

# AN OVERVIEW OF PSYCHOSOCIAL ASPECT OF SURROGACY

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**Abstract:** Surrogacy is an arrangement whereby a woman agrees to carry the child on behalf of the intended parents. It is regarded as a controversial concept. It represents conflict between family, motherhood and role of gender. It is the most complicated of the new reproductive technologies as it adds dimension of genetic motherhood between biological and social parenthood. The arguments are often raised against causing harm to the human dignity and re-enforcement of gender hierarchy. It is further believed that it disintegrates the family system and parent child relationship. It is often believed that surrogacy is a cause for the commodification of the surrogate and the child born out of surrogacy arrangements. Further as in case of a surrogacy contract, the surrogate is asked to relinquish the custody of the child, it is having psychological implications both for the child and surrogate. However the researcher in the present article will emphasize the positive aspect of the surrogacy arrangements while analyzing all these psychosocial aspect of surrogacy. The paper will be an attempt to conclude that surrogacy is not having negative psychosocial aspect. The need is only to accept the arrangement by the society openly and not confidentially.

## IndexTerms – Surrogacy, Assisted Reproductive Technology, Surrogate

**1. INTRODUCTION:** Surrogacy is an arrangement whereby a woman agrees to carry the child on behalf of the intended parents. It is one of the new techniques that enable infertile couples to have children. It is defined as a process of conception, gestation and giving birth to the child through new reproductive technologies like artificial insemination, in vitro fertilization etc.<sup>1</sup> Surrogacy touches upon one of the most sensitive issue of values of the society.<sup>2</sup> It is a controversial concept as it complicates the matter as to the importance of values, traditions in comparison to buying love and affection by means of wealth.<sup>3</sup> It has the potential to cause economic exploitation, confusion and psychological harm to surrogate mother and the child.<sup>4</sup> It has resulted in to a number of abstractions.<sup>5</sup> This is the reason why the arrangement have been criticized by different thinkers especially the feminist.<sup>6</sup> However the researchers through present article is making an attempt to find out whether in reality surrogacy poses danger to the social wellbeing. In analyzing the same researchers have highlighted the psychosocial impact of surrogacy through different sub headings.

**1.1 Conflicting Motherhood Status:** The legal status of a mother is perhaps one of the most troublesome areas surrounding surrogacy.<sup>7</sup> In case of surrogacy arrangements, there is conflict of motherhood. It means that who is the legal mother or the real mother is a difficult question to answer. The arrangements confuse the status of mother especially where the surrogate is genetically or biologically related to the child or where partial surrogacy exists. This raises a question as to who should be treated as the natural mother and if in this case the surrogate is treated as a mother, then what would be the status of intended mother i.e. the mother for whom the baby is delivered by surrogate. If married or unmarried woman donate her ovum which is later fertilized and implanted in to other woman's uterus, the question would be whether the child belongs to the woman, who donated the ovum or woman who delivered it.<sup>8</sup> In case the egg is donated by the surrogate herself, she is genetically and gestationally related with the child to be delivered by way of surrogacy arrangements and in case the egg is given by the intended mother, then even though there is no genetic relation, yet gestationally she is related with the child. So it becomes very important to determine the maternity.<sup>9</sup>

Thus surrogacy depersonalizes reproduction and creates a separation of genetic, gestational and social parenthood.<sup>10</sup> In order to establish maternity both genetic and gestational bonding has to be looked in to. Both can not be over or under emphasized. An intent test can be considered as the basis for determining parentage. It is based on the proposition that as it is the intended parents who have intended the birth of the child and for that purpose entered in to surrogacy arrangements, so they must be treated as legal parents of the child.<sup>11</sup> There can be other way of solving this problem of maternity that the custody of child should be given to the fit mother who is mentally and emotionally stable to support the child.<sup>12</sup> If both the mothers are fit enough, then the method of social parenthood i.e. the mother who first intended to bring the child in to world must be followed.

**1.2 Harm to Human Dignity and Reinforcement of Gender Hierarchy:** It is argued that surrogacy reinforces the gender hierarchy. It reproduces the stereotype of patriarchal society that used to exercise control over the bodies of woman and reproductive capacities.<sup>13</sup> It is also presumed as against human dignity as the surrogate is used as a means for the end of the intended parents.<sup>14</sup> The Feminist are also of the opinion that from the ancient history men are controlling the bodies of women and through surrogacy there is again a fear that they will establish their control over the bodies of women.<sup>15</sup> Specifically it is more relevant in context of Indian surrogate who often spoke of these arrangements not individually but collectively as a team work to improve the financial situations of their family.<sup>16</sup>

However serving as a surrogate is another reproductive choice. It also fulfills biological and emotional need of couple who are in desperate need of the child.<sup>17</sup> The argument that surrogate is reduced to subordinate position of a slave has ignored the aspect of other woman involved in the surrogacy arrangement who has allowed her husband to carry with the arrangement further.<sup>18</sup> It represents her contractual freedom. It is a well known fact that that all the women have freedom to contract, so they must be allowed to enter in to surrogacy contract also.<sup>19</sup> As long as the surrogacy contract is entered in to voluntarily, it can not be treated as violation of surrogate's autonomy and dignity. On the other hand if she will be prevented from entering in to the contract, then it will be against her autonomy and personhood.<sup>20</sup>

**1.3 Disintegrating Family System:** Surrogacy raises serious questions regarding the nature of the family unit and nature of particular relationships with in the family unit.<sup>21</sup> Surrogacy agreements according to religious and social conservations lead to threat to traditional family and in particular the role of women as wives and mothers.<sup>22</sup> It is believed that these arrangements are a kind of threat to the traditional family norms as it introduces a third party in to the family which is unconventional.<sup>23</sup> Further the picture of mother handling over the child and getting paid for does not fit easily with current values or conventional notions of family.<sup>24</sup> It is also not according to current values of society.<sup>25</sup> It is further argued that surrogacy should be prohibited as it poses a danger to sanctity of marriage and integrity of family.<sup>26</sup> Traditionally it is believed that procreation must be within the family i.e. between the couple and third party or person must not interfere as it would change the nature of the family.<sup>27</sup>

However these arguments fail to see the breaking up family ties because of the infertility of the woman. It can be up to the extent of ending relationship with the intended woman in case she is unable to bear the child especially in the society like India.<sup>28</sup> In these societies children are always considered as desirable and necessary. In fact childlessness is treated as greatest threat to marriage relationship.<sup>29</sup>

**1.4 Destruction of Parent Child Relationship:** The long-term effects of surrogacy contracts are not known, but feared by the opponents of surrogacy. They are of the opinion that it will have adverse impact on the child who learns that her life was bought, that she is the offspring of someone who gave birth to her only to obtain money. It also have adverse impact on the natural mother who served as surrogate as she has to bear the burden of isolation along with the sale of her body, once the child is relinquished for the sake of money. It also has impact on the natural father and adoptive mother once they realize the consequences of their conduct.<sup>30</sup> This could result in moral degradation of child on attaining majority. Issues are always raised regarding the suitability of the intended parties.

However the parents will be more careful towards surrogate in order that there is no harm to the child. Moreover in case the parents are not the intended parents, there is no absolute guarantee that they will give same care and protection to the child of their own as is expected from the infertile couple.<sup>31</sup> Further the empirical evidence suggests that children born through other assisted reproductive technologies are functioning well in spite of their conception through donated gametes.<sup>32</sup> Mere existence of the genetic link with the child will not ensure the emotional bond or will not ensure that the child will not be subject to sale by the natural parents.

**1.5 Exploitation of Women:** Exploitation could be described as a situation where a person is under coercive pressure to make a certain decision. In case of surrogacy it is argued that whether it is commercial surrogacy or altruistic surrogacy arrangements it results in exploitation of the surrogate.<sup>33</sup> Surrogacy is exploitative in three ways, Firstly, it uses the people as a means to an end, secondly it treats the reproductive labour as any other right, and thirdly it violates the respect of women.<sup>34</sup> The exploitation is more in the poverty stricken and traditional societies.<sup>35</sup> In this case the family members can coerce the women to act as surrogate for getting money.<sup>36</sup> The surrogate mother is paid by the couple who want the child, and it is possible that the mother may not be adequately paid by intended parents.<sup>37</sup> Thus this arrangement can result in exploitation of the needy women.<sup>38</sup> In India many surrogate clinics have dormitory like group homes where number of surrogates are kept together. They are not allowed to go outside except for the day of appointment with doctors or meeting or visiting family members. They are reported as missing their children. In most of the cases the money received by the surrogate is four or five times more than their annual household income.<sup>39</sup>

However it is not so. If the agreement undertaken between the parties is of the altruistic nature, then the surrogate is not exploited rather she does an act of kindness and charity by giving birth to a child for a couple who were having no chance to get a biological child. Moreover if the transaction is undertaken on commercial basis i.e. money is exchanged between the parties, then also it does not lead to exploitation of the surrogate as she is paid for the services she renders for bringing up a child to the living world. Surrogacy arrangement in any way is not exploiting the poor woman. Rather it is giving an opportunity to the woman to get employed for better living standards.<sup>40</sup> It can not be termed as coercive as the proposal to make some one better off does not restrict or reduce the freedom, rather it increases the options.<sup>41</sup> Further this situation can be overcome if short waiting period is given to the surrogate for deciding to relinquish or not, the custody of child without infliction of penalty.<sup>42</sup>

**1.6 Commodification of Women:** Another issue regarding surrogacy is that it leads to commodification of women.<sup>43</sup> Commodification is ethical and cultural concept rather than a legal concept. In particular, many feminist scholars argue that women who serve as surrogates and rent their womb for giving birth to a child in fact commoditize their reproductive capacity.<sup>44</sup> It permits the surrogate mother to exchange an inalienable right i.e. her *quasi*-parental right for money.<sup>45</sup> It is further argued that in case of surrogacy arrangements, reimbursement is for the relinquishment of the child which is another form of commodification.<sup>46</sup>

However if these arrangements are banned, it will cause more harm to parties as interest of no party will be protected.<sup>47</sup> Giving birth to the child is the most valuable service which must be compensated.<sup>48</sup> Surrogacy is a unique service as it permits surrogate to get honoured for her work.<sup>49</sup> As far as the commodification argument is concerned, it can not be acquainted with it as there is no compulsion either on the couple or on the woman to enter in to the contract. In case of surrogacy arrangements no one wants to commodify the child so that she is treated as a good which can be sold and consumed in the ordinary course of business.<sup>50</sup>

**1.7 Harmful to Children and Leads to Commodification and Baby Selling:** The widespread availability of reproductive technologies have created a sense in our society that child can be produced and therefore commodities rather than a gift of God. In the past, the children were generally conceived by loving and intimate act starting from the conception itself. However with the result of technology, the child is easily viewed as a product which can be manufactured by parents by adopting expensive technological techniques.<sup>51</sup> These viewpoints are also applicable in case of surrogacy. It is often argued that the child is literally exchanged between complete strangers for the purpose of satisfying needs of the adults. The relation between the surrogate and the child is thus commercial rather than emotional.<sup>52</sup> Most complicated situation in case of arrangement arises when the intended parents refuse to take the custody of the child specially when the child is born with deformity, then both the parties can try to excuse themselves from liability and child will then be treated as unwanted commodity.<sup>53</sup> As the intended parents on the one hand have given value, so they might want a perfect child. On the other hand, surrogate is gestating child only to hand it over to the couple and has no intention to keep the child.<sup>54</sup> Moreover there can be tendency of causing harm to the child by the surrogate in case she has to keep the child as she thinks the child not of her own but of the commissioning parents.<sup>55</sup>

Even enough arguments are available that surrogacy leads to commodification of child, it is not so. Surrogacy does not commodify the children as they are not properties which can be a subject matter of sale and purchase. It can not be asserted that children who are born out of surrogacy arrangements are not humans as compared to the children born through traditional arrangements.<sup>56</sup> The contract of surrogacy can not be acquainted with the baby selling as all the parties have deep concern about the well being and health of child. Both the parties have mutual interest. The interest of parents is in getting healthy child, so they also take care of the surrogate with the establishment of relations with her.<sup>57</sup> Surrogacy agreement can not be acquainted with the commodification as in case of gestational surrogacy agreement, the embryo belongs to the parents so it can not be treated as baby selling as the surrogate can not sell that thing over which she has no right. The surrogate is just selling her gestational services as is undertaken by woman in other services like in case of wet nurses, athletes, models etc.<sup>58</sup> The surrogacy agreement can not be acquainted with baby selling as the arrangement is entered in to before the conception of he child. The gestator is not avoiding an unwanted pregnancy or there is no fear of rearing of the child. After the child is born, he will be put up in the custody of the intended parents that will be in the best interest of child. Thus in any way it can not be treated as any form of baby selling.<sup>59</sup> The child is unique and thus it is inappropriate to describe the relationship of parent to the child as commodification.<sup>60</sup> It can not be acquainted with the child selling as the intended parents are going to rear up the child and for that purpose they will be making personal sacrifices.<sup>61</sup>

**1.8 Psychological Impact on Surrogate:** It is argued that there are negative psychological effects of serving as a surrogate.<sup>62</sup> Psychological trauma is applicable to both kinds of surrogacy whether it is commercial or altruistic. In case of altruistic surrogacy the woman can be coerced to assist the infertile relative.<sup>63</sup> Surrogate mothers are presumed to be at greater risk for psychological problems after the relinquishment of the child.<sup>64</sup> During the implantation of embryos through the technologies like IVF, there is a possibility of transferring more than one embryo at one time which is risky for women. It is generally seen that when more than one fertilized ova has been transferred and all surviving, then doctors have to abort the excessive.<sup>65</sup> This process of IVF treatment is reported as extremely stressful.<sup>66</sup> Responses to IVF treatment and its failure are also linked to psychological vulnerability of women.<sup>67</sup> Further if the treatment is successful and surrogate carries the fetus to term, then also it has psychological impact on the surrogate at the time of relinquishment of the child.

However, there are enough studies which found that there is no psychological impact on the surrogate even after giving of custody of child to the intended parents. According to a report, fewer than 1% of surrogate change their mind and the same is the percentage of women regretting child bearing or undertaking surrogacy arrangements. According to American Medical Association, the risk of psychological detriment to surrogate is small and it is outweighed in case there is lack of genetic tie to the fetus and where there is mutually beneficial arrangement.<sup>68</sup> According to the association in order to reduce the psychological risk in traditional surrogacy arrangements, the surrogate mother should be given the opportunity to avoid the contract.<sup>69</sup> The purpose of the contract is not to destroy the mother's rights but to induce a woman to become mother.<sup>70</sup> The relationship between surrogate and child is not having any psychological impact over the surrogate as she knows from the very beginning that she has to give the custody of child to the intended couple.<sup>71</sup> A study was also conducted by the Family and Child Psychology Research Centre at City University, London, UK in 2002 and it concluded that surrogate mothers rarely had difficulty relinquishing rights to a surrogate child and that the intended mothers showed greater warmth to the child than mothers conceiving naturally. Moreover if there is some possibility of psychological impact, there are ways of avoiding it. Only that woman who has previously delivered a child can be allowed to carry the child. Further the counseling process can be followed at regular intervals in order to remove the distress of the surrogate. The exclusive counseling shows that she will not form any bond with the child.<sup>72</sup> Many surrogates intentionally try to foster the development of emotional attachment between the intended mother and the surrogate child. Thus it is clear that surrogacy arrangements have no psychological impact on the surrogate.

**1.9 Psychological Harm to the Child:** It is also believed that these technologies harm children psychologically as well as affect the social welfare of children. These children are treated as manufacturing products which will further enhance the chances of social stigma. A common fear about this arrangement is that the resultant child will be at risk if the custody is given to the parents who have entered in to the surrogacy arrangements. However the children who are conceived through normal means run a far greater

risk as compared to children born of surrogacy. For e.g. risk to the child is more when their parents divorced or there is birth of an illegitimate child.<sup>73</sup> These arguments are refuted by a controlled study in which no distinction was found with family relationship of natural born child and child conceived through assisted conception.<sup>74</sup> Fears that babies born to surrogate mothers may suffer psychological harm are unfounded, according to the first study into the long-term effects of donor children. Researchers found that parents show more warmth to surrogate children and are more emotionally involved than the parents of traditionally conceived babies. The study also revealed that surrogate babies show no difference in temperament and behaviour compared to non-surrogate babies and virtually all surrogate mothers have no problems handing over babies.<sup>75</sup> There is another study which examined the impact of surrogacy on mother child relationship and child psychological adjustment.<sup>76</sup> The study found that there is no difference on basis of child adjustment, maternity positivism or negativity. It further suggests that warmth communication and conflict are better predictors of child's adjustment than is family structure.<sup>77</sup> Thus the study concludes that there is no negative development on the child in families.<sup>78</sup>

**Conclusion:** After analyzing all the possible psychosocial impact of surrogacy, it can be safely concluded that surrogacy arrangements have no negative impact on the parties involved in the contract specifically the surrogate and the child. It is on the other hand is mutually advantageous arrangement between the surrogate and the intended parents. It gives an opportunity to the surrogate to get benefited financially and on the other hand it gives life long pleasure to the intended parents in the form of resultant child. In order that the arrangement is successfully completed, it is required that the emphasis must be on mandatory counseling and overall regulation of surrogacy by the governmental authorities. There is also a need to accept the surrogacy arrangement by the society. If the society will not accept the same whole heartedly, law even if made will have no impact. This is due to the reason that if it will not be accepted by the society, it will remain underground. Thus there is further a need to accept the surrogacy arrangement transparently not confidentially.

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