

# LEGAL AND ETHICAL ASPECTS BEYOND COMMERCIAL SURROGACY: MODERN FORM OF HUMAN TRAFFICKING

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## ABSTRACT

*The current revolution in technology and science has brought a top-notch exchange in the existence of human beings. The biotechnology studies have assisted the humanity to detect sex determination strategies and exceptional medical developments like DNA, fingerprint, and many others to aid the management of justice. On the other hands, it has additionally added large demanding situations and problems which have been otherwise remarkable. The problem of "ARTs" has affected human existence in various methods. The definition of motherhood is seriously affected and modified into genetic and surrogate mother. Surrogacy is in no manner or social progress as some stated. On the contrary, it is a modern semblance of human trafficking of women and children, which turns children into a commercial commodity. And open the door for exploitation and abuse. This study aims to review and discuss the ethical and legal issues in surrogacy and the current state of surrogacy laws. Finally, it is connection with human trafficking.*

**Keywords:** New Technologies, Ethics, Legislations, Motherhood, Child Selling, Human Trafficking, Bioethics, Science, Commercial Surrogacy.

## INTRODUCTION

Marriage is a transaction and resulting contract in which a woman and a man are recognized by society as having a continuing claim to the right of sexual access to one another and in which the woman involved is eligible to bear children (Haviland, 1996). It can also be defined as a social order through which a married couple desires to beget a child legally. (Wimalasena, 2016) However, but for an infertile couple, this choice continues un-accomplished. Over centuries, this willingness of getting an infant via an infertile couple grows to be being happy with the resource of adopting a child (Taub, 1990; Supriya et al., 2016).

Lately, the fertility treatment turns out to be especially by using the medication to accurate hormonal reduction, or through the surgical procedure to accurate anatomical deficiency (Marcia and Pasquale, 2015; Teoh, 1987). Those treatments had been typically non dialectical from a moral or religious perspective. However, the present-day coming of Assisted Reproductive Technology ("ARTs") modified spectacularly. These technologies shift the method of procreation from a private relationship among husband and spouse, into a synthetic way in a laboratory, and often, comprise a third or fourth parties within the method. These changes within the procreative technique assignment fundamental spiritual and moral concepts (Hossam, 1993).

Development of medical technology which enables the reproduction has resulted in lots of methods to achieve the demand impact. Modern reproductive techniques, like surrogate motherhood can bring about separating the two fundamental roles of a mother-the creator of egg cells to be fertilized, and the function of a female, who bear the pregnancy.

Surrogacy had more and more come to be a problem in the national and international public debate within the ultimate 20 years (Chintamani, 2012; Simmons, 1983). Problems include the increase of in fecundity in contemporaneous society, coupled with low variety of children to be had for adoption process, the growth of the surrogacy settlement and commercial surrogacy organization and the advent of present-day applied sciences together with *in vitro* Fertilization (IVF) Have led to creating exposure and public concern within the formulation of such agreements amongst sterile couples (Andrea, 2005; Anita, 1995)

Beyond the last few years the commodification of the human body has been drawn into acute attention. Along with organs human trafficking and sexual servitude that have won worldwide perception. Regrettably, another shape of human trafficking has appeared on the equal level of interest and outrage of the worldwide, commercial surrogacy. The ethical dilemmas which can be inherent to commercial surrogate are often the motive for many legislators that regulate this challenge. When the child becomes the mere item of a convention; at the same time as the surrogate mother is used as an incubator. Right here the predicament arises due to the collision of the rights which are being determined with the aid of commercial surrogacy. There is a desire to maintain private autonomy and the right to an unfastened-choice on the one hand, and the moral obligation in the direction of the child this is being born in this way and all of the parental duties, which is draw the borders of the public policy of surrogacy (Dan, 2007).

From this Surrogacy can be defined as a woman who carried an infant, after a successful herbal or artificial insemination, or after an in vitro fertilization through the implementation of an embryo, (cook et al., 2003) for an infertile couple, based totally on a pre-pregnancy settlement, with the goal of handing the child to the commissioning couple who acquire parental rights and duties.

According to this definition, Surrogacy can be divided into two divisions:

- (1) Gestational: In this category, the surrogacy carried the baby from the egg and sperm of the genetic parents, which after fertilization is inserted into the womb of the surrogate mother. She relinquishes all parental rights as the gestational mother upon delivery. The foetus could be genetically linked to one, both or neither doomed parents if donor DNA was utilized (Council for Reproductive Genetics & Gugucheva, 2010).
- (2) Conventional: In this category, the eggs belong to the Surrogate and by means of synthetic insemination, fertilization befall. Similarly, she can bring the foetus until delivery of the child.

Finally, family courtroom of Australia gives a beneficial legal definition of the practice as follow:

*“An arrangement wherein a woman (‘the surrogate mother’) concurs to conceive and bear a child, which she intends to transfer to another or others (the ‘commissioning couple’ or ‘commissioning husband’ and ‘commissioning couple’) upon the child’s birth.”* (Lowe et al., 2011).

## METHODOLOGY

The methodology Adopted is analytical and purely doctrinal. Law relating to adoption with special reference to their epistemological and axiological aspects, however, in order to deal with bioethical issues, not only do legal aspects have to be considered but the whole concept of humankind vis-à-vis a knowledge-based approach. Theories of value have in addition to being developed. As such, before legal rules can be established, bioethical issues must be examined, and discussion on the basic concept of the human in relation to the development of knowledge initiated. The relationship between Surrogacy and human trafficking has been analysed to form conclusion and recommendations.

## RESULTS AND DISCUSSION

Surrogacy is an exceptionally current issue and at first glance, it may seem to involve only a very small percent of society, that's why a common response to this practice is that of indifference or relativism. Surrogacy is frequently understood because the personal decision of an individual, who's independent and free to select and decide over his or her body and lifestyles, which has no impact on society and in which regulation has to not intrude.

Perspectives are listed that surrogate motherhood is actually a child buy which devalues human lifestyles (Trowse, 2011; Davies, 1985). There are a number of objections to surrogacy from a moral perspective. One of these objections is its consequences in the commodification of motherhood. Surrogacy makes the cost of motherhood reduced to a charge. In the end, the child emerges as a commodity and the method of procreation becomes a commercial enterprise (Sunčana et al., 2012). On top of that, the relation among the surrogate mother and her biological child remains uncertain and in addition to her role within the child's destiny existence. Some scholars argue that the traditional own family concept is being lost (marriage is violated, i.e. the relationship between the surrogate mother and her partner, however also the commissioning couple, specifically inside the case of the traditional surrogate motherhood, wherein the child genetically belongs to surrogate mother and commissioning father and has no biological connection with the lawful wife). It is approximately uncontested that a child lives better when he rises in a home with married, biological parents. There are also views that it is ethically and naturally unacceptable for a woman to offer birth to a child in order to surrender it to other people. These questions, amongst others, demand answers not only from ethicists, but the society in general (Donum, 1987; Kešina, 1996).

Beside the ethical issues, there are also many legal issues related to surrogacy (Schreiber, 2002). The principle problem is deciding who the mother and father are, and who's legally accountable for the rearing of the resulting child. The severity of the problem will increase while a dispute arises most of the parties concerning the surrogate agreement, whether or not it's far before or after the delivery. Many examples of this type of problem have come to be to the general public. (Robert & Jean, 2006; Bernardes, 1993) countries are divided on whether

surrogate contracts are legal, and consequently, enforceable. There may be also a query as to whether or not adoption laws can be enforced in those surrogacy cases.

Additionally, Surrogacy organization practices can resemble those utilized by human or sex traffickers. Agents seeking out capability surrogate mothers prey on unsophisticated and frequently illiterate rural women, who are compelled to transport to principal cities far from their own family. One surrogate mother recalled her recruitment process inside the following terms:

*"Madam instructed me I have to turn out to be a surrogate and if I do, all my worries will go away."*

This woman turned into additionally advised to:

*"Consider the pregnancy as someone's baby involves live at your place for nine months. (Dolnick, 2007; Johnson and Cao, 2014)*

Surrogacy compromises the dignity of the child by making the child the object of a settlement a commodity. It in addition compromises the dignity of the surrogate mother, even though her participation is voluntary, through simply treating her as a *"womb for rent"* (Mark, 2013). The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Article 3, paragraph (a) defines Trafficking in Persons as:

*"The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". This is implemented in that case.*

Also, Article 21 of the additional Protocol to the convention for the protection of Human Rights and Dignity of the human being with reference to the application of Biology and medicine defines that the human body and its parts can't be a source for acquiring financial gain. Accordingly, our view is that carrying and giving birth to a child for another man or woman, solely for the cause of financial benefit, is immoral, illegal under the article 21 and insults the essential values of democratic society, such as the value of protecting women from exploitation and the protection of a child that became born on this way. Practicing the right to autonomy of an unmarried man or woman must not be harmful to others, or harmful to the society as a whole. Placing women and children available on the market dehumanises individuals and opens the way for commercialization of human rights (Capron & Radin, 1987).

According to the previous discussion and the human trafficking protocol it is prove that surrogacy is a breeding ground for exploitation, abuse and human trafficking, also there are a several examples and cases which prove that we can't find it in the developing countries but also

in the developed countries as well. Accordingly, inside the United States, a network of lawyers turned into dismantled who had created an inventory of unborn child to be sold at the charge of \$100,000 using surrogates (Kristen, 2018). Also in Asia, Babe 101 implied the disassembling of an unlawful surrogacy ring and the freedom of various young ladies taken under the "*guarantee*" of a top notch work, for use as gestational mothers thought implantation or rape. In June 2012, Nigerian police freed 32 pregnant young ladies elderly in the vicinity of 15 and 17 from confinement. Several of them proclaimed that they were provided 192 dollars for his or her new born children, the last cost to be settled in advance with the kid's sex. The children were then sold for a sum extending among 2,000 and 6,000 dollars.

From that we can conclude that there is no clear public policy the legislators can follow. Actually the countries take 3 different tracks or ways concerning surrogacy. In the primary group, some countries (i.e., Austria, Germany, Italy, Finland, Hungary, Iceland, Pakistan), surrogacy is illegal, and severe sanctions are implemented for medical doctors who arrange a surrogacy for their patients or for mediators who assist an infertile couple discover a surrogate. In Germany, All surrogacy arrangements (both commercial and altruistic) are forbidden, The German courts read the German charter and the German Civil Code to ban all sorts of surrogacy as towards public coverage despite the fact that the German legislature has no longer expressly banned surrogacy (Michael & Colin, 2011). In the second group surrogacy is legal and permitted by the local legislation (i.e. Russia, Greece and India) Within the third group, there's no clear laws governing commercial surrogacy, not allowed no longer prohibited, as an example the Middle East and Islamic countries besides Iran, Ireland (Gostin, 1990).

According to the various directions of the countries towards the issue of surrogacy it can be concluded that most of the victims of the rental of women's wombs belong either to countries whose domestic laws permit this as in India (Pyali, 2014). Where India is one of the largest market in surrogacy. Or that these countries have not been exposed as near or far to this issue as in developing countries where there is no clear law criminalizes the surrogacy and does not support the woman against exploitation. From that we can draw the public policy that should followed by the legislators, by consider all the different shapes of surrogacy as human trafficking by measuring international conventions regarding human trafficking, maintaining its dignity and not dealing with the human body commercially as mentions in the human rights protocols.

Surrogacy should be prohibited underneath standards Reflecting Human Rights and the inherent Dignity of every Human Being. Even as the Council of Europe has not yet written a treaty to cope with in particular the difficulty of surrogacy, tenets of legislations from different comparable treaties provide a framework from which a consistent function on surrogacy can be synthesized. Human dignity is on the very essence of human rights protection: it's the base the muse of freedom, justice and peace within the international level, according to the Universal Declaration of Human Rights. During the treaties in oblige in Europe, there's a public policy in favour of protective human dignity, prohibiting human trafficking, in particular in women and children, making sure the best interest of the child, and towards interfering with the natural method of conception and birth (Karen et al., 2012). This is evinced by using the prohibition in opposition to choosing the sex of a child created thru in vitro fertilization and the prohibition on

cloning humans due to the fact such motion is opposite to human dignity. Retaining in line with those set up regulations, the Council for Europe should undertake a policy banning surrogacy due to the fact the contractual technique is wrought with ability exploitation and due to the fact surrogacy reduces the surrogate mother and infant to commodities of a contract in violation in their human dignity.

## CONCLUSION

The most effective solution can be provided at the global level is the prevention of commercial surrogacy, on an equal basis of the sale of children, also there is a need to adopt penalties on every one participate in this practice on the local and international level, especially intermediaries. Many countries have already taken procedure to prohibited surrogacy. To preserve uniformity with the principles in international and European law, particularly the Convention on the Rights of the Child and its second protocol, and the decisions of the European Court of Human Rights, we recommend the legislators all over the world who's didn't have specific laws for surrogacy to follow the same track of other European countries by prohibiting surrogacy.

As well, on the local stage, the rejection to permit the registration of the child born from surrogacy will terminate this issue since it would work effectively as an obstacle and would radically terminate the surrogacy business and exploitation against women and children. Finally, giving new hope to infertility couples to achieve parenthood by facilitating the adoption. Whereas, many couples give up quickly, due to legal formalities and a lengthy period of time it takes to adopt a child. So there is a need to improve this process and adopt new procedure make this way effortless to encourage couples to pursue.

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