



PSYCHOLOGICAL CONVULSIONS OF RENTED WOMB

Dr. Manpreet Kaur Rajpal

Head and Associate Professor,

Indore Institute of Law, Indore, Madhya Pradesh

ABSTRACT

The desire to procreate is a very fundamental attribute of the Human race. Sadly though, many are denied the joy of Parenthood due to several reasons, biological or otherwise. With the developments in Reproductive Sciences and Technologies the barriers to Parenthood are no longer as formidable as they once were. The New Reproductive Techniques have opened many ways to cater a child of their own. Out of many, Surrogacy is one in vogue from the last decade.

Surrogacy is a rented womb wherein a Surrogate mother conceives for the intended parents and after the delivery handover the child in lieu of monetary remuneration or in rare cases due to love and affection. Undoubtedly, Surrogacy is a boon for the infertile and desirous couples but at the same time there are many demerits of the same.

The researcher has tried in the paper to throw light on various darker side of the Surrogacy but in particular my primary emphasis is on the Psychological toll which becomes a regular part of everyone involved in Surrogacy ie Surrogate Mother, Surrogate Child and the intended parents.

KEYWORDS: Surrogacy, Intended parents, Assisted Reproductive Techniques, Ivf, Artificial insemination

INTRODUCTON

The overwhelming desire to have a Child is the product of a deep-seated, instinctive and evolutionary urge to perpetuate the species and pass on the genetic material to another. It is this archetypal desire, embedded in our collective unconscious, which often spurs Human Beings to have children at any cost, come what may. "It is this irrepressible drive that propels man to go to any extent to propagate his genes," says **Nirja Chawla, a Gynecologist**, adding, "*Motherhood is important for completion of self.*"¹ To this biological drive add the socially conditioned expectations of the role and function of a woman and you know this is the reason why so many people flock to



fertility clinics in the region. And it is a blatant exploitation of this desire to have Children that makes millionaires out of Gynecologists in the business who laughs all the way to the bank.

Medicine has made some remarkable advances in the field of Reproductive Technology. The term Reproductive Technology refers to various medical procedures that are designed to alleviate infertility, or the inability of a couple to produce a child of their own. These include Artificial insemination, In-Vitro Fertilization or “Test-tube” Babies, and Surrogate Motherhood. When successful, these technologies are the miracle of life for couples who have often spent years trying to have a child, and who have exhausted all other avenues for conceiving a child of their own.

SURROGACY: Basic Instinct

Surrogacy is a hope of ray to millions of Childless Couples. The New Reproductive Technologies give great hope to such infertile couples and make many new reproductive arrangements possible. Out of them one is Surrogacy. And it is seen; couples worldwide are increasingly seeing Surrogacy as a viable option to bear genetically related children. Over the years, Surrogacy has evolved as a much preferred mode of bringing a child into this world. India, in particular has seen a rise in the recourse to Surrogacy as an ideal technique for Childless couples to enjoy the pleasures of Parenthood. With adoption becoming legally more difficult, and greater awareness of Surrogacy as an option, many couples and even individuals that cannot otherwise bear children are increasingly turning to Surrogacy as a possibility to fulfill their Parenthood dreams.

Surrogacy is first and foremost about sacrifice, both for the Surrogate Mother and the Intended Mother. These two women sacrifice physically and emotionally for a common goal; to bring Surrogate babies into the world. Surrogacy is not something that is right for everyone, be they potential Surrogate Mothers or Intended Parents. For many, the emotions involved in this process are simply too overwhelming. Simply recognizing this fact goes a long way. Infertility and Surrogate Motherhood is not easy. It is a rough and extremely time consuming road to follow, but the rewards are wonderful. At the end of the road is a beautiful child, or twin surrogate babies, that many people have helped into the world. Undoubtedly Surrogacy is a boon to the have not's but at the same time it is a curse for many. The medical procedures used in surrogacy are too invasive in nature and along with it there is inevitable psychological turmoil involved in this process.



Demerits of Surrogacy

The introduction of Contraceptive Technologies has resulted in the separation of sex and procreation. The introduction of New Reproductive Technology mainly Surrogacy via IVF & Embryo Transfer has led not only to the separation of procreation and sex, but also to the redefinition of the terms mother and family. Surrogacy distinguishes between:

- **The Genetic Mother - the donor of the egg;**
- **The Gestational Mother - she who bears and gives birth to the baby;**
- **The Social Mother - the woman who raises the child.**

Surrogacy has also divided feminists. Since the mid-1980s, with the case of 'Baby M', liberal feminists took a positive stance, stressing the right of women to determine their reproductive rights and be perfectly capable of entering legal contracts as they please, whereas socialist and radical feminists were against Surrogacy using the commodification argument. What made feminists uncomfortable with the whole debate is that on the one hand some of the arguments against Surrogacy are overlapping with conservative approaches to the 'unique experience of Motherhood' e.g. of Catholics and pro-life activists, while on the other the arguments in favor seemed to be endorsing market arrangements.²

Surrogate Motherhood; one of the latest Reproductive Technologies, has raised complex ethical and legal Issues, and lawsuits over custody after the Child's birth have resulted from both types of Surrogacy.

In the highly publicized **Baby M case (1986-88)**, Mary Beth Whitehead, the Surrogate and Biological Mother, sued William and Elizabeth Stern, the Baby's Father and his Wife, for custody of the child. Although, the Surrogate Mother was not awarded custody in the Baby M case, she was granted visitation rights. Several European countries and a number of states have passed laws banning paid Surrogacy.

These New Reproductive Technologies raise complicated issues, not only for the law, but also for morality. What is society to say to these technologies that, in many cases, redefine the family and



turn traditional notions of reproduction upside down? In addition, since many of these issues are not directly addressed in Scripture, in what way does the Bible speak to these issues? So here are some ethical, legal and social concerns with Surrogacy.

- ❖ First, there is the issue of the children born as a result of Surrogacy. The child will, in effect, have two Mothers for sure and at times it could be three even as described earlier. One who carries the child in the womb for nine months, only to give him/her away with no further rights or responsibilities and the other who claims to be the true Mother but may not even be biologically related to the child. The concern of course is that the child's origins will therefore be confused and he/she may be unsure of where he/she truly belongs.
- ❖ There is, secondly, the issue of the women involved in Surrogacy arrangements. The situation is most complicated where the child genetically belongs to the Surrogate Mother. Having given birth, the woman may be unwilling to hand over 'her' baby. Furthermost, the unrelated, nurturing Mother may discover feelings of resentment or alienation from so-called Partial Surrogacy, once a child is 'handed over' the Right of one parent, the natural father to associate with his child is enforced at the expense of the Right of the other, the Surrogate, who is no longer involved with her child.
- ❖ Surrogacy involves the carrying mother's emotional detachment from the child in utero. This detachment is something that would be strongly discouraged in a 'Traditional Pregnancy' but it is strongly encouraged in Surrogacy. Thus, *Surrogacy turns a 'VICE' into a 'VIRTUE'*, as the woman is encouraged to dissociate and distance herself from the child she is carrying.
- ❖ There has been no detailed, long-term research on the impact of the hand-over of the baby, and on the degrees of regret and psychological implications for either Surrogate Mother or child, which are likely to be significant and borne by both for their whole life. This is an area where more research needs to be undertaken.
- ❖ There are also issues around some of the potential problems that can arise from individual Surrogacy arrangements; such as if the baby is handicapped, miscarried, aborted, or stillborn. For example, which of the 'parents' involved will take responsibility for the Child if it is



handicapped? And how will payments be made if a Child is stillborn or is miscarried partway through the pregnancy?

Thus, Surrogate Pregnancy and Surrogate Motherhood are a topic of great debate worldwide. Thousands of people support Surrogacy and consider it as a boon to the hopeless. But, at the same time many groups of people would like to see an end to the practice of Commercial Surrogacy and cite ethical, social, economical, etc. issues as the cause.

Emotional /Psychological issues

Surrogacy is fraught with unknown psychological stresses to all the parties involved Commissioning Parents, Surrogate and Child. Detractors of Surrogacy argue that it involves dehumanization of women's reproductive labor.³ It expects that a woman should be pregnant without being conscious about pregnancy. In other words, she is likened to a '**Human Incubator**' for someone else's child. It is believed to destruct the relationship between expecting mother and her pregnancy. Surrogacy has been accused of failing to perceive the subtle and poorly understood bond between mother and unborn baby. Similarly the Intended Parents and child even undergo an emotional upheaval in Surrogacy which is further discussed in detail under the following sub-headings:

- **Psychological Toll: Surrogates**
- **Psychological Toll: Intended Parents**
- **Psychological Toll: Surrogate Child**

Now let's throw light on the Psychological toll of all the three parties involved in Surrogacy individually.

Psychological Toll: Surrogates

The Commercialization of Pregnancy is deemed unnatural. There is apprehension that Surrogacy may be inappropriately used as a convenience for nonmedical reasons.⁴ Surrogacy carries



with it the risks of pregnancy from mild to severe. The Surrogate Mother shares a special bond with the unborn baby⁵ and at times giving away the baby may prove devastating to her mental health.

It is possible that the Surrogate will experience grief and psychological problems when it comes time to hand over the child she has carried and delivered. Because society tends to take a dim view of women giving up babies, Surrogates sometimes meet with disapproval from neighbors and acquaintances. The emotional upheaval of pregnancy, delivery and separation from the baby can result in postpartum depression. The *Cases of Baby M⁶ and Evelyn⁷* highlights that at times the Surrogate Mother may be reluctant to relinquish the baby. Such a situation is not only distressful to her but also to Intending Parents who have been desperately waiting for the baby's arrival. This could potentially put the "Parents" in a difficult situation. Legal issues can rise which further complicates the Surrogacy route.

Surrogate Mothers run the risk of emotional problems due to handing over the baby after it is born. A risk that can occur to the Surrogate Mother is becoming attached to the child she is carrying. Even though Surrogacy is a contractual agreement in which she know she will be giving up the baby, carrying a baby for nine months and giving birth to it can cause her to become attached. The embryo does not belongs to her so there will not be any association with the baby is an argument. But the answer to it is very simple that you won't have anything genetically common with your spouse don't you have attachment with him or her. Furthermore the Surrogate may have to seek psychological counseling or treatment for postpartum depression or depression from giving up the baby upon delivery.

Foster states that many Surrogate Mothers face emotional problems after having to relinquish the child. She recalls a women who said that she started praying not to go in labor so that she and her child could stay together.⁸ However, other authors disagree with Foster.

A study by Jadva, Murray, Lycett, MacCallum and Golombok showed that surrogate mothers do not appear to experience psychological problems as a result of the surrogacy arrangements. Although they do acknowledge that some women do experience emotional problems in handing over the baby or as a result of the reactions around them, these feelings appeared to lessen during the weeks following the birth.⁹ Surrogates also suffer the consequences in their personal lives



and relationships. One of the Surrogates in Gujarat on the condition of keeping her identity hidden, remarks that although she lives with her husband, they do not discuss anything related to the Surrogacy or the child. Despite the agreement to enter the arrangement, the awareness of the nature of the work has affected her relations with her Husband. Faced with a similar silence in the Hospital setting, she asks who she is expected to talk to.

Another Surrogate from Indore on the same hidden identity condition shared that Surrogacy led to a grave conflict between her husband and her brother-in-law, resulting in scuffles. The atmosphere, as she described it, during her Surrogate pregnancy was one of complete Hostility and Abusive behavior towards her from some other family members, despite her husband and her sister-in-law encouraging her initially to do a surrogacy in order to repay a family debt and to stabilize the family income. She revealed that she had to repeatedly bear abuse from her estranged and **alcoholic Husband**. *He would turn up at her house and create a scene, screaming and castigating her for having sold herself and for selling her child.*

Psychological Toll: Intended Parents

The woman having no child feel miserable I agree, they should be given an opportunity to have their own Biological Children is agreeable, but at the cost of a poor soul is not palatable for me. It is true even with the Husband of the Surrogate Woman, near family friends even with the Surrogate Woman, when they have a little bitterness about the origin of the child how can they be happy over a long run? Further in the long run somebody or the other will tell the child about its origin, and what those parents can say if it was anonymous Surrogacy? They stand as liars, in the eyes of their own child. This brings emotional turmoil for the child and parents.

Another side effect of Surrogacy is of a psychological nature. **Clinical Psychoanalyst Annie Reed Henderson** says the emotional stress that couples experience during Assisted Fertilization Procedures can result in serious consequences for the relationship. In cases of Artificial Insemination from a donor, only the female partner can claim a biological association with the child, leaving the male parent to learn how to psychologically cope with this reality. Henderson states that the majority



of emotional trauma induced by the sometimes long and drawn-out fertilization procedures could be assuaged by professional psychological counseling.

Psychological Toll: Surrogate Child

In discussing Surrogacy Contracts, the majority of scholars, especially feminists, seem to focus on the harm that Surrogacy has on women. Some, however, note that there is also the potential for serious harm to children. Davies argues that children born through the use of Surrogacy arrangements might suffer serious psychological issues later in life. *Davies asserts that there is the potential for serious personal identity issues with both forms of Surrogacy and a confused sense of family lineage in cases of Traditional Surrogacy.*¹⁰ *It is also possible the child may feel worthless or degraded, especially in cases of Traditional Surrogacy, because he or she knows that they were purchased by their parents.* Critics of Surrogacy basically argue that the Sale and Purchase of a Child may have serious Psychological and Emotional Ramifications for the child later in life.¹¹

Most claims that Surrogacy arrangements harm children are based on the belief that children will feel that they were bought and sold—and that feeling like an item that can be bought and sold will have long lasting psychological effects on the child.¹² **Merrick** similarly takes a stand against Surrogacy, using a range of arguments. In discussing the social and ethical issues involved in Commercial Surrogacy. Merrick asks whether the arrangement constitutes the Sale of the Child.¹³ A typical Surrogacy Contract provides payment not for the service rendered, but rather for the surrender of the baby and for the termination of the Surrogate's Parental Rights. This transaction is a sale that turns the child into a product and devalues him/her as a human being. She argues that Surrogacy should be banned also because it increases the possibility of the child being abandoned due to birth defects, and because it inflicts psychological harm on the players involved and especially on the child.

Merrick further points out that there are no data on the Psychological effects experienced by Children born of Surrogacy arrangements. Indeed, overall, very little data exist on the participants in Surrogacy arrangements. Additionally, how would the best interests of the child be adjudged when custody battles occur in Surrogacy arrangements? Can a contract legally bind a Surrogate to follow a certain lifestyle, and to meet certain conditions imposed on her lifestyle? Does she have to submit to



abortion if the intended couple so wishes? Merrick argues that a ban on Commercial Surrogacy arrangements is the only solution when one considers the total picture.¹⁴ Thus, it is very clear that Surrogacy imprints grave Psychological impact on the mind of the Child. There is a probability that when the child grows up he/she may feel degraded as he/she has been treated as a product and is being purchased by the parents. At times the peer group dismantles the confidence of such Children as Surrogacy is yet not socially accepted. Further he may have confusion as well as anxiety to know about the Surrogate, egg donor etc which can further lead her/him to a depression.

CONCLUSION

Surrogacy leads to an On-Going Discussion. Each one differs in their views with others on this sensible issue. The researcher pay heed to all of their views but sternly believe 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 which results in Psychological upheavals in the` child life. Apart from the same question raised here as well, there are other aspects to be considered. Are the women who provide this service not merely poor but so desperate that they have no other avenues for livelihood and therefore no real choice in the matter at all? Or are they knowingly forgoing less remunerative careers simply because they value the money more than the physical/psychological burden of bearing someone else's child? Commercial Surrogacy is a win-win situation for all the parties involved in it. The benefits of Surrogacy for the parents are that they will be given a child when they could not conceive themselves. There are huge benefits to the Surrogates in the form of remuneration for their Reproductive Labor. In the case of a Commercial Surrogacy, the Surrogate will get paid on top of the payment of the doctor bills. But at the same time they have to undergo a lot of emotions which actually disturb them for life time as surveys reveal. They are stigmatized in the society as seller of their child. Often they are being disregarded by their family and relatives cause of surrogacy. Similarly the intended parents even go through a lot of emotional turmoil.

Here I will conclude by saying that though Surrogacy is a hope to the childless couples but looking into the darker side of Surrogacy I recommend that the government shall prohibit Surrogacy and instead of it promote Adoption.

**ENDNOTES:**

1. http://www.endoscopy.co.in/Dr._Nirja_Chawla__Senior_Gynaecologist_%26_Laparoscopic_Surgeon,_Chandigarh_%28India%29/Media.html
2. Scott, E. 'Surrogacy and the Politics of Commodification', 72 Law & Contemp. Probs. 109 (2009)
3. Van Niekerk V, van Zyl L. *The ethics of surrogacy: women's reproductive labour*. J Med Ethics.1995;21:345-9
4. Van Zyl L, van Niekerk A. *Interpretations, perspectives and intentions in surrogate motherhood*. J Med Ethics. 2000;26:404-9.
5. Tieu M., *Oh Baby Baby: The problem of surrogacy*. Bioethics Research Notes19(1):2007 <http://www.bioethics.org.au/Resources/Online%20Articles/Opinion%20Pieces/1901%20Oh%20Baby%20Baby%20The%20Problem%20with%20Surrogacy%20MT.pdf>
6. Tieu M., Submission to: Inquiry Into Legislation on Altruistic Surrogacy in NSW By Southern Cross Bioethics Institute (SCBI) 26th Sept 2008 available at <http://www.bioethics.org.au/Resources/Submissions/NSW%20Surrogacy%20Submission.pdf>
7. Nicholson CJ, Ellis, Lindenmayer JJ. Re Evelyn (1998) 145 FLR 90; (1998) 23 Fam LR 53; (1998) FLC 92-807; [1998] FamCA 55 <http://www.globalhealthrights.org/wp-content/uploads/2013/02/Fam-C-1998-Re-Evelyn.pdf>
8. Singh KK. Human genome and human rights: An overview.J Indian Law Inst 2008;50:67-80. Surrogate Motherhood-Ethical or Commercial Centre for Social Research (CSR) 2, Nelson Mandela Marg, Vasant Kunj-110070 Available from: <http://www.womenleadership.in/Csr/SurrogacyReport.pdf>
9. MacCallum, F., Lycett, E., Murray, C., Jadv, V. and Golombok, S. *Surrogacy: the experience of commissioning couples*. Human Reproduction 18, 1334-42 (2003)
10. Davis, Iwan, "Contracts to Bear Children." Journal of Medical Ethics 11 (2) 1985 pg 61-65.
11. Fabre, Cécile, "Surrogacy Contracts" In *Whose Body Is it Anyway?* Oxford: Oxford University Press, 2006
12. Jackson, Emil, "Surrogacy." In *Regulating Reproduction: Law, Technology, and Autonomy*. Portland, Oregon: Hartland Publishing, 2001 pg 294-295
13. Merrick, J., *Selling Reproductive Rights: Policy Issues in Surrogate Motherhood*. Politics and Life Science, 1990 pg 161-172.
14. Merrick, J. (1990). Selling Reproductive Rights: Policy Issues in Surrogate Motherhood. *Politics and Life Science*, 161-172.