Conclusion

Throughout our study, we have seen that surrogate motherhood is basically an arrangement—an arrangement of collaborative reproduction through which unrelated individuals can provide reproductive contributions in procreating child for childless couple. To assist infertile or sub-fertile couple for procreation is, no doubt, a beneficial, but, at the same time, challenging task. The significance of a genetic child to childless couple is immense. As a result, within few decades, surrogacy becomes popular practice and is widely employed throughout globe. The widespread applications of this technology gradually generate numerous controversial issues regarding—moral, socio-political, psychological, anthropological and legal. Few issues are deeply rooted in our traditional, cultural beliefs. The application of surrogate motherhood significantly divides the traditional unification of marriage, sex and procreation. Parenthood is reduced to matter of personal choice rather than fact of nature. Fragmented motherhood raises the most crucial question about this technology: who is the real mother of the child? Genetic, gestational or social?

Surrogate motherhood is not a novel practice. What is novel is its high-tech applications. While traditional surrogacy offers to the couple to be related (genetically) with at least one commissioning parent to the child, gestational surrogacy provides opportunity to sub-fertile couple to be related to both parents. The word ‘surrogacy’ denotes to substitute. Surrogate motherhood, by nature, is an alternative form of motherhood. Since Biblical era, we have experienced different alternative forms of motherhood like wet-nurse, breast-feeder, step motherhood etc. Unlike these forms of alternative motherhood, a surrogate mother contributes her genetic materials, provides her gestation in procreating a child. Surrogate motherhood is structurally akin to adoption, but, these two practices are not equivalent. Unlike adoption, surrogate motherhood is a pre-natal agreement, highly intentional to the commissioning parents and at least one commissioning parent is genetically related to the resulting child. In present days, adoption becomes a second choice of childless couple, next to surrogacy.
The commercial application of surrogate motherhood began in USA in early 1970s. Within a short span, commercial surrogacy became a popular practice, especially in Euro-American societies. A large section of childless couples employed the arrangement. The applications of the technology increased with a rapid pace. But, the practice became a topic of hot discussion when Mary Beth Whitehead, a commercial surrogate, entered into New Jersey court-room for the trial of the custody dispute of the resulting child, Baby Melissa (Baby M). General public, moralists, legal practitioners very prominently divided into two broad groups: proponents and opponents of this arrangement. In fact, the advocacies offered by both opposing camps—proponents and opponents—complicated the debate. The controversy regarding surrogacy arrangement gradually strengthened.

In our study, we actually assess surrogacy arrangement from four distinct perspectives—moral, social, anthropological and legal. We have seen that some controversies are purely concerns about morality; some are deeply rooted in socio-political issues. Few debates arise from cultural disagreements, while, some others are simply legal disputes. Sometimes, it is hardly possible to separate these perspectives. Some social issues are moral issues too. Now, these controversies regarding applications of surrogate motherhood significantly affect another crucial sphere of human life—religious concerns. We have noticed that major religious institutions, like Christianity, Hinduism and Islam notably respond on this controversy. We surprisingly notice that while Roman Catholic Christians or Islamic teachings clearly disapprove the technology for applications, many Hindu scripts would cordially recommend this technology. Different mythological references of Hindu scripts not only approve various assisted reproductive technologies like donation of sperm or embryo, embryo transfer (ET) or surrogate motherhood; it also recommends another novel form of procreation—surrogate fatherhood.

Reproductive autonomy, alternative form of family, genetic relatedness, fundamental human right about procreation, different constitutional rights of US—promotes us to employ surrogacy without any state intervention. Economic theses
like universal commodification, welfare economics or moral doctrines like utilitarianism, also recommend the application of this technology.

Opponents, on the other hand, provide numerous grounds to proscribe the practice. In our study, we have considered seven distinct controversial issues. These seven issues are related to surrogacy arrangement either morally or socially or culturally. Those who vehemently oppose this practice mostly try to assimilate surrogate motherhood with some stigmatized practices like baby-selling, prostitution or slavery. No doubt, surrogacy has some close resemblances with these already acknowledged stigmatized practices. Lack of self-determinations, coercive consent, sale of baby to highest bidder—all these similarities with surrogate motherhood make us confused and leads us to conclude that like these practices, surrogate motherhood is also a wrongful practice. But, our study has thoroughly examined and comes to conclude that such resemblances are apparent, not real. Surrogate motherhood has its own unique features. Unlike baby-selling, surrogate motherhood is a prenatal, highly intentional transaction. Unlike a prostitute, a surrogate sells her reproductive labor. Her service is purely asexual in nature. Unlike a slave mother, a surrogate is free to decide whether she would act as a surrogate or not. So, surrogate motherhood is neither baby-selling nor akin to prostitution or equivalent to slave motherhood.

We have also seen that applications of different assisted reproductive technologies including surrogate motherhood transform the very nature of reproduction. Reproduction is no longer fact of nature, but becomes a matter of personal choice. Asexual reproduction through surrogate motherhood not only approves the intrusion of third party among married couple, institutions like marriage gradually lose its social significance. So, those who prefer to biological model of kinship and believe that genealogical grid is the only foundation of kinship and bilateral or matrilineal ancestry is the proper way to reckon kin relationships just like Euro-Americans are enforced to redefine the notion of kinship. Collaborative reproduction, genetic contributions of anonymous donors—not only loses the natural properties of reproduction, fragmented parenthood becomes an obstacle to identify the biological relationships in traditional ways. In our study, we conclude
this chapter of discussion by suggesting that it could never be a vital issue if a certain model does not incorporate some inevitable changes. Moreover, the culture that inherits adoption as a recognized practice, where both social parents are not biological parents of the child, could never deny the application of surrogate motherhood through which at least one commissioning parent would be genetically related with the resulting child.

The term ‘exploitation’ has various connotations. In ordinary usage, the term refers to wrongful act which commits some moral harm. In our study, except this common use, we have considered three kinds of exploitation: (i) harmful non-consensual exploitation, (ii) mutually advantageous consensual exploitation and (iii) moral harm. We consider the alleged commodification of children, surrogate mothers and their reproductive labour as a kind of moral harm and like to discuss the issue separately. In this topic, we assess surrogacy arrangement as harmful non-consensual exploitation and as mutually advantageous consensual exploitation. We identify four potential stakeholders of this arrangement—the child, the woman who acts as a surrogate, the commissioning parents and the society as a whole and thoroughly discuss the type and the nature of potential harm. The notion of mutually beneficial transaction is often used by the liberal interpreters. In our study, we have discussed this notion of mutually advantageous exploitation and explain how heterogeneity of preferences and social surplus determines surrogacy contract as all-things-considered, beneficial transaction for all concerned parties. Our study critically observes that surrogate motherhood could be and mutually beneficial transaction, but the recommendation offered by these liberal thinkers is not tenable. According to liberalists, adequate amount of remuneration to a surrogate can negotiate the potential harms related to this practice. But, I think that adequate payment, even over payment can not justify any risk or harm. In my opinion, those who thinks surrogate motherhood is harmful, non-consensual exploitation and identify several harmful risk factors related to each stakeholder could be minimized by employing careful monitoring and strict supervisions. Proper psychological counselling of both surrogate and commissioning parents, a well-framed contract, adequate medical and genetic tests and diagnosis—would be beneficial not only for the contracting parties but also
for the welfare of the resulting child. The wellbeing of the child should always be the pre-condition of any surrogacy arrangement.

It has been severely objected that surrogacy commodifies the resulting child, the woman who acts as a surrogate and her reproductive labor. We have noticed that the alleged commodification fundamentally depends on a single issue: is everything market tradable? Is there any moral constraint on the scope of market? On this issue, commentators are broadly divided into two groups: pro-commodificationist camp and anti-commodificationist camp. Under pro-commodificationist school, we have discussed few versions of universal commodification thesis. On the other hand, we have developed various interpretations of asymmetry thesis which hold that the reproductive labor of woman is intrinsically different from other forms of labor. Though the versions of Pateman, Anderson, Debra Satz are different, they all agree to discard the principle of supply-demand which is appropriate to any economic market to reproductive market. Such application is unjustified and morally wrong. Kantian formulation of categorical imperative on human dignity also undermines the application of this technology on the ground that the practice uses a woman as a means, not as an ends. We notice that each doctrine has its own merits and also demerits. Apart from these theoretical disputes which are exclusively depended on our cultural beliefs, we observe that the Kantian objection, to some extent, is inapplicable. In all kinds of paid service or wage labor, we actually consider a being as a means, not as ends. When fire-men are send to rescue others, do we think that they all are used just as means? In my opinion, when human beings are employed for some noble causes, not to fulfill some selfish interests of other, such treatment could never be considered as mere ‘means.’ Moreover, our study also admits the essence of the asymmetry thesis in the sense that reproductive labor is closely associated not only with wellbeing of the pregnant woman, it involves the welfare of a new life—a baby.

Any autonomous individual would possess two types of reproductive rights: right to procreate and right to avoid procreation. Different liberal schools of thinkers like to extend the scope of this liberty, though most of the commentators differ on what
would be the proper scope of this liberty. No doubt, surrogate motherhood is a free exercise of reproductive liberty of autonomous individuals.

Throughout our discussion, we have also observed that commercial application of surrogacy needs strict supervisions. Employment of open market norms, augmentation of commercial attitudes may create significant harm to all concerned parties. The commissioning parents may refuse to grant the custody of the diseased, deformed babies just like a buyer in a open market who seeks high quality product in exchange of handsome amount of money. The birth of Baby Doe (baby born with Downs's syndrome), the subsequent custody dispute and her death warn us about the harmful effects of this arrangement. The wellbeing of the resulting child could never be negotiable to other considerations. Approval of the parental fitness is much more vital and significant than any other considerations.

Now, the legal status of surrogacy arrangement varies throughout globe. The approach of legal moralism fundamentally determines the nature of surrogacy regulatory law or policy. Those who think that surrogacy is a morally wrongful practice, prefer to impose a total ban on this practice. Those who believe that there is no moral harm in employing a surrogate mother, approve all forms of surrogacy arrangement. The moral and legal positions of these two perspectives are clear and straight-forward. But, those who assume that only few forms of this arrangement would be morally justifiable, consider that only few forms of arrangement are legally permissible. We have also noticed that this group of policy-makers feel confused under which law surrogacy should be regulated? Under law of adoption or as contractual agreement? We observe that those who prefer enforceability of surrogacy arrangement always treat surrogacy as a contractual agreement. But, those who prefer the non-enforceability of this arrangement choose law of adoption under which surrogacy arrangement would be regulated.

I would conclude my study by referring to some of my personal observations regarding the moral and legal assessments of surrogacy arrangement. If I am asked: is surrogacy a morally justified arrangement or not? In our study, I have considered seven controversial issues regarding surrogacy arrangement. Are all
these issues justifiable? My analysis very prominently shows that surrogacy does not amount to baby selling, prostitution or slavery. Surrogate motherhood is neither baby-selling nor akin to prostitution or similar to slavery. Our observation also confirms that the questions of commodification, kinship and reproductive autonomy—undoubtedly stem from our cultural beliefs. Whether surrogacy arrangement really commodifies the resulting children, women who act as surrogates and their reproductive labour or not, whether the biological model of kinship fails to keep proper balance with the intrusion of third party or not, whether autonomous individuals would possess unlimited scope of reproductive liberty or not—all these issues exclusively depend on some traditional beliefs, cultural thoughts and divergent theoretical foundations.

The question, then, arises: is surrogate motherhood a properly justifiable practice? Is it a morally tenable practice? In my opinion, surrogate motherhood, to some extent, involves some hazards, which are not morally defendable, eg., the issue of exploitation. It is undeniably true that surrogate motherhood has enormous potentialities to become exploitative at any point of time during the arrangement. My query is about: the welfare of the woman who acts as a surrogate and wellbeing of the resulting child. Let me clear my position.

No doubt, surrogacy serves some social purposes. The social purpose that it serves is to provide some unfortunate couples with children. But, the question is: who actually serves this social purpose? No doubt, the answer is: the surrogate mother. In commercial surrogacy, poor, underprivileged and deprived women would act as surrogates. They are women with slender financial strength; they have no other alternative employment. Isn’t it coercive? My empirical insight suggests that if we could provide alternative sources of earning to them and offer substitute employment to them, none would be available to serve this purpose. Indisputably, the consents of most of the surrogates are coercive in nature.

Moreover, the physical harm of pregnancy and harms related to IVF technology may severely affect a surrogate mother and welfare of the resulting child even after the successful completion of this arrangement. In this context, I like to
mention in some details: how a comparatively relaxed law compromises with those risk factors in Indian context.

A few centuries ago, in India, surrogacy had been practiced occasionally mainly within familial relationship. But, the practice became topic of hot discussion when, at the end of last century, Nirmala Devi, a surrogate from Chandigarh, offered her womb on hire for her employer for the proper medication of her paralytic husband and to protect the future of her existing own child (RENT OF WOMB, reported by Reena Martins, published in The Telegraph, Calcutta edition, January 22, 2006). But, within a decade, the scenario totally changed. Surrogate motherhood grows at a rapid pace. Reproductive tourism becomes a thriving, booming business. As reported in The Guardian (http://www.guardian.co.uk/fortpage/story/0,1734989,00.html), site visited on 20/3/2011, a rapidly emerging business sector emerged with a transaction of roughly around half a billion dollars per year ($449 million). A huge number of infertile couples from foreign countries is seeking womb for rent from India. (Sastae garbhadatri Maa pete Anande Vidhesira) published in Anandabazar Patrika, a popular Bengali newspaper, dated 23rd October, 2006 (page 6, col. 2)

Now, the question is: What are the root-causes that have made India a top destination of reproductive tourism? (i) Relatively relaxed Law for procreation and assisted reproduction in India in relation to other countries, (ii) Relatively low costs of medication, IVF cycles, medical skills, technical expertise and other health care givers, (iii) Low cost of surrogates, (iv) Availability of surrogates and (v) the practice has been arranged by private clinics only and does not allow the interference of government. Till date, except ‘National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India,’ http://www.slideshare.net/ovary2009/guidelines-for-art-clinics-in-india, site visited on 2/12/2010, formulated by Indian Council of Medical Research, 2005, there is no other well framed law or regulation.

In this context, I would like to mention few provisions as suggested by the guideline.
1. No woman shall act as a surrogate for more than three successful live birth,
2. The guideline also permits to three Embryo Transfer (ET) of a particular couple, which means that a particular surrogate can carry the embryo(s) of a particular couple for three times, (National Guideline, Clause - 1.6.8.2).
3. And, in a single cycle of IVF, almost three embryos can be transplanted at a time (National Guideline, Clause - 3.5.13).

Now, all these provisions enhance the success rate of this arrangement, but, at the same time, these seriously affect the mental, physical, especially the reproductive health of the woman who acts as a surrogate. To allow three successful live births along with three ET (Embryo Transfer) of a particular couple suggests that a surrogate may legally undergo nine possible cycles of IVF excluding her previous pregnancies. No doubt, these provisions both heighten the success of its application and significantly cause harm to those women who act as surrogates. Now, a single cycle of IVF includes the risk of uterus torsion, severe allergic reactions and infection, bleeding, high blood pressure, glaucoma, cataracts, heart attack, stroke and serious blood clots, even risk of uterine or breast cancer. If a single cycle is so harmful, then, think of the risks of the nine possible cycles of IVF. So, such provisions are too injurious and are highly alarming. In addition, National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India also allows a surrogate to be implanted with at most three embryos of a couple at one time. Such implantations may cause multiple pregnancies. To carry multiple fetuses is not only harmful for a surrogate mother, it also significantly affects the growth of the fetus and causes premature delivery. Premature birth is not only harmful to the resulting babies, it may create major birth defects to them. In comparison to India, no other countries like UK, allow such extensive opportunities to commissioning parents. In UK, a woman may act as a surrogate not more than two successful live birth. In most of the European countries, a single ET has been allowed and at most two embryos can be implanted at a time. So, such provisions of Indian Guideline should be reformulated immediately in accordance with the standard norms acknowledged by most of the countries.

In addition, the wellbeing of the resulting children should occupy the central position in surrogacy arrangement. We have noted that the problem of identity crisis of the resulting child can not be easily resolved. Disclosure of information might not be sufficient to solve this problem.
Is there any way out through which we can both serve the social purpose and minimize the risk factors related to this arrangement? To impose a total ban on this practice or non-enforceability of this contract would not serve the social purpose of this arrangement. My suggestion is to employ a strict monitoring, proper counselling of both contracting parties and to frame a suitable legislation or policy for regulating surrogacy arrangement. Proper family support and care, appropriate parental guidance can be beneficial to resolve the problem of identity crisis of the resulting children.

Finally, my observation suggests that surrogate motherhood would be a mutually beneficial transaction and would serve the social purpose, if and only if, it has been regulated properly—socially and legally. It would be mutually beneficial transaction, but not in the sense offered by liberal school of thinkers. I differ from the liberals on the ground that only adequate payment can not minimize the potential risk factors. In my opinion, adequate payment does not justify the permissibility of any harmful practice. Only proper monitoring and supervision can minimize those risk factors. The fertility clinics in which surrogacy are arranged should be monitored properly. Well framed legal provisions can legitimately reduce these risks. At the moment, India needs a law—a well defined law, which should incorporate the following suggestions:

1. Surrogacy arrangement should not be made for commercial purpose,
2. The arrangement should ensure the financial support to those children born through surrogacy, even in case of death or divorce of parents where commissioning parents refuse to grant the custody of the resulting child,
3. The right of privacy of the donor as well as the surrogate should be protected,
4. Surrogacy through sex selection should be strictly prohibited,
5. A surrogacy contract should include the health insurance coverage for the surrogate,
6. The number of pregnancies that a woman has already had must be considered while restricting the number of surrogate pregnancies,
7. Foreign couples coming to India for surrogacy should submit the permission of their home country certifying that the children born through this arrangement will be granted citizenship in the country of their nationality,
8. Any surrogacy contract should appoint a legal monitor of that arrangement who will be legally responsible for taking care of both the surrogate and the commissioning parents during and after pregnancy to prevent the misuse and exploitation of the both parties.

A practice may serve its social purpose but not at the expense of the interest of others. The commercial market strategy would never grasp the real essence of reproductive labours. In my view, altruistic but enforceable application of this arrangement would serve the social goal properly. The contribution rendered by a surrogate mother is invaluable. So, this form of application of surrogate motherhood would, undoubtedly, be considered as a perfect gift—a gift of life.

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