
SOCIOLOGICAL UNDERSTANDING & IMPLICATIONS OF SURROGATE MOTHERHOOD IN INDIAN SOCIETIES

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Abstract: The objective of the paper is to build a sociological understanding on surrogacy its analysis and to identify and assess implications of the same on the existing social institutions of family, marriage and the social concepts of motherhood, parentage, inter personal relationships and also to visualizing the new possible transformations in the social institutions their structure, functionalism as reconstructed as an impact of surrogacy on the same. Surrogacy has challenged the traditional concept of family by primarily by taking out the act of procreation one of the basic function of family out of the realm of wedlock and sphere of family by introducing a third party or surrogate mother, gamete donors for bearing child for them thereby surrogacy has fragmented motherhood into three competing women the gestational carrier, the egg donor or the genetic mother and the intending mother based on their functional roles. Thus surrogacy challenges the most fundamental or primary unit of society family, the institution of marriage, social concept of parentage, relationships. Surrogacy makes motherhood a commercial service available on rent or hire for monetary returns as popularly called womb for rent, on this reasoning surrogacy is taken as akin to prostitution and for the same reason many commercial surrogate mothers face social stigma.

Keeping in regard the above issues, the discourses related to surrogacy falls in the realm of sociology of law and family and feminist sociology. Hence, Surrogacy brings about a new area of social legal inquiry due to the peculiar inherent nexus or the relation between law and social issues, changes in one reflects the change in other. There is a felt need for the adequate socio legal construction of this new development. There is a urge to regulate this social development through law but only after considering the social milieu in which the law seeks to operate.

Key words: Surrogate Motherhood, Social Institutions Family, Marriage, Patriarchy Gender stereotype.

Introduction:

Background & History: Surrogacy has existed from time immemorial as documented in the Bible with mentioning Genesis, Chapters 16 and 30 namely the tale of Abraham & Sarai and the tale of Rachel & Jacob respectively. It is stated that the first traditional surrogate arrangement initiated resulting in the birth of the first surrogate child Ismail in the year 910 B.C. in this world as per the religious text. In the Babylonian society surrogate motherhood is mentioned as a legitimate form of family formation for reasons associated with family, kinships, ancestral bloodline with authoritative references in the Hammurabi's Code, Nuzi Tablets which legally permit surrogacy due to bareness of wife for continuation of family through servant or slave thus allowing traditional surrogacy. Thus, in the historical context surrogacy was practiced then was traditional and altruistic undertaken out of compassion in order to help the infertile couples to bear children for them.

Surrogacy - Medical Legal Development: India made its foray in gestational surrogacy following the medical advanced in reproductive technology with the birth of first surrogate child in India named Kanupriya in October 1978 which is only three months after the birth of first surrogate child in the world Louis Brown in UK in July 1978. Following the medical development, the first regulating instrument

on surrogacy were issued by Indian Council of Medical Research (ICMR) in the year 2005 which laid down the permissible standards for the conduct of surrogacy and provided for commercial and gestational surrogacy in India there by permitting the reproductive labour or gestational services of a woman to be availed for gestation and delivery of child in return for monetary payment. In the year 2008 the supreme court of India in its landmark judgment of Japanese surrogate Baby Yamanda Manaji case legalized commercial and gestational surrogacy and directed for the enactment of a legislation on the same leading to formulation of The Assisted Reproductive Technologies ART Bill 2008 had been formulated which has been revised in the year 2010 reiterating the same. As per the Bill, Surrogate motherhood is defined as merely gestating or carrying the foetus with in the womb who is not biologically related to the child and after birth delivers the child to the intending couple in return for monetary payment under a financial surrogacy contract. However these bills are in pendency awaiting enforcement while India permits and promotes commercial surrogacy in the absence of any effective statutory law. India is popularly known across the world as Global capital of surrogacy and the surrogacy capital of the world. Thus even in the present context, Surrogacy retains the cardinal

function of means to family formation and have biologically related children and particularly for infertile, same sex group for who it may be sole means to family formation. Hence surrogacy has transformed the most fundamental or the primary unit of society the family by replacing the natural traditional family formation with medical technological arrangement involving third part as surrogate mothers or donors. Besides this profound change, surrogacy has brought forth dynamic changes in society. Some of these are identified and briefly discussed here. Surrogacy offers a new technological innovative form of family formation in which biological or genetic connection between the couple or potential parent and the child is redundant or not necessary and similarly bearing of child within the wedlock is not always necessary as children could be born by a third party falling outside the union of marriage. A biological tie, marital union is no longer a defining factor either in the foundation of family, marriage as prime social institution. Accordingly, surrogacy has brought significant changes in the social institution of family, marriage and social construction of motherhood. Some of the significant changes are discussed below.

Surrogacy on family structure & composition: "Surrogacy by opening up the 'family' to single women and queer couples has changed the constitution of family" surrogacy has changed the established heterosexual-parented family as single parent or homosexual family. For instance, Superstar pianist Sir Elton John and his gay partner David Furnish commissioned surrogacy to have their two surrogate sons, in the year 2013.

Surrogacy changes traditional function of Family, Marriage & Mother child Relationship: Marriage and Parenthood are God-ordained relationships. Surrogacy introduces a third party interference with a natural process thereby violation of God's will. Many religious groups deem surrogacy as "mechanical adultery" for such inclusion. Surrogacy is an inherently unnatural process. As surrogate children may be borne with or without necessary genetic connection with the parents or the husband and wife hence surrogate children may be related or may be partially related with either of the couple or may not be related to both. Surrogacy challenges the social construction of family and motherhood. "If a woman is willing to gestate a child in order to give it away to others this itself is un-natural of motherhood"! Further commercial Surrogacy disrupts the parent child relation and enables buying and selling of parental rights under surrogacy contract for monetary payment. Surrogacy differentiates between bearing and rearing children as a role of mother. Surrogacy causes shunning of all

physical and emotional psychological relationship between women and her foetus.

Surrogacy reinforces the Gender Stereotype: As per a leading feminist Debra Satz in her work why something's should not be for sale states that commercial surrogacy reinforces negative gender stereotype by viewing women as "baby machines". The landmark American case of *Johnson vs Calvert* represents this societal perception of women as "class of breeder." It signifies the notion that women are naturally fit for mothering, producing children used as mere wombs whose services may be hired for a defined period for a fixed sum of money.

Surrogacy imposes Patriarchy: Surrogacy represents a patriarchy in society as it seeks to promote the patriarchal line of ancestral lineage, inheritance and authority derived from the genetic or biological connection with the intending father. Gena Corea, in her work "The Mother Machine" opines that "surrogacy is part of a patriarchal conspiracy to control women's bodies and reproduction."

Dehumanizing and Commercializing

Mother hood: Surrogacy exploits a woman's body or reproductive labour as commodity or as any other labour offered for sale or hire in the market. "Such treatment of a woman's reproductive capabilities as an inanimate object available for payment of a fee is reflective of the dehumanizing treatment to woman and dehumanizing of the sacred role of women as an 'incubator available for payment of a fee'. The case of 'Baby M' of New Jersey could be cited as an example where 'Surrogate mothers are degraded to baby-making machines which requires that the surrogate mother deny all her feelings' of motherhood and makes her no more 'than a contract labourer with neither any emotion or any legal rights over the child.

Surrogacy causes polarization class divide in society: Commercial surrogacy reflects the notion of the race and class, inequality, power dynamics in terms of social economic positioning or status of parties involved in commercial surrogacy arrangements. At international level it appears that the south Asian women or women of color are easy to commodify, as they have a commonly shared social context of economic deprivation, illiteracy therefore they agree to act as gestational carrier and deliver babies for rich westerners, In the historical context, the African-American women or the slave women called as "Black Gestators served as surrogate mothers and wet nurse for the white master's children. At present in India poor Indian women agree to commercial surrogates for rich foreign intending couples visiting India.

Surrogacy implicates social stigma & Prostitution:

commercial surrogacy entails stigma on surrogate mothers, she is equated with a prostitute as she is making money by making use of her private body organ. Surrogate mothers are cast upon a stigma and denied social acceptance. Surrogacy is a form of slavery or prostitution in which the surrogate is exploited through the enticements of money. Surrogacy, like prostitution, is payment of a fee for the use of the body. Dworkin argues that surrogacy, like prostitution, allows society to equate women with sex and nothing more.

Negative Psychological consequences Identity crisis & Incest on Surrogate child: Surrogate children may face emotional or psychological difficulties and take to rejection of a life after learning about the birthing process, may be confused about his/her biological identity. Surrogacy might also lead to incest of a sort. As the surrogate child might marry another offspring of the surrogate mother.

Conclusion -

Surrogacy as a medical development is a novel technology which may help many infertile couple to

have children and form family however at the same time it has brought myriad changes in society through the restructuring and redefining of social institutions.

It is also observed that there is no standard definition of family. Family as an institution has undergone a change in its structure and function through the surrogacy arrangements. Families have changed and the law should also change and there is need to modernizing regulations, to accommodate the social reality to provide sufficient safeguard for the child and the family. Certain safeguards are required to be built in the society to control the commodification of women's body and exploitation and also check the oppression of poor women under the surrogacy arrangement. The feminist concerns of greater patriarchal control needs to be counterbalanced with family formation goals. There is need to build a greater societal acceptance towards this and also need for a law to control this social change towards desirable social functions and control the misuse of technology.

References:

1. ANDREA DWORKIN, *Right-wing Women*, A Perigee Book, G. P. Putnam's Sons, New York, 1982
2. Anita L. Allen, *The Socio-Economic Struggle for Equality THE BLACK SURROGATE MOTHER*, 8 *Harvard Black Letter Journal* Spring, J. 17, 1991.
3. *Assisted Reproductive Technologies (Regulation) Bill - 2010 (Draft)*, Ministry of Health & Family Welfare Govt. Of India, New Delhi & Indian Council of Medical Research New Delhi, available at <http://icmr.nic.in/guide/ART%20REGULATION%20Draft%20Bill1.pdf> (Last visited Feb. 15, 2014)
4. *Baby M*, 225 N.J. Super 267 (N.J. Super. Ch. 1988)
5. *Baby Manaji Yamanda*. Union of India, (2008) 13 S.C.C. 518.
6. Debra Satz's "Why Some Things Should Not Be for Sale: The Moral Limits of Markets", Oxford University Press, 2010.
7. Gena Corea, *The Mother Machine: Reproductive Technologies from Artificial Insemination to Artificial Wombs*, Harper collins 1st edition April 1, 1985
8. ICMR National Guidelines for Accreditation, Supervision & Regulation of ART Clinics in India, 2005, available at http://icmr.nic.in/art_clinics.htm (Last visited Feb. 15, 2014).
9. Indian Council of Medical Research. *The Assisted Reproductive Technology (Regulation) Bill-2008(Draft)* Ministry of Health and Family Welfare, Government of India, available at [http://icmr.nic.in/art/Draft%20ART%20\(Regulation\)%20Bill%20&%20Rules%20-%202008-1.PDF](http://icmr.nic.in/art/Draft%20ART%20(Regulation)%20Bill%20&%20Rules%20-%202008-1.PDF) (Last visited Feb. 15, 2014)
10. JEAN M. SERA, *SURROGACY AND PROSTITUTION: A COMPARATIVE ANALYSIS*, *JOURNAL OF GENDER & THE LAW* Vol. 5:315 Spring 1997, <http://www.wcl.american.edu/journal/genderlaw/05/sera.pdf>
11. *Johnson vs Calvert* (Cal. Super. Ct. Oct. 22, 1990)
12. Kathryn Venturatos Lorio, *Alternative Means of Reproduction: Tingin Terdtory for Legislation*, 44 *LA. L. REV.* 1641, 1657 n.85 (1984).
13. Lieber, Katherine B. (1992) "Selling the Womb: Can the Feminist Critique of Surrogacy Be Answered?," *Indiana Law Journal*: Vol. 68: Iss. 1, Article 7, available at: <http://www.repository.law.indiana.edu/ilj/vol68/iss1/7>.
14. Sayantani Das Gupta, Shamita Das Dasgupta, *Globalization and Transnational Surrogacy in India: Outsourcing Life*, Lexington Books, 2014

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