LEGALISED COMMERCIAL SURROGACY AND ECONOMIC NEOLIBERALISM IN INDIA: THE CONTEXT OF HUMAN RIGHTS

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ABSTRACT: The study throws light on the industry of commercial surrogacy (hereinafter referred as CS) and its various unexplored dynamics and angularities in the city of Delhi, which is the capital of India and hence, may be considered as a representative study for the CS regime in India. The study analyses the socio-economic status of surrogate mothers vis-à-vis the commissioning couples and the deep entrenched socio economic inequalities embedded in the structure of the society facilitating boom of the industry as the prime reason. This paper mainly places the CS in human rights framework at the core of the discussion. Firstly, the paper concludes that CS which is a form of Assisted Reproductive Technology (ART) is a bliss, if used ethically and for altruistic purposes. However, it may prove a bane and can create serious crises of right to life and human dignity, especially when it operates for commercial purposes that too in unethical and unregulated informal framework. Unethical and unregulated informal framework in the context has potential to pose serious crises of human rights for both, the surrogate mother and the prospective child. Neither India nor does the international human rights law has any normative legal framework to regulate the regime of CS. The paper contextualizes CS, particularly in the neoliberal economic paradigm which India has adopted ever since 1991 and pursuing rigorously, and thereby forge links between the exploitation of surrogate mothers vis-à-vis economic liberalization. The analysis of the statistics of the study provides a fair idea about the functioning of the regime of CS and forces us to rethink about the idea of legalization of CS. The main hypothesis of the paper is that CS is an obvious offshoot of the ideology of economic neoliberalism and free market operating in Indian society with deep entrenched structural inequalities resulting into chronic and acute mass poverty. India has indirectly legalized CS through various judicial pronouncements. The

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researcher/author attributes legalization and institutionalization of CS to neoliberal economic paradigm which has enabled poor women to manage their two square meals on the one hand; it has opened doors for their institutionalized exploitation up to the extent of risking their lives and dignity, on the other hand. The paper argues that instead of performing its constitutional duties towards poor, the state by legalizing CS is encouraging poor women to lease out their wombs to meet their basic needs. This raises a serious question mark on the very legal and moral foundation of Indian state. The paper also argues that CS is actually a commoditization of a woman’s womb making outsourcing of fertility and procreation possible under free market economy. Not just the womb of the mother, the child in the womb is also treated as a commodity equally a subject matter of free market economy. Hence, CS is nothing but a naked human exploitation manifested under the domain of neoliberalism and economic globalization. Finally, the paper concludes that legalization of CS is a brazenly pervert and diabolic neoliberal utilitarian strategy of harvesting despair and mass poverty embedded in the deep entrenched socio-economic inequalities which even the rhetoric of neoliberal values cannot justify.
INTRODUCTION

Human dignity, freedom, justice and equality are the foundation of Universal Declaration of Human Rights (UDHR). Human dignity particularly is integral to right to life and is inalienable to the human rights movement all across the nations. No human rights discourse on right to life is possible without the discourse on human dignity at the core. The same are at the very core of the democratic struggles all across the globe. Throughout the international treaties and conventions having direct or indirect bearing on right to life there is a general policy in favour of protecting human dignity\(^1\), prohibiting human trafficking, especially in women and children\(^2\), ensuring the best interest of the child\(^3\) and against interfering with the natural process of conception and birth\(^4\). This is evinced by the prohibition against sex determination of a baby born through \emph{in vitro} fertilization\(^5\) or otherwise and the prohibition on cloning humans. The reason specific is that such action is considered unethical, unnatural and contrary to human dignity\(^6\). The Convention on the Elimination of All Forms of

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See Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine preamble, Apr. 4, 1997, C.E.T.S. No. 164 (“Convinced of the need to respect the human being both as an individual and as a member of the human species and recognizing the importance of ensuring the dignity of the human being.”).  
\(^2\) Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings; Article 6 of the Convention on the Elimination of all Forms of Discrimination against Women; Article 2a of the Optional Protocol to the Convention on the Rights of the Child on the sale of children; Article 3 of the ILO Convention 182 on the Worst Forms of Child Labour  
\(^5\) Convention on Human Rights and Biomedicine Art.14; also Parliamentary Assembly of the Council of Europe RES 1829(2011) and REC 1979(2011) on Prenatal Sex Selection  
Discrimination Against Women (CEDAW) is a landmark international instrument that affirms the fundamental principles of human rights, especially right to equality and dignity. It specifies rights of women, especially doing away with sex trafficking & domestic violence helping mothers and families by providing access to maternal health care. Similarly, Convention on the Rights of the Child and the Convention on the Adoption of Children (revised) can very well be used to protect right to life of a child in the womb in the context of surrogacy.

As treatment of infertility has become expensive and high profile all across the globe, medical technology has developed new techniques to assist conception over the years\(^7\). Assisted Reproductive Technology (hereinafter referred as ART) is one such developed technique. India is the biggest reproductive tourism industry and the most popular destinations for the fertility travellers all across the world. Commercial surrogacy is a full-fledged organized business and a booming industry in India. Commercial surrogacy has been legalized in India through various judicial pronouncements in the absence of codified law on the subject matter though; there are certain Guidelines of Medical Council of India issued in the year 2010\(^8\). There is a huge debate among practitioners, academics and jurists in terms of legality and morality of the domain of commercial surrogacy in India. Through the empirical study the researcher attempts to unfold this debate examining varied dimensions and the truth behind the legalization debate. During the course of the study one to one interview of total 207 respondents in eleven Fertility Clinics in the city of Delhi was conducted as random samples for the study. These 207 respondents include 54 commissioning parents and 153 surrogate mothers. The study highlights that the business of surrogacy is growing leaps and bounds in India with all pervasive impunities in the absence of a legal framework and regulatory mechanism at the national and international level.

\(^8\) http://icmr.nic.in/art/Chapter_3.pdf, page 55-76 retrieved on 11/8/15
On a comparative note, some countries like France, Italy, Germany, China and Japan surrogacy is completely prohibited by law. While in UK, Australia, New Zealand, Israel and Netherlands only altruistic surrogacy is permitted. However, there are countries like India, Russia, Ukraine, Panama, Thailand and some states of USA like California and Florida where not only altruistic surrogacy but commercial surrogacy is also not prohibited by law. Nevertheless, whatever laws exist on the subject matter, primarily are country specific. There are countries which have no law on the subject matter. Some countries have very clear law on surrogacy; while others have murky laws with enough grey area giving rise to conundrums, especially with regard to trans-national surrogacy, more so when biological parents belong to one country and the surrogate mother belongs to another. India is one among the countries devoid of any law on the subject matter.

Surrogacy per se is not bad or unethical, especially when it is for altruistic purpose. Altruistic surrogacy is certainly a humanitarian and philanthropic act of psychological fulfilment. However, commercial surrogacy cannot be equated with the altruistic one in the same sense, though it is generally presented just one of the methods of medically assisted reproduction, a treatment for infertility. Commercial surrogacy is often presented as a generous humanitarian and philanthropic act meant to help couples who cannot naturally have children, to offer them the joy of parenting. The supportive argument is that surrogacy gives childless families a chance to fulfil a basic human need that would otherwise be impossible to achieve in natural course. At the same time, the surrogate woman gets the compensation therefore; it is a “win-win situation” on both sides. However, reality is far from this sugar-coated picture. The so called “win-win situation” is just a smokescreen to the harsh and complex social realities in surrogacy domain.

It is true that infertility problem has devastating impact on the lives of married couples however, whether commercial surrogacy is the right answer, especially when India is having 15 million orphan children. Given the fact that India is primarily a patriarchal society where a child generally carries the surname of the father and male child carries the progeny of the father forward, most of the parents are
obsessed with the notion “my child must carry my genetic stock”. Instead of adopting a child infertile couple believe in hiring a surrogate, sometimes at the price beyond their means. In such value framework and the deep trench of socio-economic inequalities whether legalisation of commercial surrogacy is the right answer or adoption can also be an equally efficacious alternative, is still a question.

The Supreme Court of India and different High Courts in India through judicial pronouncements and liberal interpretations have legalised commercial surrogacy. For example, in a leading case, Baby Manzi Yamada v. Union of India\(^9\) the Supreme Court while dealing with the issue relating to the absence of a legal framework on the subject matter accepted the existing phenomenon of surrogacy and surrogacy contracts under the general law of contract in India in the following words\(^{10}\):

“We need not go into...........whether bona fides are involved or not. Surrogacy is a well-known method of reproduction whereby a woman agrees to become pregnant for the purpose of gestating and giving birth to a child she will not raise but hand over to a contracted party.”

A decision of Gujarat High Court in Jan Balaz v. Anand Municipality\(^{11}\) legally justified even trans-national commercial surrogacy.

The general hypothesis for the study is ‘Commercial Surrogacy being legally unregulated is an organised, institutionalised and legalised exploitative regime in the city of Delhi and only poor women are the victims and hence, the Commercial Surrogacy regime has a class character”. The major research questions of the study are, while it is a known reality that surrogacy procedure may cause extreme medical complications ranging from extreme pain to death of the surrogate, why commercial surrogacy is legal in India as against most of the countries of West. Secondly, if the compensation money is meagre and level of exploitation is considerably high- why there is a boom in this sector of economy in India? What encourages women to become surrogates? Is it the philanthropic feelings and humanitarian concerns

\(^9\) AIR 2009 SC 84; (2008)13SCC 518
\(^{10}\) Ibid. Para 5
\(^{11}\) AIR 2010 Gujarat 21
towards childless couples? Or, are there compelling reasons beyond the sense of philanthropy?

1. EMPIRICAL STUDY

1.1. The Scope, Limitation and Methodology of the Study

The study has been conducted under the aegis of Center for Human Rights and Subaltern Studies (CHRSS), National Law University Delhi (India) between July-December 2018. The author is the principal investigator of the empirical study. This is a self-funded study of the CHRSS. Delhi, the megalopolis capital city of India is the major jurisdictional focus. In the present empirical study interview method has been adopted using a questionnaire for the respondents.

The limitation of the study is that India being a hugely populated country the study does not take substantial quantitative data. Though the universe and the scope of the study is confined to only one city i.e. city of New Delhi, it may be taken as a representative study for India as far as the nature and extent of exploitation of surrogate mothers is concerned at the pan India level. Nevertheless, a general conclusion can be drawn from the study only in respect of the city of Delhi. It is largely a socio legal study rather than paying a strict focus on medical aspects of surrogacy. In addition to empirical data the study also uses the secondary sources available online and offline.

The researcher/author during the course of the present empirical study conducted interviews of total 207 respondents. These 207 respondents include 54 commissioning couples and 153 surrogate mothers in eleven fertility clinics in the city of Delhi. The identities of the fertility centers have been protected as revealing identity is unrelated to the purpose of the study. In the present empirical study interview method was used and a questionnaire was prepared for the respondents. During the course of the study one to one interviews were conducted as random samples of the study. The study has focused on the various criteria such as marital status, education, family structure, occupation and economic status etc. The study
provides a fair idea about the functioning of the regime of commercial surrogacy and compels the readers to rethink about the continuing legalization of commercial surrogacy in the city of Delhi and in India at the broader scale.

Table No. 1: Literacy Status of Surrogate Mothers

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Education</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>0-5 Standard (Primary Education)</td>
<td>22</td>
</tr>
<tr>
<td>2</td>
<td>6-10 (Secondary Education)</td>
<td>39</td>
</tr>
<tr>
<td>4</td>
<td>Graduation/Under graduation</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>Illiterate</td>
<td>87</td>
</tr>
<tr>
<td>6</td>
<td>Not responded</td>
<td>3</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>153</td>
</tr>
</tbody>
</table>

Source: Data Collected by the Researcher in the City of Delhi

Out of 153 surrogates 149 were married. Two surrogates declined to reveal their marital status and the other two declined to answer about their family structure. Out of the 153 surrogates 87 were illiterates, 22 had education 0-5th standard, 26 studied between 6-8th standard. Thirteen surrogate mothers had studied till 10th standard, 2 were doing their graduation in professional courses and rest 3 respondents declined to answer this question. There was a range of reasons, mostly economic ones.

2. DATE ANALYSIS AND CAUSATIVE FACTORS FOR THE BOOMING INDUSTRY

Out of 153 surrogates 71 surrogates were having families ranging between 4-6 children. Forty nine surrogates had 2-3 children, 23 had 1 child, 4 surrogates were childless and had desire to procreate children for someone else as their own spouses had infertility problems. However, this was a collateral reason; compelling economic hardships was the main reason. Four surrogates did not reveal their family structures and rest 2 declined to tell about their marital status as stated above. Forty
six surrogate mothers told categorically that due to long persisting unemployment of one or both the spouses’ decision to become surrogate was taken with the consent of their respective husbands. Twenty six surrogate mothers revealed that their decision was founded on the hope that their own children would continue their studies. Twenty seven surrogates took the decision on account of acute poverty even though both the spouses were full time wage labours. Thirty four surrogates’ spouses were casual wage labourers for want of regular employment. Seven surrogates took the decision on account of heavy indebtedness. Eleven women decided to become surrogates as their husbands were chronic alcoholic and had no other helping hand to run their families. Rest 2 declined to tell the reason. In order to repay the debt they had to accept the offer from the intermediaries to become surrogates.

(1). Mass Poverty

The data analysis reveals that none of the respondents (surrogate mothers) came from affluent background; they all were poor women hailing from suburbs or slums of Delhi. It is significant to note that slums in Delhi generally known for their ghettoised living conditions. The data analysis also reveals that all the respondent surrogates invariably became surrogate for compelling economic reasons grappling with chronic or acute impoverishment. Therefore, the above stated statistical facts are enough to evince that the socio-economic inequalities were in the core as prime reason of commercial surrogacy.

Poverty is the most significant reason is that surrogacy in other countries, wherever permitted is much costlier than in India and Indian fertility clinics provide surrogacy at competitive and affordable costs. The precise reason for cheap and affordable surrogacy is the availability of potential surrogate mothers on account of mass poverty in India.
Forbes List of year 2018 reveals that out of top hundred billionaires of the world, 10 are Indians\(^{12}\). While on the opposite extreme, India is “a hunger republic\(^{13}\)” or may also be terms as the “hunger capital of the world” as every 4\(^{th}\) hungry and starving person of the world is Indian\(^{14}\). While at the same time, about 71\% i.e. 880 million people of the country are living Below Poverty Line (BPL). It is significant to know that India’s official poverty line is actually a ‘hunger line’. About 230 million people in India sleep hungry\(^{15}\) and poor masses have learnt the “art” of surviving with hunger as hunger is the way of life\(^{16}\). Seventeen states of the country are worse than Sub Saharan countries in terms of hunger and starvation.\(^{17}\) Over five thousand children (18, 25,000 per year) die each day due to hunger and undernutrition related diseases\(^{18}\), yet it is never taken as bloodless genocide\(^{19}\). State while on the other hand, is rather busy with manipulating statistics convincing the world that poverty is reducing. Commercial Surrogacy in India must be seen in this disturbing scenario.

The above statistics clearly suggest that overwhelming majority of the surrogates is illiterate or semi-literate\(^{20}\) and poor wage labourers hailing from slums or countryside\(^{21}\). Most of the surrogate women become surrogate due to the reasons of chronic or acute poverty and agree to procreate child on “competitive rates”. The

\(^{12}\) http://www.forbes.com/india-billionaires/
\(^{13}\) Utsa Patnaik, *Hunger Republic of India and other Essays*, (April 2007), Three Essays Collective publication
\(^{14}\) VANDANNA SHIVA, KUNWAR JALEES  *WHY EVERY 4\(^{TH}\) INDIAN IS HUNGRY: THE CAUSES AND CURES FOR FOOD SECURITY*, ( Navdanya 2009)
\(^{15}\) Report of the National Commission for Enterprises in the Unorganized Sector(popularly known as  Arjun Sengupta Committee Report),2008
\(^{16}\) Harsh Mander, “Ash in the Belly: India’s Unfinished Battle Against Hunger”, (2012-7) , Penguin Books India
\(^{18}\) https://revolutionaryfrontlines.wordpress.com retrieved on Sep. 2010
\(^{19}\) The author is of the opinion that the International Convention on Genocide must redefine the expression “Genocide” in terms of states’ liability in hunger and starvation death, in addition to the existing terms.
\(^{21}\) PANDA, AMRITA, *Not an ‘Angel’ Not a ‘Whore’: Surrogate as “Dirty” Workers in India*, Indian Journal of Gender Studies 16 (2) 41, 141-173 (2009). Online version available on http://ijg.sagepub.com/content/16/2/141
legalized regime of commercial surrogacy is brazenly pervert that provides a diabolic neoliberal utilitarian strategy of harvesting mass poverty embedded in the deep entrenched socio-economic inequalities. It is in no way an honour to India to be called the 'surrogacy capital of the world'. Rather, it is indeed a matter of national shame. In some places in India, the same surrogacy rackets are involved in human trafficking and prostitution. The same methods are used to recruit young women in the countryside for prostitution and for surrogacy: lure them with the promise of a respectable job, rape them and sell them out to brothel for prostitution or to rackets for surrogacy. Women in India rent out their wombs to manage their two square meals, often under human trafficking and financial coercion. Commercial Surrogacy is thus a new form of contract slavery, yet commercial surrogacy did not receive enough attention of the global community.

India has legalized the commercial surrogacy precisely because state has not able to address the issue of mass poverty and chronic hunger and starvation generated by the structural inequalities. Indian state has pathetically failed to perform its fundamental constitutional duty towards impoverished citizens. This failure is very much conscious and deliberate as this failure is an inevitable product of mindless pursuit of economic liberalization and globalization. Instead of addressing mass poverty, state has resorted to an easy but unethical way out of legalizing commercial surrogacy. Legalization eventually has become a vehicle of exploitation of poor surrogate mothers. Legalization of commercial surrogacy is manifestly incompatible with the constitutional morality and therefore, it raises a serious question mark on the very legal and moral foundation of the Indian state.

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22 As a participant, Dr. Susan Sodder observed in her presentation made in the Seminar on “Gift of Human Life” organised by the Catholic Church, Archdiocese of Bombay (Oct. 17-19, 2014) in St. Pius Seminary in Goregaon, Maharashtra.
(2). Free Market in Economic Neoliberalism

Commercial surrogacy may also be seen as a gross reflection of the economic neoliberalism and economic globalization. In this regime of economic neoliberalism and economic globalization everything, right from human sentiments to womb of a mother is a “commodity” up for sale. Michael Sandal (2012) in the context of American monopoly capitalism observes: “This is a debate we didn’t have during the era of market triumphalism. As a result, without quite realizing it, without ever deciding to do so, we drifted from having a market economy to being a market society”. The difference between the two is: A market economy is a tool- a valuable and effective tool- for organizing productivity, while market society is a way of life in which market values seep into every aspect of human endeavour. It’s a place where social relations are made over in the image of the market. What Michael Sandal observed in American context is equally true in Indian context and particularly in the context of commercial surrogacy.

In the age of economic globalisation “outsourcing” is a norm. Outsourcing of fertility and maternity in the regime of commercial surrogacy is yet another instance. In legalised surrogacy a woman is free to lease out her womb and her uterus is treated as an oven wherein a product is baked and the final product is delivered as per the demand of the market. Hence, commercial surrogacy is nothing but commoditisation of human body. The current practices and status of surrogacy in India reveal the nature and extent of abuses caused to both surrogate and the child treating them as commodities.

Further, legitimisation of commercial surrogacy has also legitimised human commoditisation, human trafficking and exploitation. Motherhood in commercial surrogacy is also a form of commoditisation of the human being which makes poor women highly vulnerable to human trafficking. The current practices and status of

23 MICHAEL SANDEL, WHAT MONEY CAN’T BUY: THE MORAL LIMITS OF MARKETS, 10-11 (Allen Lane, Penguin 2012)
24 ibid.
surrogacy in India, and particularly in the city of Delhi reveals the nature and extent of abuses caused to both, the surrogate mother and the child treating them as commodities. Since commercial surrogacy is not just unethical but exploitative as well, it must be unacceptable to any civilised society. However, according to a European document titled as “Surrogate Motherhood: A Violation of Human Rights”, surrogacy “violates the dignity of both the surrogate mother and the child\textsuperscript{25}. The child becomes the mere object, while the surrogate mother is used as an incubator. Such commoditisation in itself violates the dignity of both the surrogate mother and the child. Commercial surrogacy indeed paves the way for exploitation of poor women, the document says.

For last few decades various forms of commoditisation of the human body like, human trafficking for organs trade and sexual servitude have been drawn into sharp focus and have gained international attention. Unfortunately however, despite the hazards of commercial surrogacy linked with institutionalised human trafficking the human rights groups are neutral to the issue.

It is true that even in countries where commercial surrogacy is prohibited, women may be coerced into accepting surrogacy, e.g. through emotional pressure or threats or promises etc.\textsuperscript{26} but law as such does not facilitate the institutionalised human trafficking. In a rare instance, even if it takes place, it attracts public attention and becomes a subject matter of intense public discourse. Legalised commercial surrogacy in India on the other hand, has encouraged institutionalised human trafficking, yet it has evaded any amount of international attention. Except by a few religious denominations\textsuperscript{27}, the very idea of legalisation of commercial surrogacy per

\textsuperscript{25} Published by the European Centre for Law and Justice, which is a Europe-wide group dedicated to promoting human right, http://www.cinews.ie/article.php?artid=10094 (April, 26, 2012)

\textsuperscript{26} This already exists about egg donation, as the French General Inspection of Social Affairs noted in its February 2011 Report: Etat des lieux et perspectives du don d’ovocytes en France, p. 25-26

\textsuperscript{27} Catholic Church, Archdiocese of Bombay has severely criticised the idea of legalisation of commercial surrogacy. However, this denomination constitutes a miniscule minority of the vast canvas of religious faiths and denominations in India.
se is not questioned on moral account in public discourse. It is not a subject matter of the moral conscience of public either. There seems to be a tacit consent and implied understanding among the policy makers and the intelligentsia, including academics on the issue of legalisation of commercial surrogacy. There seems to be an implied understanding in favour of commoditisation of the uterus of a poor surrogates and the prospective child. Hence, no organised public disagreement has ever been raised in the public domain. Though the exploitative realities of surrogacy arrangements and the resulting commoditisation of women and children have united unusual allies i.e. “feminists and religious institutions alike and they all have condemned the practice of commercial surrogacy as ‘baby selling’—one that demeans and threatens women.”

Yet, the same time international community, including the legal fraternity also seems to be tacitly approving this unethical and preposterous act for not questioning the morality of legality of surrogacy domain. Although incidentally commercial surrogacy may be contrary to numerous international and European law provisions, especially regarding human dignity, adoption, protection of women and children and trafficking in human persons, yet there is no direct international instrument which governs the issue of surrogacy, its legality, its scope and limitations.

(3). Availability of Technical Skill and Technology

One of the significant reasons of booming commercial surrogacy in India is that there is availability of required technical skill with reliable reproductive technology in India at competitive cost. This is certainly cheap and cost effective for foreigners, especially couples from the west who want child through surrogacy technique. Indian doctors engaged in surrogacy industry are better equipped with the technology skill required for the success of the industry. All the fertility centers providing surrogacy facility are also very well equipped with required infrastructure.

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right from the medical test laboratories to admission and surgery of the surrogate with guarantee of the successful delivery. It goes without saying that caesarian delivery is the way to successful delivery. The baby is precious as the commissioning couple for they have invested a lot of money. Secondly, successful delivery of the child is important for the surrogate mother and the fertility clinic as their payments are also due and these payments are subjected to successful delivery as per the surrogacy contract (generally unwritten). Hence, in majority of the cases instead of waiting for the normal delivery which might take place with medical complications, doctors prefer caesarian delivery under the regulated medical conditions, though caesarian delivery incurs extra cost for the commissioning couple.

(4). Absence of Regulatory Legal Framework

Third reason is that India does not have any formal legal framework to regulate the domain of surrogacy. Absentia of regulatory framework has encouraged unfettered impunities in the domain endangering right to life and dignity of both, surrogate and the prospective child. In the absence of a codified law almost all the private infertility centres are minting money through surrogate mothers. This is generally done through well organised rackets which include medical professionals, pimps and intermediaries. In the absence of a regulatory legal framework these illegal racketeers harvest the despairs of infertile couples and sufferings of poor surrogate mothers. They charge very exalted prices for providing suitable surrogate mothers and, if necessary egg donors and sperm donors according to the needs and desires of the commissioning parents.

On a comparative note, surrogate mothers receive ‘handsome compensation’ in western countries wherever commercial surrogacy is legally permitted. This compensation is sometimes so high that it is a clear incentive for surrogacy and hence, does not give any feeling of being exploited. While in India the compensation amount is meagre and surrogate mothers are subjected to organised, institutionalised and legalised exploitation. Many surrogacy agencies claim that they
are offering a legitimate service under a contract of service as surrogacy is a service and surrogate is a service provider under the domain of commercial law. However, the truth is that commercial surrogacy operates in grey area and the absentia of appropriate regulatory framework facilitate the surrogate agencies to entrap poor women into a loosely drafted contracts making them vulnerable and favouring the commissioning parents29.

Medical Council of India had issued certain Guidelines in the year 2010. However, as a matter of fact these Guidelines are only on papers and nobody really cares for the same. Nevertheless, a legislative enactment to regulate the domain of surrogacy is still waiting. The Law Commission of India in its 228th Report titled “Need for Legislation to Regulate Assisted Reproductive Technology Clinics As Well As Rights and Obligations of Parties to a Surrogacy” also felt need of having a legislation on the subject matter. Nevertheless, the truth is that a legislative enactment to regulate the domain of surrogacy is still non-existent.

CONCLUSION AND SUGGESTION

Firstly, it is true that infertility problem has devastating impact on the lives of married couples. However, it is suggested that instead of jumping on to the decision of having a child through surrogacy, couple should think about adoption of a child while a child through surrogacy should be the last option.

Secondly, at its very core, surrogacy is a sheer exploitation as its aim is not the interest of the child or the surrogate mother but to fulfil the desire of the commissioning parents to satisfy their wish for a child. Surrogacy compromises the dignity of the child by making the child the object of a contract—a commodity. It compromises not only the dignity of the mother by treating her as a gestational oven but also the dignity of the child making the child an object of the contract, even if the participation of the woman is voluntary.

29 The Hindu (the National Daily Newspaper), Oct. 8, 2014
To prevent both current and future exploitation, it is essential that India apply the principles embodied in existing documents, such as the Convention on the Rights of the Child, the Convention on the Adoption of Children (Revised) and The Convention on the Elimination of All Forms of Discrimination Against Women, to the practice of surrogacy. Since these international instruments provide fundamental legal framework as a model to be followed by the state parties, India being a signatory is under legal obligation to implement the same seriously. There must be an international legal document on the subject matter which could provide a clear understanding on varied complexities of legal and moral significance.

Thirdly, the state must seriously focus on addressing the structural inequalities and mass poverty. In addition, there is a dire need for a regulatory legal framework. International community should also make endeavours to have a regulatory legal framework at the international level to protect the interests of surrogate. International regulatory framework is necessary for two reasons. One, in order to deal with the conundrum prevailed all across the world, especially with regard to transnational surrogacy and second, the disparities between legislations across different countries makes it necessary to adopt a common international law or guidelines at least, with required flexibility\(^3\). It will not only be helpful in doing away with the legal and ethical conundrum but also provide a clear understanding on varied complexities of legal and moral significance.

However, more important is to deal with the deep entrenched socio-economic inequalities, poverty, hunger and starvation. Indian state has pathetically failed to address the structural issues of inequality. Poor women too deserve dignified human life. Legalizing and institutionalizing commercial surrogacy amounts to \textit{legalized state escapism} as essentially a legal impunity of a liberal economic state. Lastly, the mindless pursuit of economic neo-liberalism is unnecessary as it is essentially counter-productive to the poor sections of the society.