various opponents to propagate for its ban. However the proponents argue for it as they emphasize on individual freedom of choice and reproduction. This ideological clash warrants legislative action to manage the situation and prevent exploitation of women by either banning this practice or by strictly regulating it.

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