



CULTIVATION OF BABIES: GAINSAY TO INDIAN DOGMAS AND SOCIETAL NORMS

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Abstract

*Children are a Treasure their worth we cannot Measure. Children are the ultimate gift to two people who love each other. There is no bigger responsibility, and yet a relationship with a child can bear the greatest rewards. It is not exaggerating to say that **CHILDREN** are one of the most precious gifts of God to every living creature on this planet. The reason to be happy & to be Sad. And it's docile here to say that a woman is complete when she becomes a mother & a family is complete when a child is born. But unfortunately there are some couples who remain shunned from this magnificent God gift. The growth in the ART methods is recognition of the fact that infertility as a medical condition is a huge impediment in the overall wellbeing of couples and cannot be overlooked especially in a patriarchal society like India. 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. And therefore, to fulfill their earnest desire to have a child, the infertile couples, singles, homosexuals etc are promoting the business of Cultivating the Babies known as Surrogacy. Surrogacy is a ray of hope to the desirous couples but at the same time it is deteriorating the societal norms as well as is detrimental to the institution of marriage especially in reference to India. My research paper throws lights on the darker side of Surrogacy. It deals with the aftermaths of Surrogacy on the Indian Society.*

Keywords : *Surrogacy , Assisted Reproductive Technology, Infertile Couple, Cultivation Business*



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Introduction

In India the traditional picture of a family would not be complete without children. Many couples face a breakdown of their marriage in their inability to procreate. The inability of a woman to

become a mother could also, many a times, be responsible for bigamous marriages, spousal abandonment, and cruelty in the marital family and other forms of domestic violence.¹

Some authors put it as follows:

**The Parents construct the Child biologically,
While the Child constructs the Parents socially.**

In the Indian social context specially, Children are also a kind of old age insurance. If marriage is a personal choice monitored by social practices and obligations in India, so is motherhood; to not become a mother is rarely a matter of personal choice and in the least, encouraged. In the conundrum of familial pressure, concerns over genetic progeny and continuation of property rights of a group of persons who are genetically related to each other, not having a 'next generation' has made persons look to alternative remedies for continuation of the bloodline.

And here, Surrogacy springs in as a savior to the Childless Couple.

Advances in Assisted Reproductive Techniques² such as donor insemination and, embryo transfer methods, have revolutionized the reproductive environment, resulting in Surrogacy, as the most desirable option. The system of Surrogacy has given hope to many infertile couples, who long to have a child of their own. Taking advantage of the advanced medical facilities, they seek alternative solutions like Artificial Reproductive Technology (ART), In-Vitro Fertilization (IVF) and, Intra-Uterine Injections (IUI), in the hope of having a child of their own. Infertile women, homosexual couples and singles desiring to become parents may seek surrogacy as a simpler route to do so. In India, Surrogacy has marked its inception in late 90's. At the outset it marked its existence in metros only. But with march of time & progress of society it has become a booming business in India. You can easily find news pertaining to Surrogacy in Print & Electronic media very often. **Commercial Surrogacy in India is legal.**³ The availability of medical infrastructure and potential surrogates, combined with international demand, has fueled the growth of the industry.⁴ Surrogacy is a boon to the childless couple but at the same time there is a darker side of this booming business. There are many aspects related to Surrogacy which need to be discussed namely, social, ethical, legal, moral, etc. But in this paper I have highlighted only the social aspects pertaining to Surrogacy.

Social Issues

Human beings live in a society. And society is a web of social relationships. Social relations are established through mutual behavior of and intercourse between the various members of society,

males and females, children, old men and young juveniles.⁵ This conduct or behavior takes the form of mutual activity. In this way, social relationships depend upon the social interaction of the constituent members of society. Some or the other kind of social interaction is set into motion whenever two of its members come into contact. When a man and woman come into contact there can be attraction as well as repulsion, co-operation as much as conflict, competition, co-operation, and synthesis or other activity. All these are social interactions. To regulate the behavior of all the human beings living in a society, there are some codes of conduct from times immemorial. These are the social norms which govern the society. Surrogacy, the modern recourse to alleviate infertility, violates these social norms and adversely affects the society. Let's discuss these effects under different heads as following:

- ❖ **Dilapidation of Social Structure**
- ❖ **Fragmenting Motherhood**
- ❖ **Social Stigma**
- ❖ **Negative Impact on Future Generations: Single Parenthood**
- ❖ **Sex Selective baby**
- ❖ **Genetic Diversity**
- ❖ **Eugenics**
- ❖ **Social & Racial discrimination**
- ❖ **Paternity**

Dilapidation of Social Structure

The first and foremost demerit of Surrogacy under this head is that, it violates the norm of society which says that a person once married cannot have relations with other women/men. The traditional view is that a child should be a result of intercourse between husband and wife. No third person can enter into this process of reproduction. Surrogacy upfront violates this norm and belief and thereby pollutes the atmosphere of society.

During the process of Surrogacy, a Surrogate carry's the baby of a man who is not her husband.

What relation does a Surrogate and the Intended Father shares? Isn't Attraction, very normal between the Surrogate and the person, whose child she is carrying?



There are so many such questions which are unanswered. But the answers of all such questions, challenges the social structure of India which considers marriage as a Sacrament with strong social and ethical values. In India marriage is not a social contract temporarily entered into under the influence of romance or dissolved at one's pleasure. It is the most important Religious Sacrament, necessary for every individual to realize fully one's potential and to fulfill the responsibilities which one's owes to one's self, one's family, and one's ancestors and to society at large.

Marriage, therefore, is to every Hindu, not merely institutionalized pleasure, or primarily a source of gratification of sentimental longings or romantic loves, but an act of duty, a matter of moral and religious obligation, incumbent on everyone in all normal circumstances. Both the spouses are duty bound to be honest and loyal towards each other in a marriage and the interference of third person i.e. in the process of reproduction openly violates this duty, though not in every Surrogacy arrangement but the probability is high in maximum cases.

Fragmenting Motherhood

Initially, the biological and the social aspect of Motherhood were identifiable in one person. Now Motherhood can be distinctly fragmented into three parts viz. *the Genetic mother who contributes her ova for the embryo, the Surrogate mother who bears the child and the Social mother who nurtures the child*. As infertility increases and reproductive technologies such as Gestational Surrogacy gain sophistication, the problem of identifying a child's Legal Mother becomes more difficult, says *Erin Y. Hisano of the Lewis and Clark Law School*. In a minority of cases, the use of a Surrogate mother results in a maternal rights dispute which can be distressing and financially limiting for the parties involved and the dispute can affect second and third generations of a family.

Many a times Surrogacy leads to an array of legal complexities regarding Motherhood as was shown by *Jaycee B. v. Superior Court*.⁶ A child was born to a Surrogate Mother using sperm and eggs from anonymous donors because the infertile couple was unable to create their own embryo using the In-Vitro Fertilization techniques. The couple chose to use anonymous donors rather than asking the Surrogate to use her own eggs because of the *Baby M Case* in New Jersey in which the Surrogate had eventually refused to hand over the baby saying that she was its biological Mother and her right to raise the child pre-empted the Commissioning Parents.

The child thus had five people who could lay claim to Parenthood – a Genetic Mother, a Commissioning Mother, a Surrogate Mother, a Genetic Father and a Commissioning Father.

One month prior to the birth of the baby Jaycee the intended parents John and Luanne separated and John sought to rescind his obligations under the Surrogacy contract so as to avoid having to pay child support for Jaycee. Luanne sought both custody and support from her ex-husband. The Court battle continued and for three years Jaycee did not have a legal parent. A Californian Court granted temporary custody of the Baby Jaycee to Luanne and ordered John to pay for child-support.⁷ *After this, Countries like United Kingdom and Australia have simplified this problem by lawfully declaring the Surrogate to be the legal mother whereas India and certain states of the United States of America have held the Commissioning Mother to be the legal mother of the child.* But still it remains as one of the biggest drawbacks of Surrogacy as it actually fragments Motherhood which may have long lasting effects on child's mind when he/she grows up.

Social Stigma

Most women who become Surrogates insist on anonymity for fear of social stigma. Some men, particularly the Husbands of Surrogate Mothers, react badly to this encroachment on their rights. Women who participate in Surrogacy programmes report that their partners, initially agreeable to their undertaking the responsibility, often change their attitude after they take on their new role. One American woman told of being left by her fiancée for another woman. The Husband of another Surrogate Mother would not look at her after she was inseminated.⁸ According to the other Surrogates, the misconception that becoming a Surrogate requires one to have sexual relations, combined with the assumption that a child is given in exchange for money, are the sources of the stigma.

The act of bearing children outside marriage and as part of a commercial transaction goes against the dominant perception of reproduction as an activity to be performed within the private, familial space, motivated by love and care, and thus is seen as undesirable and 'immoral'. They face stigma because of their deviance from traditional patriarchal roles and institutions. This stigma is heightened because of a deflected stigma attached to other occupations such as sex work. It is pertinent to ask why Surrogacy is viewed and valued differently from other stigmatized work. Is there a hierarchy based on the degree of transgression? And if so, to what extent can it be made to seem acceptable? And if there is indeed such a hierarchy, is it also because of a different configuration of an industry that is simultaneously producing these meanings and references? Further, the use of IVF technology in conceiving and implanting the embryo for a Surrogate pregnancy is not widely known or understood by many people. The assumption that conception will be achieved through sexual relations leads people to compare Surrogacy with sex work.

Surrogates are constantly negotiating ideas and perceptions about the nature of their work, reacting and responding, and defining what kind of use of the body is acceptable and for what reason. In each instance, Surrogates have to gauge their work against existing perceptions about work and the body. When faced with the imposition of any notions of 'morality', they problematize the source of this 'morality' as based on class privileges and also emphasize their own needs and their own 'choice'. They thus effectively argue that there can be no single or absolute prescription about what kind of use of the body qualifies as 'work', which can be redefined on the basis of the existing social meanings.

Negative impact on Society: Single Parenthood

Surrogacy has risen up as a viable option to start a family for many homosexual couples across the world. Surrogacy is not as heavily regulated as Adoption, and in fact, in some cases, it is not regulated at all. It is much easier for a gay couple to go through Surrogacy to complete their family than it is for them to attempt the adoption process. For infertile couples wanting to have children, the ART would make things easier as regulations will be there for the entire process. But if it encourages Single Parenthood, it will not be in the interest of the children born out of such an arrangement and thus will have a negative impact on society.

Having said that, there are still limitations for Gays via Surrogacy. Some states, such as Florida and Texas have gone out of their way to circumvent those in same sex relationships from

attempting Surrogacy. But these states, both against Surrogacy for Gays, do so in a round-about way. Instead of directly stating that Gays are not welcome in Surrogacy arrangements in their states, they have actual laws allowing Surrogacy for "a Man and Woman who are married where the Woman has a medical need to seek a Surrogate."

But it's high time when this matter shall be directly dealt as family togetherness, in traditional terms of having a father, mother and brother/sister, is important for the upbringing of any child and the same cannot be provided by Gay or Lesbian Couples or Individuals. Children born to such couples or individuals may lack confidence. It will definitely affect the Children in the long run, which is a matter of grave concern for any society.

Sex Selective Surrogacy

The practice of Surrogacy raises the issue of Gender inequality. The ratio of male and female can be adversely affected by Sex Selective Surrogacy. The practice of selecting embryos as part of the procedure was confirmed by the doctors whom I was fortunate enough to converse. However, different opinions were expressed regarding the basis of selection. While sex selection was categorically denied, selection against disability and disease was discussed without any hesitation.

Selection of the 'Best' and the 'Healthiest' embryo was presented as a part of the standard IVF procedure. Selection on the basis of sex was denied by all the doctors, although they mentioned that commissioning parents frequently asked for a male child. All the doctors said that these requests were common, but emphasized that sex selection was illegal and that such requests were not entertained. They further said that many of the requests they get are from aging couples who have either lost or do not have children. They are especially desirous of having sons and they opt for ART procedures or Surrogacy as an arrangement for securing a male heir.

While the practice of Sex Selection is illegal, the possibility of pre-selecting the sex cannot be ruled out. The lack of any regulatory framework regarding ARTs and Surrogacy further complicates the situation. Additionally, information gathered from the Doctors regarding such practices itself comes with a qualification that it cannot be verified. ***In a study conducted by Sama, it was found that despite a similar denial by ART providers, Sex Selection was nevertheless being practiced.***⁹ Thus, I can conclude that Sex Selection in Surrogacy is a threat to Male & Female proportion of the Country at large and is no doubt one of the biggest demerits of Surrogacy.

Genetic Diversity

Surrogacy has its benefits for individuals but may impact diversity. Ten million American couples are considered infertile, according to Fertility Today, a Reproductive Health Magazine. Surrogacy, one option for infertile couples, can help but it raises ethical and biological questions because it may have an effect on Genetic Diversity. Various emotional, financial and legal problems can result from Surrogacy at an individual level and these can be passed onto future generations.

Surrogate pregnancies affect the composition of the human gene pool by increasing or decreasing the frequency of different genotypes or combinations of genotypes. If the Genetic Diversity of a population is reduced, individuals and species will be less able to survive, which is an ethically unacceptable change to set in motion, as described by Ohio University.¹⁰ If Genetic Diversity is not naturally maintained, future generations will suffer in terms of their ability to survive.

Eugenics

Using Gene therapy during Surrogacy or "Assisted Reproduction Techniques" to reduce the chances of disease or to pretreat existing problems is one possibility that would, in principle, have a beneficial impact on future generations. However, the highly controversial and without doubt unethical process of Eugenics, the avocation of intercepting and altering the genetic composition of a population or its individuals to "Enhance" their biology, is unacceptable, racist and has the potential to create mutations which could destroy humanity, as explained by **Human Genetics Alert**.¹¹

Social and Racial Discrimination

Related to the issue of eugenics, there is a possibility that Surrogate mothers would be picked according to so-called "Good Genes," which may constitute discrimination. This could have an effect on future generations in terms of genetics, financial gain in the case of Commercial Surrogacy and racial equality.

UNESCO¹² were the first professional organization to suggest discrimination as a possible drawback in Gene Surrogate Motherhood and also raised the question of whether low-income women could become targeted in a commercially-driven reproductive process, says **Debra Satz of Stanford University**.¹³ In addition to it, Surrogacy augments the disparity between rich and

poor. Again, this pollutes the atmosphere of the society. The helplessness of poor becomes the boon of rich.

Paternity

Restrictions are imposed on Surrogates regarding their sexual activity with their husbands. The rationale provided by the doctors and agents is primarily that after the transfer of embryo to ensure that it is successfully implanted and the Surrogate does not conceive through her husband. A Surrogate must agree not to have intercourse with anyone between the first days of her menstrual cycle before the embryo transfer until the day that her pregnancy is confirmed. The Surrogate's partner must agree not to engage in any activity with her that could introduce his sperm into the Surrogate's body. As the baby is the most susceptible component of a Surrogate agreement, abandonment or the chance of neither party wanting the child after birth may suddenly be an issue. The risk of Surrogate Mothers, specifically those in Traditional Surrogate arrangements, forming an attachment and demanding to keep the children may arise. If guidelines are not followed, such as those requiring Surrogates to refrain from sexual intercourse until fertilization and the onset of pregnancy are successful, paternity may come into question. This guideline ensures that the conception is in fact a result of the Intended Biological Father. But pragmatically, there is always the possibility that the Surrogate will not abide by this and the pregnancy that does result is her partner's child and not the child of the intended father.

Conclusion

Surrogacy leads to an On-Going Discussion. Each one differs in their views with others on this sensible issue. Undoubtedly, Surrogacy is one of the best ways to have a genetic child of their own. It gives an opportunity to the have not, to have their own child. We must remember that Surrogacy does offer one method of achieving Parenthood to a few couples who could never have a baby by any other means. But at the same time the researcher sternly believes that Commercial surrogacy shall be banned as early as possible on the ground that commercialization tends to exploit poorer women and at the same time converts a *CHILD into a PRODUCT of sell and purchase*. Apart from the same question raised here as well, there are other aspects to be considered. The road to Surrogacy is a rocky one and requires much thought as it is detrimental to the interest of society. It challenges the rituals and social norms of the society. It fragments motherhood and it deteriorates the social structure of the society. It increases disparity between

the rich and the poor. It is perhaps the most complex and difficult way to achieve parenthood and there is an urgent need to be addressed by the competent authority.

The matter is of grave concern and the decisions taken in present will indispensably effect the future generations. Surrogacy involves conflict of various interests and has inscrutable impact on the primary unit of society viz. family. Non-intervention of law in this knotty issue will not be proper at a time when law is to act as ardent defender of human liberty and an instrument of distribution of positive entitlements. A proper enactment is needed which clearly prohibits commercial Surrogacy in India as it will adversely affect the future generations and will adversely affect the dogmas and norms of the Society.

Endnotes

¹ Mary Warnock's report wrote of the prevailing societal attitudes in the England of early 1980s towards infertility, adoption and single parentage and is reflective of the contemporary attitude in India which is but slowly changing. The Report was by the Warnock Committee, established four years after the birth of the world's first test tube Baby, Louise Brown to morally justify the creation of a legal regulatory framework for new developments in the field of human fertilisation and embryology, at the time a fledgling industry. She wrote of the affects of infertility and childlessness on couples as well as the ignorance about the causes and the skepticism towards new forms of remedies to infertility. The report is seen as having a negative view on surrogacy. The Warnock Report and the subsequent controversy that ensued in the case of *Re C (A Minor) (Ward ship: Surrogacy)* [1985] FLR 846, HC, which was one of the first cases to reach an English Court. The problem however arises when the parents are unable to construct the child through the conventional biological means.

² Assisted Reproductive Technologies (ARTs) are a group of technologies that assist conception and pregnancy. These technologies are designed to increase the number of eggs and/or sperm, or to fertilize them, resulting in the improved 'probability' of conception/pregnancy that is not otherwise possible. The technologies used for assisting reproduction range from simple or 'low-tech' methods such as intrauterine insemination (IUI) to 'high-tech' methods such as in vitro fertilization (IVF) in all its variations. Although surrogacy is an arrangement, it has been included in ARTs.

³ The Associated Press (2007-12-30). "India's surrogate mother business raises questions of global ethics". Daily News. Retrieved at July 07, 2010

⁴ "India's baby farm". The Sun-Herald. 2008-01-06. Retrieved 2010-01-06., Indian women carrying babies for well-off buyers, 'Wombs for rent' pleases women and customers, but raises ethical questions; Monday, December 31, 2011; The Associated Press; CBC News; Canadian Broadcasting Corporation, "Business is booming for India commercial surrogacy program" by Associated Press, Dated: Monday, December 31, 2010; The Albuquerque Tribune, NM, USA, Paid surrogacy driven underground in Canada: CBC report; Wednesday, May 2, 2010; CBC News; Canadian Broadcasting Corporation

⁵ <http://www.ehow.com/what-are-the-ethical-unethical-views-vitro-fertilization.html>

⁶ 42 Cal.App.4Th 718 (1996)

⁷ Law Commission Report, Supra note 37 at 28

⁸ Centre for Social Research (CSR) "Surrogacy Motherhood: Ethical or Commercial?" 2012 available at

<http://www.womenleadership.in/Csr/SurrogacyReport.pdf>

⁹ In an earlier study conducted by Sama –Resource Group for Women and Health and published under the title

Constructing Conceptions, it was found that despite a similar denial by ART providers, sex selection was

nevertheless being practised (Sama, 2010,p. 123).

¹⁰ <http://www.ehow.com/the-effects-of-surrogacy-future-generations.html>

¹¹ Id.

¹² See <http://www.unesco.org/new/en/unesco/about-us> "The United Nations Organization for Education , Science , and Cultural was founded on November 1945. UNESCO has 195 Members and Eight Associate Members. It is governed by the General Conference and the Executive Board. The Secretariat, headed by the Director General, implements the decisions of these two bodies. The organizations have more than 50 field offices around the world. Its headquarters are located at Place de Fontenoy in Paris, France , in an outstanding, Modernist building inaugurated in 1956 and recently renovated." Last visited on 11/11/2014

¹³ <http://www.ezinearticles.com/?Advantages-and-Disadvantages-of-Surrogacy>