Chapter - 4
Moral Disputes regarding surrogate motherhood

Surrogate motherhood is, no doubt, a unique application of advanced technology. Technology itself has no moral values. It is the application of technology which actually is subjected to moral evaluation. In this chapter, we would discuss and assess the alleged risk-factors or other controversial issues arising in respect of against surrogate motherhood. We would consider both the defenses and their counter-defenses offered by both proponents and opponents of this arrangement and, finally, would try to assess whether these claims are morally or socially justified or not.

In the introductory chapter of our study, we have already mentioned that moral assessment of a technology primarily rests on two fundamental issues: (i) whether the application of this technology is morally wrongful contextually or forever, and (ii) whether the application of technology enforces us to modify the traditional norms of moral assessment. In this chapter, the aim of our study is to justify whether surrogacy as a technology, as an arrangement would be treated as immoral practice forever or contextually, whether the application of surrogate motherhood enforces us to rethink the traditional moral assessment or the age-old cultural beliefs of society.

Before we proceed further, I would like to mention two sets of experiences shared by two surrogate mothers —namely, Stacy Ziegler and Elizabeth Kane on their surrogate pregnancy.

In her book, ‘Pathways to Parenthood: The ultimate guide to surrogacy,’ (Published By Brown Walker Press, Florida, 2005), Stacy Ziegler being a proud birthmother of four boys has shared and expressed her experiences as two-times gestational surrogate in the introductory part of this book (pp. v to xii). As she states: “My first surrogacy, via an agency, resulted in the birth of a healthy baby boy in May of 2002...I am still close with his parents...next summer, we are planning a family vacation together...his mother called up and put him on the
speaker phone where I was lucky enough to hear him call me Aunty Stacy. It melted my heart and reminded me why surrogacy is such a beautiful thing...I am now very close to delivering my second baby through surrogacy." (pp. v)

Elizabeth Kane, the first recorded commercial surrogacy mother in USA, in her book ‘Birth Mother: The Story of America’s First Legal Surrogate Mother,’ Published By Random House Value Publishing, Harcourt, 1988) states how initially she viewed surrogacy as a wonderful gift to an infertile couple, but, later on, she realized that how this gift turned into disaster for her and for her family. She wrote— “I now believe that surrogate motherhood is nothing more than the transference of pain from one woman to another. One woman is in anguish because she cannot become a mother, and another woman may suffer for the rest of her life because she cannot know the child she bore for someone else. ” (Cited in ‘Selling Reproductive Rights: Policy Issues in Surrogate Motherhood,’ By Janna C. Merrick, Published in Politics and the Life Sciences, Vol. 8, No. 2, Feb, 1990, pp. 161 – 172) Further, a woman (surrogate mother) feels like a flesh covered test tube during the entire experience. As the fetus grows, the woman is depersonalized; she becomes fragmented from the whole person - merely a vehicle for breeding babies!!

Very prominently, two surrogate mothers have experienced and expressed two radically opposite feelings about pregnancy. Why? If surrogacy is an arrangement to bear a child for infertile couples and relinquishes the custody and parental right to the resulting child, then why should two surrogate mothers have drastically reverse experiences? While one mother is ready to deliver her next (second) surrogate child for intending parents, on the same platform, another feels ashamed for her own decision. In our study, we feel that both experiences are deeply rooted in some crude realities. Could two radically opposed experiences be true at the same time? It is logical to think that either any one is true or both are true to some extent. So, at this point, our query is: to what extent, experiences of these two surrogate mothers are true and real? How far they are misled or falsified? The next journey of our study is to find out the root causes which promote a strong defense
in favour of this practice, on the one hand, and also invite state interventions either to impose a total ban on or restrictions upon this practice.

In the previous chapter, we have already seen that the application of surrogacy arrangement would be feasible only within a specific socio-economic framework—the laissez faire market situation. One of the most significant features of this market situation is: injustice or inequal distributions of welfare. Inequality can persist even in an optimal situation also. So, application of surrogate motherhood, by nature, has the potentials to be harmful. The question is: what are those harms? Who are being harmed and by whom? Again, those who oppose surrogacy arrangement as a morally justifiable practice always try to assimilate it with other practices which are already recognized as stigmatized practices. Thus, opponents seek similarities between surrogacy with other stigmatized practices like prostitution, slavery and baby-selling. In contrast, those who advocate this arrangement think that surrogacy is the exercise of reproductive autonomy of two adult individuals. Any kind of restriction or interference would be treated as paternalistic treatment of the practice. Further, surrogacy is closely related with some notions which are basically culturally constructed. For example, kin construction, formation of family, the notion of commodification etc. Now, the cultural beliefs of one society or community could never be comparable or applicable cross-culturally. Therefore, the controversies about surrogacy take various shapes and depth in accordance with the nature of issue. In our study, we consider seven such controversial issues for further examination. These are:

A. Baby-selling
B. Exploitation
C. Commodification
D. Prostitution
E. Family, Kinship and Third-Party Intrusion
F. Slavery
G. Reproductive Autonomy

Throughout this chapter, we would concentrate on these issues separately under seven distinct sub-sections.
4. (A) Surrogacy and baby selling

Surrogacy has two popular, recognized forms: Altruistic and Commercial. In its altruistic or non-commercial form, the practice does not involve any sort of payment or compensation to the surrogate mother, because, in most cases, altruistic surrogacy is mainly confined within close family circles and the woman acts as a surrogate out of her altruistic motivations. But, in its commercial form, a surrogate mother receives approximately $9,000 to $15,000 US dollar after completing a series of reproductive responsibilities: a fetus should be implanted to her womb to carry the baby to full term; she would give birth of a healthy, live baby and finally, handed over the child to his or her genetic father and adoptive mother after surrendering all her (surrogate’s) parental rights. The amount of remuneration varies mainly for two reasons: firstly, whether the surrogate mother is chosen from third world countries or not. The remunerations of Euro-American surrogates are comparatively higher than that of the surrogates chosen from third world countries. And, secondly, whether the resulting baby is live or not. In case of pre-mature abortion, miscarriage or stillbirth, a surrogate would receive hardly $1,000 to $2,000 US dollar for her service which she had rendered during her surrogate pregnancy. Now, the entire controversy regarding the sale of baby, is deeply rooted on this payment or remuneration paid to a surrogate mother. What are the reasons that underlie behind such apparently handsome amount of transaction? What sort of things or items commissioning parents buy with such an attractive amount? Why do commissioning parents pay? Whether the items or things, exchanged in course of transaction, is permissible or not? Whether the payment is made for the sale of baby or not? All these queries ultimately take the shape of a moral controversy—whether the fee received by a surrogate mother confirms the sale of a baby or not.

4. (A). 1 Commercial surrogacy—a form of baby-selling

Both the proponents and opponents of surrogacy arrangement build up their own defense while resolving the dispute over baby-selling. According to the opponents of surrogacy arrangement, the payment received by a commercial surrogate mother encompasses nothing but sale of baby and the practice which considers
baby as a salable commodity is morally wrong and should be strictly prohibited by law. It seems evident that the charge of baby-selling, in the context of surrogate motherhood, arises only in cases of commercial surrogacy, not in its altruistic forms, since altruistic surrogacy does not include any sorts of payment. So, the charge of baby-selling is exclusively centred on commercial surrogacy, not on its altruistic form.

We will begin our discussion by asking a simple question: what sort of things a commercial surrogate mother could sell in exchange of money? In our study, we closely observed that there should be four possible alternative answers to reply this question. These are as follows:

1. a surrogate mother could sell her baby,
2. she could sell her reproductive services,
3. she could sell her parental rights over the child,
4. She could sell something else other than the above mentioned (could sell her genetic materials like ova, could rent her womb etc).

Our study notes that each alternative possibility has its own distinctiveness. Among these four possible alternatives, the first option equates baby as a salable commodity, as a market product, while the second is with a service. But, the third and the fourth alternatives primarily concerned with some embodied features that are acquired by surrogate mothers, such as ova, womb, maternal rights etc. It seems logical that 'sale of a baby' always includes the sale of the remaining three possibilities. It means: if a mother sells her child, the sale automatically includes her genetic contribution in forming a fetus, her reproductive services like gestation which a mother rendered during her pregnancy and such sale, by nature, amounts to the cessation of parental rights of the selling parents.

4. (A). 2 Commercial Surrogacy—Sale vs. Service Model

It seems logical to us that both proponents and opponents would employ the suitable alternative(s) to reach to their desired destinations. Any opponent of surrogacy arrangement would often like to equate commercial surrogacy with baby-selling in order to justify their moral as well as legal claims to impose a total ban on this practice. So, the opponents, anyhow, would earnestly try to prove that
surrogate motherhood involves a kind of sale: it may be the sale of a baby or parental right or ova. But, neither of these is a salable commodity. So, the practice which approves the sale of non-salable entities is not only morally wrong, it should also be strictly prohibited by law.

On the other hand, proponents always try to employ a 'service' model in formulating their defense. Let us begin our discussion by taking an ordinary, daily-life example. "If you pay a taxi-driver to convey your body and your baby's body from one place to another or ... if you pay a porter to carry you and/or your baby from one place to another, you are not supposed to do any sort of immoral actions." (Cited in ‘Commercial surrogate motherhood’ by Hugh V. McLachlan, J.K. Swales in ‘Contemporary Review’, Edited by Dr. Are Muller, Vol. 272, March, 1998). What is bought or sold—are nothing but the services provided by the labourers. Like a taxi-driver or porter, a surrogate mother is also a wage labourer as well as a service-provider and nothing else. Like other wage-labourers, surrogate mothers sell their service, more specifically reproductive service which she provides during her surrogate pregnancy and she should be paid only for her services.

4. (A). 3 Arguments for the Service Model

In this connection, I would like to mention two famous Court verdicts in connection with two popular law-suits on surrogacy disputes. The first one is: Baby M case (1986) and the second one is: Anna Johnson vs. Calvert in California (1990). In course of cross-examination in Johnson vs. Calvert case, Judge Richard N. Parslow has awarded custody to the genetic parents and told: “I see no problem with someone getting paid for her pain and suffering...They (gestational mothers) are not selling a baby; they are selling pain and suffering.”(See Seth Mydans, “Surrogate Denied Custody of Child,” in New York Times, Metropolitan Edition, 23 October, 1990). Parslow's judgement restores the parental claims of commissioning parents by emphasizing on the sale of pain and suffering and indirectly denies the charge of baby selling. Later on, during the trial-session of Baby M case (Human Genetics and Society, by R. Yashon and M. Cummings, Published by Brooks/ COLE Cengage Learning, 2009, pp. 251) in
New Jersey Court, Judge Sorkow very unequivocally stated that if a biological father pays a surrogate for her willingness to be impregnated and carry his child to term at birth, the father does not purchase the child. In our study, we closely notice that Judge Sorkow's verdict could be used to make a strong defense to resolve the baby-selling objection against surrogacy arrangement for two fundamental reasons: firstly, baby-selling controversy mistakenly concentrates on a single issue—the payment received by a surrogate mother. Sorkow's justification suggests that a child's birth is made possible due to equal genetic contributions of two biological parents of the child. If we consider a surrogate as a mother of the child due to her genetic or gestational contribution to the child, it is equally true that at least one of the commissioning parents (father) is also the genetic parent of the child. Baby-selling dispute puts too much emphasis on the contribution of surrogate mother. A surrogate alone is not the biological parent of the child. How could a genetic father purchase his own child from other? Baby-selling objection against surrogate motherhood completely ignores the contribution of the genetic father of the child. Sale of a baby would be feasible, if both parents sold their child to others, to strangers. One biological parent could never sell her child to another biological parent of the child.

And, secondly, like any other proponent of surrogacy, Judge Sorkow intends to separate a product from its process to defend the legal position of commissioning father. Let us, briefly, analyze the theoretical underpinning of the view which promotes not only separation of product from its process (service), but also establishes a theoretical defense on favour of surrogate motherhood. According to market economy, commodities are manufactured primarily to maximize the profit limits of the manufacturer or the owner. Low production cost maximizes the profit limits of the owner. To manufacture a salable commodity, an owner needs skillful labourers. The principal strategy that each manufacturer should adopt is: to reduce all labour, all services into wage labours, because, within a market situation, all these labourers are service providers as well as wage-labourers. Wage is such a means which could fulfill the ultimate demand of the manufacturer. Let us clarify the point. To manufacture a product, each manufacturer requires skillful labourers. Through the skill of the labourer, a raw material transforms itself into market
salable commodity—commodity which has some exchange values in the market place. Without the skill or service of a labourer, a product could not be manufactured. Theoretically, a labourer acquires a right over the manufactured product. To refute any kind of right of a labourer over that product, the manufacturer/owner uses one of the most powerful weapons, called—**wage**. Wage is such a crucial, dominant factor through which a labourer surrenders all of his rights over the product manufactured by him. Any kind of wage-labour, thus, alienates labourers from the finished product only to restore the exclusive right of the owner over the entire production. It would be a tricky market strategy of any profit-making owner to reduce each service or labour into a wage labour and for this purpose, an owner would earnestly try to separate a product from its process (or service) to alienate a labourer from the finished product by giving some wages.

So, it seems logical for any proponent of surrogate motherhood to defend surrogate motherhood by *reducing reproductive services into mere wage labours*. Reproductive services are no more than wage labours. The reproductive labour provided by a surrogate mother during her surrogate pregnancy is a good example of wage labour. Like other wage labour, the wage paid to a surrogate mother for her services would ignore any kind of right-claim of a surrogate mother over the product (resulting child). Strategically, it would be one of the most vital points of reference if proponents of surrogacy intend to separate process (service) from its product only to alienate a surrogate mother from the resulting child. The observation of our study is: Judge Sorkow has deliberately made a **distinction between the ‘process’ and ‘product’ to restore the legal claim of intending parents.**

4. (A). 4 Arguments for the Sale of Baby

In contrast, there are several diverse opinions that discourage surrogate motherhood. Few may object: if a purchaser goes to a bakery to buy breads, what actually the purchaser would buy? He/she buys a finished product into which the whole range of ingredients or raw material is incorporated together with baker’s labour. It is hardly possible to separate a finished product, i.e, bread from baker’s service. Such separation is neither theoretically conceivable nor practically
possible. At this stage, we may show that there are several court verdicts, committee reports which radically oppose Parslow as well as Sorkow’s mandate. In this connection, I would like to mention two very renowned and legendary committee reports published in UK in late twentieth century which uphold baby-selling objection outright. First one is: ‘Warnock Report of the Committee of Inquiry into Human Fertilization and Embryology,’ published in 1984, and the second one is: Surrogacy: A Review for Health Ministers of Current Arrangements for Payments and Regulations in October 1998 (A review committee chaired by Margaret Brazier). In Warnock’s report, “Surrogacy agreement is degrading to the child who is to be the outcome of it, since, for all practical purposes, the child will have been bought for money.” (Source Book In Bioethics: A Documentary History, Edited By Albert Jonsen, Robert Veatch And Leroy Walter, Published By Georgetown University Press, 1998, pp. 354). In this report Warnock had not discussed baby-selling objection very elaborately. But, in Brazier’s review, this objection has been put forward more cautiously than that of Warnock. “It is possible to imagine a new legislative framework, which permitted payment of a fee to the surrogate, whilst maintaining her right to retain the child, but any such regulation would rationally have to contain provision for the contracting couple to obtain redress in the event that the child was not handed over. These legal considerations lead us to the conclusion that any financial arrangement that involves remuneration rather than simply expenses has to be regarded as a form of child purchase (4.35)” (Cited in Bodies For Sale: Ethics And Exploitation In The Human Body Trade, Stephen Wilkinson, Published By Routledge, UK & USA, 2003, pp 144).


To establish the view, on behalf of opponents of surrogacy arrangement, that the amount payable to a surrogate mother is nothing but the price of sale of her own child, I would like to share and develop the core ideas of the view offered by George Annas in his article, ‘Baby M: Babies (and Justice) for sale,’ Published in: The Hastings Center Report, Vol. 17, No. 3 (June, 1987), pp. 13-15. It is to be noted that in our study we only adopt Annas’ line of thinking or reasoning, but the mode of presentation is unique so far as Annas is concerned. Annas took the
example of a surrogacy contract which was made between Mary Beth Whitehead, a surrogacy mother and William Stem, the genetic father of Baby M (Melissa), the first disputed case of surrogacy in USA, on 6th February 1985. In this Baby M contract, (Baby M Contract, Cited in "Beyond Baby M: Ethical Issues In New Reproductive Technique," Edited By Dianne M. Bartlets, Published By The Humana Press, 1990, pp 263-67) we have found that Whitehead, the surrogate mother, would be paid four alternative types of remuneration under four possible situations. These are—

i) Within four months of pregnancy, Mary Beth Whitehead would receive no payment or compensation, i.e., ($0) in certain circumstances,

ii) In few circumstances Whitehead would receive only $1,000 (if abortion is demanded by William Stem, the natural father of Baby M),

iii) And, in few situations when Mary Beth Whitehead would receive only $1,000 even if abortion is not intended by William Stern.

Following Annas, our study also split up the entire logical reasoning into three crucial parts.

Let us begin our discussion by considering the first possible situation, when no payment or compensation ($0) would be offered to Mary Beth Whitehead.

According to clause [10] of Baby M Contract, during the **first four months** of pregnancy of Mary Beth Whitehead, if the child is miscarried no compensation (as enumerated in clause 4(A), i.e, $10,000 will be paid to her upon surrendering the custody of the child to William Stern) will be paid to her.

But, during the **first four months** of her pregnancy, the services, more specifically reproductive service already provided by Mary Beth Whitehead are as follows:

She would conceive by artificial insemination [Clause 2],

Frequent visits to consulting physicians [clause 15],

She should adhere to all medical instructions prescribed by inseminating physicians and Obstetricians [Clause 15],

She should lead a more restricted life-style than normal, viz, not to smoke cigarettes, drink alcohol, use illegal drugs etc. [Clause 15],
She would experience the potential risks, discomforts and mental anguish for her pregnancy during four months.

She also should nourish the fetus for 4 months.

(3) Therefore, from (1) and (2), it logically follows that Mary Beth Whitehead would not receive any compensation or remuneration for her services which she had already provided throughout four months described in (2).

Next, consider the second alternative: Under certain conditions Mary Beth Whitehead would receive only $1,000, if abortion is demanded by William Stern.

(4) Mrs. Mary Beth Whitehead will receive only $1,000, if abortion is demanded by William Stern, the natural father of the child, on the basis of amniocentesis or similar medical tests [Clause 13].

(5) In most cases, amniocentesis is carried out during the fifth month of the pregnancy only to detect any genetic or congenital defects in the fetus.

(6) Therefore, Mary Beth Whitehead will receive only $1,000 during the fifth month of her pregnancy in lieu of the services she had already provided during five months of her pregnancy. The services already rendered by Mary Beth Whitehead during these **five months** pregnancy period are as follows:

* **g)** Undergoing amniocentesis,

* **h)** Facing abortion,

* **i)** Potential risk-factors, anxiety and hazards for attending amniocentesis and abortion,

* **j)** And also all other services enlisted in argument (2) for an extended period of five months.

* **a)** She would conceive by artificial insemination [Clause 2],

* **b)** Frequent visits to consulting physicians [clause 15] throughout five months

* **c)** She should follow all medical instructions prescribed by inseminating physicians and Obstetricians [Clause 15] for the period of five months.

* **d)** She should lead a more restricted life-style than normal, viz, not to smoke cigarettes, drink alcohol, use illegal drugs etc. [Clause 15] for five months.
e) She would experience the potential risks, discomforts and mental anguish for her pregnancy during five months.

f) She also should nourish the fetus for 5 months.

Lastly consider the remaining alternative, i.e, conditions when only $1,000 will be paid to Mary Beth Whitehead from five months to full term, in case when abortion is not demanded by William Stern in the fifth month of pregnancy.

(7) Mrs. Whitehead will be paid $1,000 only when abortion is not demanded by William Stern on the basis of amniocentesis or similar medical tests, but

k) Mrs. Whitehead miscarried the baby in between five to full term [Clause 10] or

l) If the child delivered was a stillborn baby [Clause 10] or

m) The child did not survive or dies [Clause 10].

(8) But the outsized amount of services Mrs. Whitehead had already provided from five month to the period of miscarriage or stillbirth or death of the baby are as follows:

n) Experiencing miscarriage or stillbirth or death of a baby,

o) Assuming any health risk incurred during miscarriage, stillbirth,

p) Grief, mental anguish, physical pain or discomfort because of miscarriage or stillbirth,

q) Undergoing amniocentesis, at the time of five months pregnancy,

r) Potential risk factors, anxiety and hazards for attending amniocentesis,

s) She has been artificially inseminated and conceived [Clause 2],

t) Frequent visits to consulting physicians [clause 15] throughout five to nine months,

u) She maintains all medical instructions prescribed by inseminating physicians and Obstetricians [Clause 15] for the period of five to nine months.

v) She led a more restricted life-style than normal, viz, not to smoke cigarettes, drink alcohol, using illegal drugs etc. [Clause 15] from five to nine months.
*w) She experienced the potential risks, discomforts and mental anguish for her pregnancy during five to nine months.
*x) She also should nourish the fetus for 5 to 9 months.

From the above analysis, we may arrive at these following conclusions.

<table>
<thead>
<tr>
<th>Service</th>
<th>Period of time</th>
<th>Result</th>
<th>Remuneration</th>
</tr>
</thead>
<tbody>
<tr>
<td>i)</td>
<td>Services rendered by surrogate mother (*a to *f)</td>
<td>First Four Months</td>
<td>No child</td>
</tr>
<tr>
<td>ii)</td>
<td>Services rendered by surrogate mother (*a to *i)</td>
<td>First Five Months (then aborted the fetus)</td>
<td>No child</td>
</tr>
<tr>
<td>iii)</td>
<td>Services rendered by surrogate mother (*a to *x)</td>
<td>10 months (Full course of pregnancy)</td>
<td>No child</td>
</tr>
<tr>
<td>iv)</td>
<td>Services rendered by surrogate mother (*a to *x)</td>
<td>10 months (Full course of pregnancy)</td>
<td>A live child</td>
</tr>
</tbody>
</table>

i) Services rendered by surrogate mother for first 4 months + no child = $0 (No payment)
ii) Services rendered by surrogate mother for 5 months (aborted) + no child = $1,000
iii) Services rendered by surrogate mother for 10 months + no child (stillbirth) = $1,000
iv) Services rendered by surrogate mother for 10 months + a live child = $10,000

The above analysis shows that the amount of remuneration payable to Whitehead would vary from $0 to $1,000, if there remains no hope for a live baby (consider (i) & (ii) situation in the above table). But, the remaining two alternative situations, i.e, (iii) & (iv) clearly show that after completing the full period of pregnancy, the payment of full contractual amount (i.e, $10,000) will still depend on a single issue: whether Whitehead hands over a live, healthy baby to Mr. Stern.
or not. If she becomes unsuccessful to give birth of a live baby, she will get only $1,000, if yes, then only the amount will reach to 10,000 US dollar. Thus, from (iii) & (iv), it logically follows the remuneration of the service rendered by Whitehead for full period of pregnancy is $1,000 and the remaining amount, i.e, $(10,000 - 1,000) or $9,000 would be kept aside to fulfill a further condition—handing over a live baby to Mr. Stem. In short, no baby no payment. So, the proposed service-model of surrogacy arrangement will hold good, if the remuneration in both alternative cases, i.e, (iii) and (iv) would remain the same, irrespective of the fact whether Whitehead hands over live baby to Mr. Stern or not. The service rendered by Whitehead, i.e, (*a to *x) in situation (iii) where pregnancy ends with stillbirth would remain the same as in described under (iv) in the above said table in which Whitehead only successfully handed over a live baby. The payment of residual $9,000 will depend on—whether the pregnancy ends with stillbirth or live-birth. So, the contract itself proves that Whitehead sells a live baby, not her reproductive labour. If Whitehead actually sells her reproductive services, then she would be paid in full unconditionally, irrespective of the fact that whether the resulting baby is alive or not. Service-model thesis, therefore, utterly fails to defend surrogate motherhood from the allegation of baby-selling.

4. (A). 6 Assessments of Annas’ claim: Types of Service Contract

Our next query is: Is Annas’ claim true? How far is his observation justified? Before we evaluate Annas’ reasoning, I like to clarify first, which type of service contract surrogate motherhood is? Surrogacy is, by nature, a contractual agreement, a kind of service contract. But, there are various types of service contract. Let us discuss different types of service contracts familiar within a market situation. We can put all service contracts into two broad categories: service contract with success clause and contract without success clause. A contract with a success clause, demands an expected result, while the other contract does not. We can cite enormous examples of both these service contracts. Suppose, I have employed a plumber to repair the leakage of my sink. I would pay him the contract amount after ensuring that he is able to repair the sink properly. But, if he would fail to stop the leakage, he would receive nothing. (Example cited
in ‘Is commercial surrogacy baby selling?’ by R. Jo Kornegay, published in Journal of Applied Philosophy, Vol.7, No. 3 1990, pp 45-50). Similarly, a matchmaker would expect his payment only when he could manage to settle marriage. In contrast, a surgeon will receive the full contractual amount for performing a surgery, apart from the fact whether such surgery is successful or not done by him. Or, teacher/professor is paid in full without fixing any expectation whether his student would pass in examination or not. Thus, all service-contracts are not of the same kind.

4. (A). Surrogacy as a service-contract with success clauses

Our next query is: which type of service contract surrogate motherhood is? Is it a contract with success clause? Or without success clause? We will begin our investigation by asking a very fundamental question: when and under what circumstances we can consider a surrogacy arrangement as successful surrogacy arrangement? What are the expectations that inspire intending couples to employ a surrogate mother spending such a huge amount of money? It seems logical and at the same time, true to us that no intending parent would enter into a surrogacy contract, if a surrogacy agreement satisfies only following two conditions: i) the proposed surrogate mother would become pregnant by implanting the embryo contributed by the intending couples through in vitro fertilization and ii) she gives the birth to a baby. Apparently, these two conditions appear to us as necessary for fulfilling the ultimate goal of the intending couples, i.e, to achieve a baby for their own. But, in spite of the fulfillment of these two conditions, there might have high chances of some regrettable events due to which commissioning couples may feel disheartened. It might be the case that a surrogate mother becomes pregnant with the implanted embryo contributed by intending couples, but later on due to some medical reasons, the surrogate mother might undergo abortion or miscarriage; or pregnancy may end with unfortunate incidents of stillbirth. Further, after giving birth of a live baby, a surrogate mother, due to some psychological reasons, might not hand over the resulting child to its commissioning parents. So, in the long run, these two conditions mentioned above may not be sufficient to fulfill the purpose of commissioning couples. What is additionally needed is ‘success’ clause. Now,
the successful completion of any surrogacy arrangement depends on two further clauses: whether a surrogate mother gives birth of a healthy, live baby or not; and whether the surrogate mother changes her mind not to relinquish the child. Therefore, the success of a surrogacy arrangement utterly rests on four conditions: i) the proposed surrogate mother would become pregnant by implanting the embryo contributed by the intending couples through in vitro fertilization, ii) she would give birth to a baby, iii) gives birth of a live baby and finally, iv) she would hand over the child to its commissioning parents.

In fact, the inclusion of two success clauses has some interdependency. The inclusion of the third condition, i.e, the birth of a live baby—actually prepares the logical foundation of including another success clause (iv), i.e, 'handing over the child.' If a surrogate mother would become successful in giving birth of a live child, only then the question of handing over the child to its commissioning parents would arise. Any surrogacy contract should include a ‘hand over the baby’ clause, which states that the surrogate mother should hand over the resulting child to the commissioning parents relinquishing all her parental rights over the child.

A contract with a success clause always demands a specific result, failing which would be treated as breach of contract. If we accept that there are contracts which are result-oriented, if a plumber is paid after repairing leakage, a mechanic is paid only after repairing my car properly, then, what would be the harm to admit that surrogate motherhood is a kind of contract which also stipulates a specific result? Like other service contracts, the expected outcome is desired by one of the contracting parties failing which they would not pay the service provider, the surrogate mother. The outcome they desired is: to hand over a live baby to them whom they will rear. Surrogacy is a paradigm case of service contract with success clause. So, ‘handing over a live baby’ does not equate the practice with mere baby-selling, it is merely a specific service delivery contract and nothing else.

4. (A). 8 Kornegay’s observation

Annas actually fails to recognize a complete series of service which actually rendered by a surrogate mother during her pregnancy. He only gives an incomplete description of services, which totally excludes the success clause of the service contract totally. In course of pregnancy, a surrogate mother performs a series of activities, i) became pregnant, ii) gave the birth of a baby, iii) gave the birth of a healthy, live baby and finally, iv) handed over the child to his or her intending parents. If a surrogate mother fails to perform her act in any step, from (i) to (iv), that failure would be treated as infringement of contract and as a contracting party, the surrogate would be penalized for that disappointment.

4. (A). 9 Wilkinson’s observation

In his book ‘Bodies for Sale: ethics and exploitation in the human body trade,’ (Published By Routledge, 2003, pp. 144 - 45), Stephen Wilkinson has remarked that the entire baby-selling objection is based on some misconceptions. Wilkinson’s analysis is: ‘A’ sells ‘X’ to ‘B’ means ‘A’ would hand over ‘X’ to ‘B’ in exchange of money. This general principle of sale, implicitly, also means that ‘B’ would not pay to ‘A,’ if ‘A’ could not hand over ‘X’ to ‘B.’ The entire logic of selling something (X) has expressed a close association of both ‘payment’ and ‘handing over’ clause. Depending on this general principle of sale, one can easily establish that a surrogate mother (A) virtually sells her own child (X) to its commissioning parents (B). A surrogate mother (A) would hand over her child (X) to commissioning parents (B) in exchange of money and at the same time, the commissioning parents (B) would not pay to the surrogate mother (A) if she fails to hand over the resulting child (X) to its commissioning parents (B). Wilkinson’s observation is: application of this general principle of sale in all possible cases would not be proper and adequate. We can show enormous counter examples through which the falsity of this generalized principle could be proved. Take some concrete examples. Suppose, I brought my car to a mechanic to repair it. Would I pay the mechanic if he fails to return back my car to me? We can also show the example of different occupational groups, such as school teacher, mid-wife—in which parents of children have legitimate rights to withhold payments, if children have not returned back to their parents. Does it mean a mechanic, school teacher or mid-wife—sells something to us? In fact, what we pay—we do for their
services. And, the service contract expects a desired outcome together with ‘handing over’ clause. Similarly, commissioning parents would pay a surrogate mother for her reproductive services and her service contract comprises success clause together with a hand over clause like so many examples mentioned above.

4. (A). 10 Is Wilkinson’s claim justified?

But, our study shows that Wilkinson’s above analysis is not proper and justified. Let us try to clarify the issue. At first, take the example of car repairing cited by Wilkinson. His claim depends on two essential issues. Firstly, the car owner, B, is handed over his car, X, to a mechanic, A. Now, this example shows two vital characteristics: ‘B’ is the owner of the car; and ‘B’ handed over a temporary custody of his car to a mechanic. Now, Wilkinson’s assessments would hold good iff two conditions are satisfied. (1) Parents own their children, and (2) a surrogate would hand over temporary custody of the child to the commissioning parents. So, Wilkinson’s comparison would be considered as proper, if these two claims are satisfied accurately. Therefore, our next query is: whether parents own their children or not; and secondly, whether parental right could be handed over to others like property right.

Before we begin our enquiry, we would like to clarify two notions: nature of ownership and the distinctiveness of parental right.

The sale of an object requires two fundamental characteristics: firstly, the object of sale should be a fungible, market-alienable, tradable commodity, and secondly, the seller should own the object of sale. Now, the ownership of any tradable article demands two crucial features; a) the object must have some exchange values; and b) it assigns some market-alienable rights, like property right, to the holder of the object. So, any kind of ownership, sale, transfer or relinquishment of an article exclusively depends on these two conditions: whether the object of sale is a tradable commodity or not and whether the holder of the article possesses any kind of market-alienable property right or not.
Now, the question is: what is parental right? I would like to mention, in this connection, the view of Elizabeth Anderson as shown in her article, ‘Is women’s labour a commodity?’ published in the Journal, ‘Philosophy and Public Affairs,’ Vol. 19, No. 1. (Winter, 1990), pp 75-76). According to Anderson, an individual would become a parent due to parental love and trust. Now, what is ‘parental love’? It has often been equated with ‘passionate, unconditional commitment to nurture one’s child, providing it with the care, affection, and guidance it needs to develop its capacities to maturity.’ (Anderson, pp.75). Thus, parental love is not merely a love, but, assignment of some sort of duties, responsibilities towards their children. Children are to be loved, but not to be used or manipulated for personal benefits. So, parental rights could be better described as duties rather than rights. A family, primarily, is the union of children, parents and other members. The flourishing of this family solely depends on the welfare of each member of the family. A parent could never exercise his/her parental right without considering the welfare of other family members. Unlike property right, parental right could not be exercised unconditionally in accordance with the volition of the right-holder only. Moreover, all rights are not of the same kind. Some are market-alienable rights, which are salable in market, could be transferred to others and relinquished, legally, by the right-holder. There are also some rights, which are market inalienable—which are neither salable nor transferable or relinquished by right-holder. Property right is one of the good examples of market-alienable right, which could be salable or transferred or relinquished to others. Unlike property right, parental rights and duties could never be relinquished, transferred or salable to others. Thus, parental right, by nature, could never be used like a market alienable property right. Parental right is, undoubtedly, a model example of market-inalienable right.

Our next query, now, is: do parents own their children? We have already seen that the entitlement of an article could be owned by an individual, if the article is fungible, market-alienable commodities which have some exchange values. Then, the question arises: are children market-tradable, fungible products that could be purchased by any highest paid stranger? Our study reveals that a live human being
could never be equated with a fungible, tradable commodity. Fungible objects could be owned by individuals. Because, a live baby is not a finished product; it possesses enormous potentials to achieve 'personhood' in future. We may conclude that a parent neither owns his/her children nor parental rights could be used like a property right. Therefore, the claim of parents as owners would not only be an inappropriate use of market norms; such application is morally unjust also.

So, Wilkinson’s defense regarding handing over a live child (as a success clause) utterly fails to justify his position. Because, neither claim is proper and justifiable. Neither the parents are the owner of their children; nor could parental right be used like property rights. Moreover, a surrogate mother is handed over the child to its commissioning parents not for temporary period of time, but for ever. In fact, the two issues—‘handing over’ a live baby and the relinquishment of parental right—clearly show the applications of open market norms in the most intimate, private sphere of human life—family.

In fact, in my opinion, the ownership claim of parents actually originates from some misconceptions. Let us clear the position. The advents of different technological breakthroughs provide us enormous opportunities to donate or sell our bodily organs like heart, kidney or bodily fluids like blood or bone marrow. In similar way, autonomous individuals get the openings to sell their genetic substances like sperm or ova. It has been ordinarily believed that since individuals own their genetic materials they could also place ownership claim over their children to whom they procreate. But, the actual problem is: we could sell our genetic materials just like tradable commodities, but could not sell those resulting babies who are reproduced by using these genetic materials. Why? And, at what point of time, parents or owners of sperm/ova lose their ownership claim over that matter? Embryologists, geneticists all agree that when an embryo has been considered as individual person, at that moment of time, parents would lose their claim over the growing fetus. The misconception regarding the ownership claim mainly arises due to lack of proper informations about embryonic personhood.
4. (A). 11 Our assessment

Throughout our discussion, we have noticed that the objection of baby-selling against surrogacy arrangement mainly rests on a success clause—a clause of ‘handing over’ a live child to its commissioning parents, failing which a massive cut down in remuneration would take place. Opponents of surrogacy arrangement primarily concentrate on this specific issue while dealing with baby-selling objection. Proponents, on the other hand, mainly apply the reproductive service model to defend baby-selling issue. For them, surrogate motherhood is a kind of wage labour. A surrogate mother provides her reproductive services in exchange of wages. Opponents vehemently objected that reproductive labour could never be equated with other wage labours. By nature, reproductive labours or services are totally distinct and unique in comparison with other wage labours. The finished product received through reproductive services is not a material, fungible object which could be sold or purchased. So, the reproductive labour provided by a surrogate mother is market inalienable in nature. The application of market norms in surrogacy arrangement is morally unjust and wrong.

At the end, our study finally observes that surrogate motherhood is closely related with two other social practices, called—adoption and baby-selling. Surrogacy shares some unique as well as some common features with these two practices. At the end of any surrogacy arrangement, the commissioning parents adopted the resulting child, but unlike adoption, the adoptive/commissioning parent is also the genetic parent(s) of the child adopted by the commissioning parents. Such first-degree biological relatedness is completely absent in normal adoption cases. In normal cases of baby selling, the genetic parents sold their children to highest paid strangers. In both surrogacy and baby selling, a live child should be handed over to its purchaser/commissioning parent in exchange of money. But, our study has noticed that surrogacy arrangement also possesses some unique features in comparison to baby selling.
Firstly, surrogacy is basically a pre-conception contract. It means that surrogacy arrangement is made long before the conception occurs, when there is no child who could be sold or purchased. The sale of an object could be made possible only when there exists at least one such object to be sold. How is it possible to sell a non-existent baby? Surrogacy, by nature, is a pre-natal agreement. Baby-selling, on the other hand, is, by nature, a post-natal agreement due to unwanted pregnancy or financial needs, genetic parents sold their children to a highest paid stranger.

Secondly, the child born through surrogacy is highly intended by its commissioning parents, because, the child born is also biologically related to them. In baby-selling, the purchaser is a stranger to the child; the birth of the child purchased is not intended by its purchaser.

Thirdly, the motivation that inspires a commissioning couple to employ a surrogate mother is to institute a family, more specifically a biological family for their own. In baby-selling, we actually make an arrangement to nurture, socialize an unwanted child within a family structure. The basic intentions of these two practices are different.

And finally, in an open market situation, the sale of a baby is primarily governed by the market norms; the purchasers are the highest bidders. But, in surrogacy, the application of market norms in reproductive area is a highly contentious issue. In fact, the application of market norms in selling a baby, to use a baby like a fungible, tradable commodity is equally wrong—legally as well as morally.

Surrogate motherhood, no doubt, has enormous potentials to be exploitative and harmful—harmful to the resulting child or to the surrogate mother employed. But, the charge of baby-selling against surrogacy is not suitable and justifiable.

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4. (B) Surrogate motherhood and Exploitation

The word 'exploitation' has numerous uses and distinct interpretations. In ordinary usage, exploitation is often conflated with oppression, betrayal, coercion, assault, deception and discrimination. Like human actions or attributes, relationships, transactions, even opportunities can be the object of exploitation. In ordinary uses, the word 'exploitation' denotes wrongful acts amounting to some moral harm. A wrongful act is, by nature, a deliberate action. So, an exploitative act is (i) intentional, (ii) commits some moral harm, and so, (iii) is a wrongful action. In ordinary parlance, we mostly use exploitation in this pejorative sense and often think that any society would be considered as a just society if people would not exploit one another, at least in a large scale, in this sense. Thus, the common use of exploitation is considered as a moralized concept. To make any valid claim for exploitation would be a moral claim. Murder is often treated as a moral term, which means 'wrongful homicide.'

Apart from this pejorative use, there are various other connotations of exploitation. There are some cases where exploitation can be used in non-moral sense also. Few commentators think that some types of exploitation could be harmless, mutually beneficial and at the same time, consensual for the concerned parties. In our study, we would discuss different types of exploitation under three broad categories: (i) moral or non-moral exploitation, (ii) harmful or non-harmful exploitation and (iii) consensual or non-consensual exploitation. Normally, exploitation, in its pejorative sense, which I have already mentioned above, is harmful—morally harmful and non-consensual.

4. (B). 1 Moral and non-moral exploitation

Now, the question is: are all instances of exploitation morally condemnable? Let us consider some examples. When a chess player exploits the inattention of his opponent in order to win the game, does his attitude amount to any moral harm? We rather appreciate a lawyer if he exploits the weakness of the opposite party to win litigation. It would not be morally unfair if a resourceful person exploits all the opportunities he obtains. In these non-pejorative uses, the word 'exploitation' refers to some opportunities and resources rather than human beings. Therefore, the term 'exploitation' can be used in neutral or positive senses. Such uses are
quite different from its pejorative uses. Thus, for some commentators, all uses of exploitation are not moral exploitation.

4. (B). 2 Harmful exploitation and mutually advantageous exploitation

'A' harmfully exploits 'B,' means when, (i) A (the exploiter) takes unfair advantage of B (the exploitee) (ii) A is benefited and (iii) B is harmed. For example, a slave master, A, sells a slave child, B, to another slave master, C and C forces B to work in the fields with provisions for bare subsistence of B. This is a clear example of harmful exploitation. Now, all cases of harmful exploitation do not always mean that B (the exploitee) looses something (zero-sum – A gains and B looses). It may involve a negative-sum (A's gain is less than B’s loss) or positive-sum (A gains by imposing a loss on B that is less than A’s gain).

Now, the question is: can ‘A’ exploit ‘B’ if B gains from the transaction or if B is not directly affected by A’s utilization of B? Consider few cases of harmless parasitism—where A uses B for his own advantage, but B is not worse off. Suppose, late at night, on a rural road, B's car is in a snow bank. Meanwhile, A stops at that point and assures to rescue the car within few minutes in exchange of $300. This is a mutually beneficial transaction. Such mutually advantageous transaction would be assessed differently by the contracting parties and considered as advantageous to both of them. On our study, I would discuss the notion of mutually advantageous exploitation in some details, later on.

4. (B). 3 Consensual and non-consensual exploitation

Exploitation may take place under two alternative situations: consensual and non-consensual. In case of non-consensual exploitation, the exploitee does not offer any consent or fails to give valid, voluntary consent to the transaction. In most cases of harmful exploitation, the consent of the exploitee is very often compromised either by coercion or by deception or through incompetency. Suppose, B, needs a life-saving surgery. A is the only surgeon who could do the surgery. But, A, proposes to perform the surgery for $30,000, when the normal fee for the surgery is $15,000. B agrees. Very clearly, B's consent is somehow coerced by the situation. Or, Nazi experiments on prisoners as human subjects in concentration camp—are another example of non-consensual, harmful exploitation. By contrast, in case of consensual exploitation, the exploitee makes a
voluntary, informed, competent and rational decision to agree to the transaction. In most cases of mutually advantageous transaction, the exploitee gives valid consent to the transaction. A man is drowning in a river and a rescuer proposes him to rescue, if he pays $5,000. Both of them know that there is no alternative rescuer. The transaction is both mutually beneficial and consensual.

Now, these two categories of classification of exploitation—harmful/mutually advantageous and consensual/non-consensual, are not equivalent. But, most cases of harmful exploitation are non-consensual and most cases of consensual exploitation are mutually advantageous. The moral force of harmful and nonconsensual exploitation is very straightforward. In such situations, it is wrong prima facie to harm and the state is justified in prohibiting such transactions. Now, to examine whether the applications of surrogate motherhood is exploitative or not, let us distinguish three types of exploitation for the sake of our discussion.

(i) Harmful and non-consensual exploitation, (The exploiter is benefited, the exploitee is harmed and the exploitee does not give valid consent),

(ii) Mutually advantageous, but, consensual exploitation, (The exploiter is benefited, the exploitee also benefits all things considered and the exploitee gives valid consent),

And, (iii) Moral exploitation.

On the basis of this classification, I would like to present the alleged exploitation of surrogate motherhood under three broad headings:

- Surrogacy as ‘harmful, non-consensual’ exploitative practice,
- Surrogacy as ‘consensual, mutually advantageous transaction,
- And, (iii) surrogacy as moral exploitation.

In this context, I would like to make it clear that, in our study, I deliberately separate the issue—surrogacy as the moral form of exploitation—from other two categories of exploitation for few reasons. This separation does not mean that harmful exploitations are not moral harms. Under this topic of discussion, I would like to consider only those issues which are deeply related to some moral notions like—use of human being as ‘means,’ not as ends, degradation, commodification of human being, commercialization of woman’s reproductive labor etc. This approach of my study is mainly borrowed from the writings of Alan Wertheimer
(Exploitation, By Alan Wertheimer, Published By Princeton University Press, USA, 1996, pp.102) and Stephen Wilkinson (Bodies for Sale: Ethics And Exploitation In The Human Body Trade, by Stephen Wilkinson, Published By Routledge, UK & USA, 2003, pp. 68).

4. (B). 4 Surrogate motherhood and Exploitation

One of the most significant objections against surrogacy is that: the practice involves potential exploitations for the surrogate mothers along with the resulting child. Commercial as well as altruistic—both forms of surrogacy have enormous potentials to be exploitative. The combination of desperate infertile couples, low-income surrogates, and assistance of surrogacy brokers, with varying degrees of moral scruples strengthen the prospect of reducing the practice as exploitative. So, our next query is: what are those potential harms? Are these factors really substantial to its contracting parties? Is this claim of exploitation justified? How could we minimize the potential risk factors? Thus, at this point, the prime objective of our study is to find out—the possible stake-holders, the relevant risk-factors related to them and finally to evaluate the intensity of these risk factors and possible way outs.

4. (B). 5
1) Surrogacy as harmful, non-consensual exploitation

It is to be noted that in surrogacy, a contract is duly signed by two parties, the natural father of the child and a surrogate mother. So, at a first glance, it seems logical that only these two parties are involved in this arrangement, one party gains, while the other is harmed. But, in reality, except these two, there are few potential stake-holders who could be affected indirectly by this practice. Here, by stake-holders, I mean the vulnerable parties or those subjects to potential exploitations—directly or indirectly. They are:

a) The surrogate mother herself,
b) The resulting child,
c) The intending or commissioning couple,
d) Society as a whole.

In our study, we will try to talk about probable harm or risk-factors from each of the stake-holder’s perspective separately.
4. (B). 5. A Harm-factors related to the women who act as surrogate mothers

Very prominently, the application of surrogate motherhood may have enormous potentials to be exploitative for the women who act as surrogates. In our study, we would consider all the harm-factors related to a surrogate mother under three headings: health-risk, psychological risk and financial risks. Let us discuss these issues in some details.

- Harms related to Health-factors

Surrogate motherhood involves a huge amount of risk-factors—both short-term and long-term—related to the health conditions of the women who act as surrogate mothers. In fact, the risk factors related to health conditions of surrogate mothers fundamentally depend on several distinct features of this arrangement. Some of these factors are as follows:

- The type of surrogacy (gestational or traditional),
- The nature of hormones or drugs prescribed for surrogates,
- How many IVF or AI (artificial insemination) cycles a surrogate undergoes before reaching a successful pregnancy,
- The number of embryos implanted,
- The health and age of the woman serving as a surrogate,
- The age of the woman providing the eggs,
- Whether the eggs or embryos used for transplantation are fresh or frozen,
- Whether the gamete donor has any infectious disease or not.

Let us discuss these factors in some details.

- (i) The type of surrogacy (gestational or traditional)

In traditional surrogacy, the technology this arrangement incorporates is: artificial insemination (AI). The insemination would be performed either by intracervical insemination (ICI) using neat sperm or through intrauterine insemination (IUI) by using prepared sperm.

Gestational surrogacy could be implemented in two possible ways. The first method is almost similar to an egg donation cycle. While a gestational surrogate acts as a recipient, the commissioning couple serves as donors. The eggs removed from the donor female are fertilized with her partner’s sperm and the resulting
embryo cultured in a laboratory for several days, implanted to the uterus of the gestational carrier.

An alternative method uses cryopreservation or frozen embryos. This technique applies a standard IVF cycle. Embryos produced by the commissioning couple are kept frozen. Later on, they are thawed and placed into the uterus of the gestational carrier after hormonal preparation.

So, very prominently, traditional surrogacy employs artificial insemination (AI), while gestational surrogacy involves in-vitro-fertilization (IVF). As a technology, IVF is a more complicated and risky procedure than artificial insemination (AI).

✓ (ii) The nature of hormones or drugs prescribed for surrogates

(A). Screening

In either application of surrogacy, traditional or gestational, the medical risk begins long before the commissioning parents have agreed to hire a surrogate. Potential surrogates are required to undergo a thorough screening process. This screening process includes several physical and medical tests, a thorough medical history, including any STI’s (sexually transmitted infections).

The screening process for gestational surrogacy is more extensive and complicated than traditional one. In this screening process, a surrogate is asked to undergo a hysterosonogram or a hysterosalpingogram or both. Each procedure is painful and unpleasant and medically harmful to some extent.

A hysterosonogram uses a catheter placed in the cervical canal or uterine cavity to image the uterus and fallopian tubes while fluid is injected into the catheter. A hysterosalpingogram is a similar procedure, but, in stead of fluid, it uses iodine and radiation to image the reproductive organs. Both these procedures carry risk of bacterial infections, which may, in rare circumstances, lead to major surgery and render the surrogate unable to have future children. Risks of the procedure include radiation exposure, allergic reactions to iodine and puncturing of the uterus, fainting. Allergic reaction, infection and fainting are the most common side effects of both these procedures. These procedures may also cause cramping, bleeding, dizziness, nausea or vomiting.
(B). Risks of Artificial Insemination

In traditional surrogacy, artificial insemination (AI) is the major source of pre-conception risk. The two most common applications of artificial insemination are: intracervical insemination (ICI) and intrauterine insemination (IUI). In either procedure, a catheter is used to insert sperm into the cervix or uterus. Risks include in both applications— infection, multiple pregnancies, STI (sexually transmitted infections) from the sperm, and risks associated with fertility drugs. The most common drug prescribed for artificial insemination is clomiphene citrate or Clomid. Clomid carries the risk of ovarian hyper stimulation. In some rare cases, such hyper stimulation may be life-threatening and may cause risk of hot flashes, abdominal pain, mood problems, blurred vision, and other side effects.

(C). IVF risks

IVF stimulates multiple follicles and eggs to develop in the ovaries and then taking eggs out of the woman, fertilizing them in the petri dish with her partner's sperm and finally transfer the resulting embryos back to the uterus of the female partner. IVF-gestational surrogacy involves the same procedure, except the embryo is transplanted to a surrogate’s uterus. Since the embryo is implanted to the surrogate within very few days after the ovulation of intended mother, so, a proper tuning of the menstrual cycle of the ova donor with the surrogate is required. For this purpose, an extensive course of hormonal treatment is recommended for a surrogate. As a result, these extensive uses of hormonal treatment may cause more complications to a gestational surrogate than a traditional one.

- **Lupron**, a subcutaneous injection, and **Synarel**, a nasal spray, are often used as Gonadotropin releasing hormone (GnRH) agonists, which inhibit the brain from secreting hormones that control the menstrual cycle. These medications prevent premature ovulation and allow the patient's cycle to be coordinated as needed. Normally, these medications are usually well-tolerated; some women may have hot flashes, fatigue, headaches, irritability or nausea. Risks also include severe allergic reactions, infection and bleeding.

- **Estrogen** is used to thicken the lining to the endometrium, the inner wall of the uterus, for successful implantation. Long-term use of estrogen due to
unsuccessful IVF cycles may lead to hyperplasia, a risk factor for uterine cancer, the risk of breast cancer, heart attack, stroke and serious blood clots, including all potentially life-threatening conditions. Some women may experience vaginal irritation, dizziness, lightheadedness, headache, stomach upset, bloating, nausea, weight changes etc.

- Progesterone is the hormone produced by the ovary after ovulation. This medication can be given to improve the uterine lining, which may enhance the success of implantation. Side effects can include bloating, irritability and tenderness of female organs.

- Different types of antibiotics like doxycycline and Steroids like methylprednisone and medicines used for antirejection have serious side effects, including weight gain, high blood pressure, glaucoma, cataracts, peptic ulceration, and major psychotic disturbances. Specially, the use of Methylprednisolone weakens the natural immunity of the body.

✓ (iii) How many IVF or AI cycles a surrogate undergoes before reaching a successful pregnancy

In most cases, a single cycle of IVF or AI may not be sufficient for a successful pregnancy. So, a surrogate may undergo more than one cycle of IVF treatment. To produce good numbers of embryos always improve the chances of successful pregnancy. With each cycle of IVF, the surrogate encounters the risks related to this technology including effects of hormonal medication. Thus, the increased numbers of IVF cycle, proportionately, develop the physical risk of a surrogate mother.

The success rate of artificial insemination is much higher than IVF. In case of traditional surrogacy, a surrogate mother has been artificially inseminated by the sperm of an anonymous donor or the male partner of the commissioning couple. Now, all sperms are not eligible for fertilization. Fertilization depends on: (i) the quality of the sperm (whether damaged or frozen), or (ii) the suitability of hormonal levels of the surrogate mother. The compatibility of the sperm with the woman who acts as a surrogate can never be predicted earlier. To prevent this incompatibility, AI also needs an extensive course of hormonal therapy.
✓ (iv) The number of implanted embryos

Multiple implantations of embryo also increase the chance of a successful pregnancy. But, the multiple implantations of embryos may result multiple pregnancies. To carry multiple fetuses not only harmful for a surrogate mother, it significantly affects the growth of the fetus and causes premature delivery. Premature birth not only harmful to the resulting babies, it may create major birth defects to them.

✓ (v) The health and age of the woman serving as a surrogate

Risk related to any pregnancy always depends on the age of the carrying woman. Young age with good health lessens the risks of pregnancy. So, woman with ill-health and relatively old age may encounter high risks related to pregnancy and technology.

✓ (vi) The age of the woman providing the eggs

The age of the donor who provides the egg for IVF greatly influences the success rate of pregnancy and the possibility of the live birth. Therefore, a surrogate pregnancy carries the risk of miscarriage and complications of pregnancy if the intended mother or egg donor is relatively an old woman.

✓ (vii) Whether the eggs or embryos used for transplantation are fresh or frozen

The success rate of pregnancy through IVF greatly depends on the nature of the ovum and embryo. This means that whether ovum or sperm or embryo used for IVF or artificial insemination is fresh or frozen. The uses of fresh reproductive tissues rather than frozen tissues reduce the risk of pregnancy and also increase the success rate of it.

✓ (viii) Whether the donors of gamete have any infectious disease.

When clinics and matching agencies screen the reproductive tissues to diagnose the potentials of infectious diseases and chances for sexually transmitted infections (STIs), there remains high chances of errors—both human and medical. Thus,
those who act as surrogates and agree to be artificially inseminated are subjected to the risk of infections from these reproductive tissues.

D. Risk related to normal pregnancy

The process of pregnancy itself is a risky task. Thus, the risk related to surrogacy pregnancy includes all the risk-factors related to normal pregnancy. This includes: exhaustion, nausea, indigestion, constipation, weight gain, bloating, backaches, difficulty sleeping, high blood pressure, hormonal mood changes, stretch marks, loose skin, abdominal and vaginal muscle weakness, varicose veins, preeclampsia, placenta previa, gestational diabetes, anemia, embolism, cardiopulmonary arrest and even death.

(Reference Related to Physical risks: (i) The challenge of reproductive medicine at Catholic Universities: Time to leave the catacombs, Edited By Ivo Broseus, © 2006 Peters, Bondgenotenlaan, pp. 57-70, (ii) IVF and Beyond for dummies? By Dr. Karin Hammarberg, Published By Willey Publishing Australia Ply Ltd, pp. 7-51, (iii) Textbook in In-vitro-fertilization and assisted reproduction: The Bourn Hall Guide to Clinical and Laboratory Practice, Edited By Peter R. Brinsden, ©2005 Taylor and Francis, pp. 393 - 404)

- Psychological Harms

Psychological or emotional harm is the most common risk factor of surrogate motherhood. There are several emotional issues that might significantly affect the programme. The choice to act as a surrogate mother itself is a challenging task. Such emotional risks may occur during the period of pregnancy or at post-natal session, after child-birth.

✓ Unpleasant situations between a surrogate woman and the commissioning couple may occur at any point of time. Since the couple is deeply concerned with the wellbeing of both the surrogate and the child, their involvement may exceed the limits of advice and suggestion.

✓ Two contracting parties many differ on various issues: choices and selection of food, restrictions prescribed by physician, life style during pregnancy, different cultural and religious beliefs. Major decisions during the period of child birth are mostly taken by the couple which a surrogate feels compulsive.
Sometimes, psychological stresses may occur due to lack of family support of the surrogate. If a surrogate does not get sufficient support from her partner or husband and from other members of family, she may feel alone through out the whole period of pregnancy. The physical symptoms of pregnancy and the continual fluctuation of pregnancy hormones—strengthen her feelings of isolation more pronouncedly. Thus, the applications of surrogate motherhood greatly influence the surrogate’s partner, family members and existing children of her. Very prominently, such feeling of isolation destabilizes the integrity of her family. So, it is important for a woman to consider whether she would get the proper moral support and practical help from her partner and family members or not throughout her surrogate pregnancy and the postnatal period.

Now, women who decide to act as surrogates are motivated for several reasons: some surrogates enjoy pregnancy, some who, in the past, have voluntarily aborted or given up a child through adoption, become surrogate mothers in order to relieve the painful experience of pregnancy in a psychologically suitable ways. Few are interested for the remuneration which will be treated as an option of income. Some others are motivated exclusively for altruistic reasons. Some divorced women with young children may choose to be surrogates in order to support their children and to stay at home for nurturance. So, different motivations may encourage a woman to act as a surrogate. But, these motivations, in most cases, overlook the consequences—both long-term and short-term—of this arrangement. At the pre-contract stage, it is rather difficult for a woman to anticipate any short-term as well as long-term feelings that may arise during her pregnancy. A surrogate mother begins her pregnancy with a strong conviction that she could counter any adverse situation and will remain isolated, emotionally, from the growing fetus. Relinquishing the child—is the most distressing part of surrogacy arrangement. It has been proved that a surrogate, unconsciously, forms an emotional, maternal bond with the baby. The custody disputes of Baby M or lawsuits like Anna Johnson vs Mark Calvert prove that the separation of birthing mother with her growing fetus is seriously problematic. Those who relinquish their children, in accordance with the contract, may encounter the risk of post-natal depression, feeling of anger or guilt. Such dejection may frail the mental constitution of those women. In most cases, woman enters into a surrogacy arrangement due to dire financial needs without being fully informed of its potential harms.
After surrendering the child, a surrogate may be negatively distressed not only by her feeling of isolation, she may feel the situation equivalent to sale of her body and baby.

In fact, the dispute rests on the issue: if an organ donor is allowed to sell his organ and if a donee is permitted to live a life in exchange of purchase, then, why should we reject the sale of reproductive services for financial needs? Apart from surrogacy, there are several instances of reproductive choice—abortion, sterilization, sperm donation—that might be later regretted. But, no doubt, the risk related to later regret is relatively higher in case of surrogacy rather than other reproductive cases. It is not unnatural for a birth-mother to feel depressed after relinquishing her child.

**Financial Harms**

The most common objection against surrogate motherhood is: exploitation of underprivileged women—exploitation of women with dire financial needs. It has been often said that the remuneration of a surrogate mother is not substantial. In comparison to other productive labor, the duration and complexities of the labor rendered by a surrogate is no way compatible to her remuneration. Now, the question is: how does the remuneration of a surrogate mother lead to the exploitation? In commercial surrogacy, two contracting parties—the commissioning couple and the surrogate—hold unequal power status. The unequal bargaining positions of two contracting parties never provide enough opportunities to a surrogate mother to strengthen her claim due to dire necessities.

Further, the financial inducement to a surrogate vitiates the voluntary nature of her choice. If a woman with dire financial condition acts as surrogate, her decision reflects her needs, not her autonomy or reproductive choice. Moreover, in most cases, surrogate mothers are commissioned through surrogacy agencies or through brokers. The sole target of these agencies or brokers is to recruit woman from socio-economically deprived section of Third World countries only to minimize the cost of surrogate arrangement without hampering their profit margin.

In most cases, when child birth ends with failure due to miscarriage or stillbirth, a minimal amount of compensation will be paid to a surrogate. In a
standard surrogacy contract, for example in Baby M Contract, it has been clearly stated that a surrogate will receive nothing ($0) in case of miscarriage within the first four months of pregnancy, in spite of all her reproductive services she had provided – such as, conception through artificial insemination, restricted life-style, potential risks and discomforts of pregnancy, nourishing the fetus for 4 months. She would receive only $1,000 in case abortion is demanded by natural father or in case of stillbirth in between 4 to 9 months.

- **Exploitation, coercion and valid consent**

Before we discuss whether a surrogate’s consent is valid or not, I would, at first, like to discuss what types of consent are invalid and become problematic. Let us take two types of example. Suppose, few workers are forced to take a job at the rate of Rs. 90/- per day. This wage is comparatively lesser than the standard wage of labor of the country. These laborers are forced to accept this job due to dire financial necessity only to avoid the starvation of his family members. Consider another case of wage labor. Think of a rich man, who for the sake of charity works for some days and accepts a token money at the rate of Rs. 90/- per day. Now, both these examples are connected with underpayments. But, we all think that, in the former case, the workers have been exploited by their employers, not in the latter case. The key difference between these two types of example is the nature of the consent offered by these workers. While, in the former case, the validity of the worker’s consent is questionable, in the latter case, the consent is valid and unproblematic. Thus, the validity of consent would ultimately determine which cases are exploitative and which are not. In fact, validity of consent usually depends on three essential factors: availability of adequate information, competence and voluntariness. In contrast, coercive consents are considered as forced and involuntary. To utilize coercive situations to obtain consent would render the resultant consent invalid. Within this theoretical framework, we would evaluate whether a surrogate’s consent is valid or not, coercive or otherwise?

Most of the thinkers, who believe that surrogacy is a harmful practice, assume that the consent of a surrogate mother is defective due of her coercive position. It is difficult for an individual of little financial means to refuse an attractive monetary offer. Needy, poor, underprivileged women are coerced or forced to become
surrogates, because, surrogacy gives them an opportunity to improve their present financial position. "To say that a woman 'chooses' to do this ...is simply to say that when a woman is forced to choose between poverty and exploitation, she sometimes chooses exploitation as the lesser of two evils." (Cited in, Exploitation by Alan Wertheimer, Published By Princeton University Press, USA, 1996, Chapter - 4, pp 109)

It has been argued that a surrogate mother can not give an informed consent before conception. Because, no woman is capable to anticipate how her relationship would be with the growing fetus during pregnancy and after child birth, even if she has already borne children. The term 'informed consent' usually denotes full understanding of the personal feeling and the psychological consequences of surrendering the baby. So, any pre-conception decision could not be an informed consent.

4. (B) 5. B Harm to the child born

It has been commonly argued that surrogacy is an arrangement which is executed by two contracting parties—the surrogate and the commissioning parents. Both these parties exercise their autonomy, their reproductive choices. The question is: do they consider the welfare of the resulting child before signing a contract? In our study, I would like to mention some of the risk factors related to the resulting child.

✓ Some critics suspect that since a surrogate gestates a fetus and gives birth to a child not for her own but for some others, she may feel less motivated to take care of ownself and the fetus throughout pregnancy. Her commitment to the fetus is not emotionally profound. Pregnancy, then, turns to a mere burden. Unrestricted life style including smoking, taking drugs or alcohols, insufficient food intake—may cause severe physical harms to growing fetus.

✓ The resulting child may be harmed—psychologically or socially—if he or she becomes the object of custody dispute. Children of disputed parentage may feel alienated from their genetic or gestational mothers and encounter mental agony or distress for their mothers. They may think that their birth mothers are in
great troubles, counter lots of hazards only due to her natural, emotional bond with them.

✓ An objection often raised against commercial surrogacy is that the introduction of a market mechanism for acquiring a child encourages the demand for product quality. Since the commissioning parents spend a huge amount of money only to get a child, they may feel reluctant to accept an abnormal, diseased or deformed baby.

A similar incident happens in the popular lawsuit of ‘Baby Doe.’ In 1983, Mrs. Judy Stiver, a Michigan housewife, agreed to act as a traditional surrogate for Alexander Malahoff and his wife for a fee of $10,000. When the baby was born Malahoff found that the baby suffered from microcephaly—a child with Down’s syndrome, abnormally small head. In most cases, such baby would turn out as mentally retarded. Neither Mr. Malahoff nor Mrs. Stiver had claimed the child. During the period of custody dispute, the baby died. (Judy Stiver and Ray Stiver vs Philip J. Parker and others (United States Court of Appeals, Sixth Circuit, 975 F2d261, 61 USLW 2166, No. 90-1624) (http://openjurist.org/975/f2d/261/stiver-v-i-parker.msl)

✓ When a child is born, no matter whether he or she is born through normal pregnancy or surrogacy, each and every child needs a secured family life and should not be threatened to be sold. It has been argued that surrogacy is analogous to another degraded practice, called baby-selling. A birth-mother sold her child to a stranger. In surrogacy, the only mitigating factor is that, unlike baby-selling, the child has been purchased by his genetic father, not a stranger.

✓ In both adoption and surrogacy, the birth-mother receives compensation for relinquishing the child to the intending parents. A child’s custody may be offered to an undeserving stranger. Thus, the suitability of the commissioning parents solely depends on the capacity of affordability. Now, the question is: is surrogacy a form of baby making for strangers who could have a past being child abusers?
Parents may expect more from a surrogate child, as they have spent a huge amount of money for his procreation.

In fact, such suspicion could never be justified at all. Suppose, parents spent a huge amount of money for their child—either for medication or for surgery. Does it mean to expect something more from him? Such doubts, by no means, are tenable.

Surrogacy is not only harmful to the resulting child, it is also harmful to the existing children of the surrogate. The existing children may feel insecure, threatened by their mother’s activity. They experience that their mother surrenders their new-born sibling to others. So, it may happen with them.

Now, to reply this argument, we may suggest that, from initial stage, each and every member of surrogate’s family knows very well that the child grown would not be the part of their family in future. The intending parents would be the future parents of the growing fetus and the resulting child. They are not the subjects of contract and so, could not be relinquished.

Now, the idea of personal identity and distinctive features of family formation is closely connected with our biological relatedness. Any attempt to separate these elements may cause adverse effects. In case of gestational surrogacy, a child is reared by a woman who is not genetically related to the child. The resulting child may not know—who is the ‘true’ or genetic mother. The child may experience a tremendous identity crisis and may also feel outcast in the family in which he or she is nurtured. This situation would create more complexities if any close relative or family member would act as a surrogate mother. Consider a news report. A 56 year old woman, Jaci Dalenberg from north-east Ohio, agreed to act as a gestational surrogate for her own daughter, Kim Coseno. The embryos produced by her daughter and son-in-law were implanted to Jaci and Jaci gave the birth of triplets—Gabriella Claire, Carmina Ann and Elizabeth Jacilyn at Hillcrest Hospital. Thus, Jaci becomes not only the gestational mother of these triplets, she is also the genetic grandmother of these babies. (Re: ABC News, U.S, reported by M.R Kropko, Cleveland, published in November 11, 2008)
Now, such employment of this technology not only complicates the biological relationships, the disclosure of both biological and non-biological parents may create severe identity crisis to the resulting child. These children may feel a sense of loss or abandonment due to the absence of biological mother.

In reply to these objections, John A. Robertson, an eminent liberal feminist, in his book ‘Children of Choice,’ (Children Of Choice: Freedom And The New Reproductive Technologies, John A. Robertson, Published By Princeton University Press, New Jersey, 1994, pp 121-22) has recommended that children have the right to know who are their genetic parents and this right constitutes the significant part of personal identity. So, to resolve the problem of identity crisis, disclosure of informations would be the only solution.

✓ Some critics have pointed out that the lives of the children born through surrogacy, especially through commercial surrogacy, will be less happy than those children born through normal pregnancy or through altruistic surrogacy. When a child realizes that he was sold either by his gestational mother (in case of gestational surrogacy) or by genetic mother (in case of traditional surrogacy) in exchange of money, it may severely affect psychological constitution of the baby.

In our study, I have noticed that the status and the position of children—either born through surrogacy or placed for adoption—are almost same. Surrogacy is structurally analogous to adoption. So, the placement of a child through adoption demands similar kind of duties and responsibilities of commissioning parents. Like adoption, the physical and mental fitness of commissioning parents would be thoroughly assessed.

4. (B). 5. C **Harm to the intending or commissioning couple**

At a first glance, it seems true how can the couple, who are in a far better position—socially and financially—than a surrogate be harmed by the transaction and by whom.
In fact, the intrusion of third party into the process of human procreation may weaken the marital as well as some familial relationship. In traditional surrogacy, the intending father is the only parent who is genetically related with the resulting baby, so, he may have a greater claim over the child in comparison to his female partner. Sometimes, in traditional surrogacy, the female partner of commissioning couple may feel it forcible to rear the genetic child of her husband with whom she has no genetic relationship.

Rosemarie Tong in her article, ‘Surrogate Motherhood,’ (A Companion To Applied Ethics, Edited By R.G Frey And Christopher Health Wellman, Published By Black Well Publishing Ltd., USA, 2003 Edition, pp. 369-381) has cited that an intending father may build up an inappropriate psychological bond with the surrogate mother by placing her as the ‘real’ mother of his child.

A surrogacy contract always has some potential harm for the commissioning parents. A surrogate may deliberately harm the fetus by avoiding medical constraints during pregnancy. She may threaten to terminate or harm the fetus or sometimes, refuse to surrender the resulting child for squeezing more money.

In all applications of surrogacy, there remain high chances of the resulting child to be infected, including STIs (sexually transmitted infections) and to carry the hormonal defects transmitted by the surrogate.

4. (B). 5. D Harm to society as a whole.

Fragmented motherhood, separation of traditional unification of sex, reproduction and marriage, commodification of women and their reproductive labor, erosion of traditional formation of family—all these issues show that surrogacy is not only harmful to parties involved in this arrangement, but also to the whole society. But, the harm related to our society has some unique features. Unlike the harms related to the potential stakeholders, all those factors related to societal harms are symbolic, based on our cultural and religious beliefs. In our study, we have discussed all these issues in relevant contexts. We would not repeat all these issues except one—the growth of positive eugenics through a novel market mechanism. This tendency towards the market mechanism that control commercial surrogacy
will encourage to select a surrogate with positive attributes—tall, fair with classic profiles may demand higher prices for their attributes rather than women with inferior traits. It has also been argued that the issue of positive eugenics is somehow alarming.

We may suggest that when an individual takes a decision to marry a particular individual person, his or her decision definitely shows similar type of choice or preference on the physical attributes. If a couple chooses to employ sperm splitting procedure only to determine the sex of their child and gives birth to the child whom they prefer to rear. In fact, all these applications manifest selection by choices rather than eugenic tendency.

4. (B). 6
II. Surrogacy as mutually advantageous and consensual exploitation

So far as our discussion is concerned, we have elaborately discussed various harm-factors related to possible stake-holders separately. Now, the question is: is this interpretation absolutely correct? Apart from this non-consensual harmful exploitation, there is another significant kind exploitation—mutually advantageous exploitation. This notion has been explained and elaborated by various commentators, but, in their own ways. In our study, I would like to develop some common features or their points of agreement of these different versions under the label of ‘liberal’ interpretation of exploitation. Our study shares the views of Joel Feinberg, Alan Wertheimer, Stephen Wilkinson and Allan Wood. This interpretation has been developed mainly on the basis of (i) Exploitation, By Alan Wertheimer, Published By Princeton University Press, USA, 1996. (ii) Bodies For Sale: Ethics and Exploitation in the Human Body Trade, Stephen Wilkinson, Published By Routledge, UK & USA, 2003. (iii) Harmless Wrong-Doing: The Moral Limits of the Criminal Law, By Joel Feinberg, Vol. 4, Published By Oxford University Press, 1990. (iv) Philosophy and the problems of work: a reader, Edited by Kory Schaff, Published by Rowman & Littlefield Publishers, USA, (Article: Exploitation by Allan Wood, pp. 141-64) Let us, in some details, present the ‘liberal’ interpretation of exploitation, harm, consent and coercion.
'Harm' is a relative concept. Any judgement regarding harm expresses a comparison between two relative situations. When we say that 'A' has been harmed by an event we mean that she is worse off by the event than she was before it takes place. So, we need to formulate a welfare baseline as a comparator. On the basis of this baseline, one could determine who is better off and who is worse off through a transaction. A welfare baseline could be drawn on the basis of various formulations. We may think of a normative baseline or baseline related to pre-interaction or closest possible world. When we say that a person is harmed by another person—such assertion should be assessed only with reference to a normative baseline.

At the beginning of this topic, I have already mentioned two categories of exploitation: (i) Non-consensual harmful exploitation and (ii) Mutually advantageous exploitation. In any non-consensual, harmful exploitation, we find that (i) exploitation which makes the exploitee worse off than she was originally when she had not been exploited. ii) The distribution of benefit and harm between A and B is (other things being equal) unjust (in A's favour); and, iii) B does not give valid consent.

In contrast, I have mentioned 'mutually advantageous exploitation,' a kind of exploitation in which (i) the exploiter is benefited, (ii) the exploitee is also benefited all things considered, and (iii) the exploitee gives valid consent. Such exploitation makes the exploitee better off than she was originally when she had not been exploited. To understand the 'mutually advantageous exploitation,' I would like to discuss two relevant notions—the notion of social surplus and the notion of all-things-considered transaction.

According to this liberal interpretation, each every mutually advantageous transaction generates a social surplus. Without this surplus, a transaction would not be considered as mutually beneficial. We may calculate the social surplus in comparison to no-transaction baseline. Take an example from Wertheimer. (pp 20) Suppose B sells a property to A and B determines that he would not to sell the property less than $150,000, while A decides to purchase not more than $175,000.
So, for A and B, the reservation price is $175,000 and $150,000 respectively. The limit shows the range of bargaining or any price in between these two limits is the zone of agreement. Suppose, a deal is settled on $160,000, then the social surplus of this transaction would be $25,000. Because, A, the purchaser, receives the property $15,000 less than his reservation price, while B, the seller, receives $10,000 more than his reservation price.

In this context, these liberal thinkers also developed another relevant notion related to mutually advantageous exploitation—the notion of all-things-considered transaction. Let us clarify the notion. Suppose, A and B mutually settled that A will give B a book in exchange of $100 (Wertheimer, pp 20). This book is too precious to A, because, he wants to complete a book series. Now, in this case, we do not say that B has been harmed by the transaction since he has lost the book. We may better call the transaction as heterogeneity of preferences. Both A and B evaluate book and money, but, in their own ways, differently.

Now, the question is: is mutually advantageous exploitation a moral harm? According to the liberal interpretation of exploitation the answer to this question exclusively depends on the nature of the baseline. A mutually advantageous exploitation would be considered as a moral harm if such transaction has been assessed in comparison to a normative baseline. Till it has been assessed by baselines other than normative one, the transaction would never commit a moral harm.

Within this liberal interpretation of exploitation, I would like to review the claim whether surrogate motherhood is mutually beneficial and a consensual transaction or not.

Let us, at first, discuss how are the two contracting parties benefited? How does this liberal interpretation of exploitation explain surrogacy arrangement as mutually advantageous transaction? Here, I would further refer to the notion of social surplus and all-thing-considered in evaluating surrogacy. Suppose, a woman thinks that she would act as a surrogate if she gets at least Rs. 4,50,000/-. On the
other hand, the intending parents assume that they would commission a woman if she agrees to act as a surrogate not more than Rs. 6,00,000/-. Therefore, for a surrogate, Rs. 4,50,000/- is the reservation price and for commissioning parents, the reservation price is Rs. 6,00,000/-. Any amount in between 4,50,000/- and 6,00,000/- would be the point of agreement. So, when two contracting parties agree to sign a surrogacy contract, it definitely shows that the transaction is made within the zone of agreement and the contract, without any doubt, would generate **social surplus** in comparison to no-transaction baseline.

Next, consider a surrogacy contract as **all-things-considered** transaction. In commercial surrogacy, two things are expected to be achieved by these contracting parties—child and money. While the surrogate mother receives a good amount of money for her reproductive labor, the commissioning parents also resolve the problem of childlessness by obtaining a genetically related child by purchasing reproductive service. We never think that the surrogate mother would be harmed by relinquishing the resulting child, because, she had already children for her own. In most countries, married woman with at least one child are only permitted to act as a surrogate. So, a surrogate would think that she would be benefited from the transaction because she would gain more in return what she offers. On the other hand, the birth of a child for childless couple is immense; the couple may begin their family with the child who is genetically related to at least one of them. So, they think that they would be benefited by this transaction and gain more in comparison to what they spent for this arrangement. A surrogate contract also expresses the heterogeneity of preferences. A surrogate and the commissioning parents evaluate money and child in their own ways, by applying different modes of evaluation.

Now, it has been argued that commercial surrogates come from the poor, underprivileged, deprived families. Due to their financial necessities, they could never give a valid consent. Her consent is coerced by her disadvantaged situation. So, how could a surrogate’s decision be consensual? A coercive consent is always defective, so, invalid.
Here, the question is: what is coercion? Most of the liberalist thinkers suggest that A coerces B to do X means that A threatens to violate B’s rights if B chooses not to do X. Therefore, A does not coerce B when A makes an offer to B and does not propose to violate B’s right if B should reject A’s proposal. (Allan Wertheimer, (Principles of health care ethics, Edited by Richard E. Ashcroft, Angus Dawson, Heather Draper, Published by John Wiley and Sons, pp. 250-51) Take an example. Suppose that A proposes (threatens) B to pay him Rs. 5,000/- per week, otherwise, he (A) would blast a bomb on his house. But, if A proposes B to pay Rs. 5,000/- per week to clean his house at every week, then, unlike the former proposal, A has made a non-coercive offer to B. Most of the liberalist thinkers would approve this definition of coercion. So far as this definition is concerned, commissioning parents do not offer any coercive offer to a surrogate mother, because, the commissioning parents do not propose to worsen a surrogate’s situation if the concerned surrogate rejects their proposal. A surrogate’s decision is non-exploitative exclusively in this sense. Neither coercion nor fraud can invalidate the consent of a surrogate.

Sometimes, it has been argued that a surrogate takes her decision by ignoring all the risk factors related to the arrangement. Her decision is greatly influenced by the payment she receives. Any financial reward is a kind of benefit, which is valid and it should be included in the process of risk benefit calculation. To ignore the role of payment may violate individual’s autonomy to determine the monetary value of their services.

Another objection regarding the payment of surrogate mother is that it may entice economically disadvantaged women and encourage them to bear disproportionate amount of risk related to pregnancy. From this liberalist approach, it may be said that payment means a fair compensation and this compensation should be compatible with the time she afforded and the inconvenience she has encountered during her pregnancy. Therefore, only a proper amount of compensation confirms that surrogacy is a mutually beneficial, consensual transaction.
4. (B). 7 Our assessment

In our study, the alleged exploitation argument is discussed under two prominent headings: (i) surrogacy as non-consensual, harmful exploitation and (ii) surrogacy as consensual, mutually beneficial exploitation. Both categories of exploitation have been divergently interpreted by various commentators. The divergent interpretations originate from divergent theoretical foundations. As a result, most of the controversial issues remain unresolved. Our study deeply noticed that the possibilities of risk factors related to each possible stakeholder could be minimized under strict supervisions and proper assistance. Psychological depression of surrogate mother after relinquishing the child, anxiety of commissioning parents during pregnancy, maladjustment of the child with family members after disclosure or identity crisis of the child, parental fitness of commissioning parents—all these issues could be only resolved through proper psychological counseling. Adequate monitoring, repeated counseling, proper family support may resolve these issues in significant ways. Stop payment, claiming more money before relinquishment, dispute regarding custody dispute—these risks are originally generated from the legal concerns. A proper, well defined, properly framed surrogacy contract, which is compatible to the state law, is sufficient to regulate a successful surrogacy arrangement. But, most the issues: whether a surrogate’s consent is valid or not, what is coercion, fragmentation of parenthood, erosion of traditional formation of family, whether the distribution of welfare is fair or unfair—all these issues are very prominently relied on our cultural beliefs. It would be hardly possible to resolve these problems. In my opinion, physical harms of the surrogate related to pregnancy and IVF technology, the best interest or the welfare of the resulting child and the parental fitness of the commissioning parents are the most crucial factors for the successful completion of any surrogacy arrangement.

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4. (C) Surrogacy and Commodification

In this topic, our main concern is to analyze—how the application of surrogate motherhood commodifies—the woman who acts as a surrogate mother, her reproductive labor or the child born through this arrangement and then evaluate how far such claims are justified. Before we begin our enquiry, we would like to clarify, at first, some concepts or issues closely related to commodification debate. In the light of this analysis, we would scrutiny the alleged commodification claim about surrogacy.

4. (C). 1 Definitions of commodification

The term ‘commodity’ has distinct connotations. In ordinary usage, the term ‘commodity’ refers to an economic good, an article of commerce or unspecified mass that manufactures product. Karl Marx, for example, defines commodity as something that has two types of value—use value and exchange value. A commodity, thus, satisfies some sort of human needs and closely attaches to monetary transaction and market situations. (Capital: A Critique of Political Economy—The Process of Capitalist Production, Vol. 1, Part – I, © 2007 by Cosimo, Inc., pp. 207) In similar fashion, Friederich Engels defines a product as commodity only when it has been transferred to someone to serve the use value by means of an exchange (Synopsis of Capital: The Production of Absolute Surplus Value,(http://www.marxists.org/archive/marx/works/1867-c1/1868-syg/ch03.htm Site visited on 29/11/2010). Commodities are basically fungible objects, such as, rice, wheat, table or services like labor. So, commodities are goods or services that could be bought or sold at some point. To assess things according to this commercialized, market-friendly approach is commonly known as commodification. In pejorative sense, the term commodification means to treat something as a commodity, which is actually not a commodity. Such treatment not only degrades the intrinsic value of the object, the mode of valuation is also morally unjustified.

Martha Craven Nussbaum in her book ‘Sex and social justice’ (Published By Oxford University Press, 1999, pp. 218) has introduced a wider concept—‘objectification’ rather than ‘commodification.’ Nussbaum has identified seven
ways of treating something or someone as a mere object, which is not really an object at all. These are: instrumentality, denial of autonomy, inertness, fungibility, violability, ownership and denial of subjectivity. Among these seven ways, instrumentality is a kind of objectification, in which a person has been used as a mere tool or as means to achieve the desired goal of the objectifier. Our study closely observe that Nussbaum’s interpretation of instrumentality is similar to the Kantian doctrine—people should be treated as end-in-themselves rather than as tools or means. To employ a person as tool or means denotes ‘wrongful use of exploitation.’ Such wrongful uses of exploitation are morally unjust. So, the notion of commodification is basically used in its pejorative sense.

4. (C). 2 The scope of market: Views of Pro-commodificationist and anti-commodificationist camp

Now, the question arises: Is everything or every service market-tradable commodity? Does everything possess both use-value and exchange-value? Should there be any moral constraints to market transaction? On these issues, classical theorists mainly fall into two broad groups—those who believe that it is people’s freedom or choice to buy and sell whatever they wish; and support applications of market norms in trading parental right, human organs, intellectual property, religious standing etc. Each and every conceivable thing is salable, tradable in market. This approach towards market is popularly known as the pro-commodification approach. And, those, who question the applications of market norms in trading parental right or body parts, and feel worry about the distortions of values like dignity, equality or solidarity. These thinkers are popularly known as anti-commodificationists.

According to pro-commodificationist camp, a market seems to be the positive force in society. The free market allows people to make products that they sell at a reasonable price and which anyone can buy if he or she could afford the money. There is nothing unfair in this exchange. Now, the question is: is this view morally justified? Let us take an example. Two persons—‘A’ and ‘B’—require transplantation of kidney. While, ‘A’ could afford the money for transplantation, ‘B’ couldn’t. Therefore, ‘A’ would get the kidney simply because the kidney was sold at a price which ‘A’ could afford. It seems, to some extent, immoral to apply
market norms in these situations. We think that donations should be determined on the basis of urgency rather than affordability. So, the applications of market norms are not always justifiable. Now, the query is: how could we determine when and where market norms are applicable? On these issues, both pro-commodicationist and anti-commodicationist thinkers adopt suitable approaches to defend their own standpoints. The anti-commodicationist camp believes that there are certain things, attributes or rights that are market inalienable, i.e., if certain goods and activities are used for market exchange, their values are significantly distorted; the valuation of these things or activities in accordance with open market norms are immoral and unjustified. But, these thinkers mostly differ about the nature of measuring criterion. Few suggest rich concept of human flourishing, some introduce philosophical notions like incommensurability.

Within these theoretical frameworks, I would like to discuss whether the application of surrogate motherhood commodifies—the woman acts as a surrogate mother, gestational services which she provides during her pregnancy or the resulting child born through this arrangement.

As a commercial enterprise, surrogate motherhood rests on a contractual agreement in which three distinct parties are involved: the commissioning parents, the broker and the surrogate mother. The commissioning couple chooses a lawyer or broker agency that will arrange a suitable surrogate mother, on their behalf, and make a requisite medical and legal contract for conception and gestation and finally handing over the resulting child to its commissioning parents after birth. On the other hand, the surrogate mother gives her consent to be impregnated by the fetus provided by the commissioning couples, nurture the fetus for full term of pregnancy and after giving birth to a child, she would hand over the child to its commissioning parents relinquishing all her maternal bond. In exchange of these services what she rendered during her pregnancy, she receives a certain amount of remuneration. At present, the remuneration received by a surrogate motherhood is approximately 15,000 US Dollars (in Indian currency, the amount is near about Rs. 4,50,000/-). So, it seems clear that commercial surrogacy introduces invasion of market into a novel area of human activity—women’s reproduction.
To elaborate the alleged commodification issue, in our study, I would develop three significant doctrines of anti-commodificationist camp. These three are: Elizabeth Anderson’s theory of ‘value,’ Margaret Jane Radin’s doctrine of market-inalienability and Michael J Sandel’s notion of analogy. Let us discuss, in some details, how these three doctrines construe the charge of commodification against surrogacy. Anderson is an eminent feminist and also a critic of open market-transaction, Radin is a legal scholar and Sandel is a philosopher. So, I would like to develop the commodification debate from three distinct perspectives—feminist, legal and moral.

4. (C). 3 Margaret Jane Radin

Margaret Jane Radin in her scholarly article, Market-Inalienability (Published in Harvard Law Review, Vol. 100, No. 8, June, pp. 1849-1937, 1987) assumes that the word ‘commodification’ can be used in two distinct senses. In its narrow sense, commodification means the actual buying and selling which is legally and morally permissible. But, in its wider sense, commodification includes, in addition to actual buying and selling, a specific type of market rhetoric and a market methodology. According to Radin, market rhetoric is “the practice of thinking about interactions as if they were sale transaction” and by market methodology she means, “the use of cost-benefit analysis to judge these interactions.” (pp. 1859) According to Radin, the doctrine which upholds this broader spectrum of commodification is usually known as ‘universal commodification.’ Under universal commodification, any property and attribute could be used just like commodities, achieved through exchange of money, and becomes the subject of contractual agreement. But, for Radin, there are some properties or attributes of personhood which could never be traded in open market situation; they are incommensurable properties. Radin terms them as ‘contested commodities.’ In fact, when we try to detach these attributes from personhood and treat them appropriate for market exchange, the notion of the personhood becomes problematized.

In contrast, we can logically think of a doctrine which suggests a complete non-commodification of any attributes. But, this reverse doctrine has some practical
limitations. It would be too much utopian ideology for application. Therefore, these two extreme doctrines have some merits and demerits. Neither doctrine properly justifies how to handle these 'contested' commodities. As a result, we ultimately confine ourselves within so-called 'double bind.' (Radin, pp 1915)

Double bind is a kind of dilemma. Sometimes, commodification empowers poor, underprivileged human beings, especially for women, to regain their social status in someway; it may offer a better solution to achieve a better living condition than the present. So, if we disallow commodification of these contested goods, some poor, underprivileged people would lose those opportunities. Thus, to allow commodification of these attributes is morally unjust and to disallow commodification enforces women to remain "in the circumstances that they themselves believe are worse than becoming sexual commodity-suppliers." (Radin, Market-Inalienability, pp. 1916-17) So, the notion of contested commodities is deeply entangled with double bind. One possible way to resolve this problem of double bind is to introduce the notion of 'incomplete commodification.' Incomplete commodification—a partial market-inalienability—may be replaced for complete non-commodification, though it may cause too much harm in our nonideal world. Within this theoretical background, Radin assesses the arrangement of surrogate motherhood.

The next question is: how to structure an incomplete commodification for reproductive services like surrogacy? Radin claims that paid surrogacy is one of the most complicated, problematic contested commodities. Let us discuss how Radin assumes an incomplete commodification of children and women through this practice. She, first of all, considers three types of arguments (Radin, pp. 1909) for justifying the restrictions on surrogate motherhood and to treat the practice as market-inalienable. These arguments are:

1. Prophylactic argument - If some personal properties are placed into an open market situation, then, such transaction may indulge a suspicion that his or her act is being coerced. To label such transaction as market-inalienable would be clearly a paternalistic decision. People may choose to alienate these things, but, are restrained to do so due to some legal and moral reasons. To use one’s reproductive capacities for others, to transfer the risk and the
burden of pregnancy from rich, affluent women to poor, underprivileged (in case of surrogacy for convenience ground), and ultimately reproductive services gain a new entitlement which is alienable in nature.

2. Prohibition argument – If we accept two versions of the same object—commodified and non-commodified, then, market-inalienability imposes prohibition to its commodified version. (i) Surrogacy develops a specific form of self-deception. In case of traditional surrogacy, the social mother may feel it compulsive to raise the child of her partner. This false consciousness and relative powerlessness of both social mother and the surrogate mother—are reinforced by oppressive gender role. So, to avoid this gender ideology, surrogacy must be prohibited. (ii) Another reason for prohibiting surrogate motherhood is grounded on the welfare of unwanted children waiting for adoption. Surrogate motherhood weakens the possibilities to arrange those unwanted children waiting to settle within a family. (iii) Surrogacy provides a narrow perspective to assess parent-child relationship. The practice promotes genetic relationship as ideal one. There are some couples, for whom, relational bonds created through sharing life are much more significant than genetic tie. So, according to Radin, there are relevant grounds to impose prohibitions for surrogacy.

3. Domino theory – This theory assumes that if two versions of the same object—commodified and non-commodified are possible, then the non-commodified version is much better than its commodified version and two versions never co-exist. To commodify something means to exclude its non-commodified version. Radin assumes that the fear of domino effect may also encourage market-inalienability. Surrogacy involves two types of commodification: commodification of children and commodification of woman’s reproductive capacities. Commodification of reproductive capacities becomes harmful for several grounds: (i) identity crisis in personhood; (ii) the closeness of surrogate motherhood to baby-selling, may cause harm to our self-conception; (iii) preference to select woman with better qualities, such as, I.Q, height, skin color, as surrogate mother. Not only reproductive capacities of women, the commodification of children also becomes harmful too. According to Radin, “the risk is serious indeed,
because, if there is a significant domino effect, commodification of some children means commodification of everyone.” (Radin, pp. 1933)

Thus, for Radin, there are several justified reasons for recommending market-inalienability for surrogate motherhood as an attractive solution. But, Radin thinks that we could not do so, because, surrogate motherhood involves the danger of double bind. How?

- On the one hand, commodification of reproductive capacities will harm personhood by creating two forms of alienation commodifying personal things: (i) women who act as a surrogate mother is prone to believe that through pregnancy, they would alienate their personhood as well as their personal attributes. This will ultimately end with a pain of divided self. (ii) Commodification will exacerbate, not ameliorate the oppressed, powerless status of women, because, marketization or commercialization of woman’s body or her pregnancy receive no social recognition. (iii) the use of poor, underprivileged women and transferring the risk and burden of pregnancy from rich, affluent women to poverty-sticken, needy women only for convenience, amounts to coercion which degrades the practice.

- On the other hand, to recognize reproductive labor as a novel entitlement enables a group of poor, needy women to improve their oppressed, powerless condition. This would be beneficial for their personhood. Furthermore, non-commodification of women’s reproductive capacities would perpetuate the older regime which submerges women in oppressed status and relationship.

In spite of these concerns, according to Radin, we would not recommend a ban on this practice, because, such prohibition ignores a transition problem. The problem is: some couples think that they would remain unfulfilled unless they achieve a genetic offspring for their own. Moreover, few women would think that they performed a service which is purely altruistic in nature, and some would find a relatively better living than their current circumstances at the expense of the allowance received by them.

Radin proposes twofold solutions for surrogate motherhood: (i) to resolve the double bind issue, Radin recommends a ban on commercial form of surrogacy, but, allow woman to give her service only out of love and altruistic motivations.
(ii) To create an incomplete commodification for surrogate motherhood, she suggests non-enforceable form of the practice, which means, if a surrogate mother changes her mind during her pregnancy and likes to keep and raise child, then she should not be enforced to relinquish the child.

4. (C). 4 Michael J Sandel

In his article ‘What money can’t buy: the moral limits of Market,’ (in ‘Rethinking Commodification,’ Edited by Martha M. Ertman and Joan C. Williams, Published By New York University Press, 2005, pp. 121-27) Michael J. Sandel has recognized and distinguished two major objections of commodification: objection from coercion and objection from corruption. These two objections mainly investigate: what is the proper scope of market and what are the moral limits of free, open market. Let us, very briefly, discuss Sandel’s analysis of these twofold objections.

According to Sandel, each objection originates from distinct moral standpoints. Coercion objection basically stems from the misapplication of notions like autonomy, consent or existing inequalities. Such objection mainly focuses on the injustice which might take place when people buy and sell something under dire financial necessities or severe inequalities. This argument actually finds out flaws in the act of consent. Thus, for obvious reason, when a poor farmer sells his kidney to protect his starving family, his consent could never be treated as purely voluntary. His decision has been coerced by dire situation.

In another article, ‘The Price of Everything, the Value of Nothing: Reframing the Commodification Debate,’ Published in Harvard Law Review, Vol. 117, No. 2. (Dec., 2003), pp. 689-710), Sandel further stated that coercion argument has two distinct formulations: formulation of ‘voluntariness’ and formulation of ‘accessibility.’ A good example of voluntary formulation is—the sale of kidney by a poor farmer due to dire financial conditions, which I have mentioned earlier. At first glance, it seems to us a voluntary decision of a farmer who sells his body organs. But, the crude reality is: his decision has been coerced by his dire financial conditions. In access formulation, the traded objects are all ‘desirable’ goods; but, the process of exchange involves some unequal accession over that good. Let us
take an historical example. During Civil War (1861 to 65) in America, to recover the shortage of man-power or soldiers in military services, citizens between the ages of 18 to 35, were called and enforced to join the military force for three years. But, the ruling included an unfair provision. Such provision allowed rich, wealthier citizens to pay only $300 as a commutation fee and in exchange of money, he would be exempted from the compulsory services of military (Cited in, A Great Civil War: A Military and Political History, 1861 to 1865, By Russell Frank Weigley, Published By Indiana University Press, 2000, pp. 321-24). No doubt, such transaction purely needs the affordability of an individual and nothing else. Such deal prominently indicates an unequal accession of concerned persons.

Sandel’s second objection is from corruption. Corruption argument mainly evaluates the moral worth of the object which is at stake. Suppose, we think that the sale of body parts is intrinsically degrading because it ignores the sanctity of human body, then any sale of body parts, whether it has been sold by a rich or a poor no matter, is equally wrong. Corruption objection is deeply rooted in the degrading effects of market exchange and valuation of certain goods and practices.

According to Sandel, those who oppose surrogate motherhood claim that both these two objections—coercion and corruption—could be raised against the applicability of this practice. The voluntary choice of a woman to bear a child is not really voluntary as it seems. A surrogate’s consent could never be truly voluntary in the sense that she is unlikely to be fully informed. It is rather impossible for a pregnant woman to anticipate, in advance, the strength of her bond with the child which she would actually develop during her pregnancy. It would be, then, unfair to enforce her to relinquish the child once the baby is born.

Now, the corruption argument also holds good for counteracting surrogacy arrangement, because, even if a surrogacy contract is purely voluntary or fully informed consent, such arrangement always lacks moral force for certain things, certain services to be bought and sold. Such reasoning suggests that we are not always free to assign whatever values we want to assign to a good. Certain modes of valuation are appropriate for certain goods. It would be harmful and degrading if one mode of valuation, appropriate for specific kind of goods, has been applied
to other kind of things inappropriate for such mode of valuation. In short, there are various modes of evaluations which are utilized for different purposes or ends. To resolve this problem, Sandel has suggested argument by analogy. What would an argument by analogy apply for surrogacy? According to Sandel, we would begin by asking whether surrogacy is morally analogous to baby-selling or whether it is more similar to sperm-selling. Surrogacy would receive the same status to which practice it is more similar. (Markets, Morals, and Civic Life, by Michael J. Sandel, Published in the Bulletin of the American Academy Summer 2005)

4. (C) 5 Elizabeth Anderson

In her book, 'Value in Ethics and Economics,' (Cambridge, Massachusetts, © Harvard University Press, 1993) Elizabeth Anderson develops a theory of value which significantly opposes the consequentialist doctrines of economic. She argues that people can and should recognize different values of things and activities. So, except their market value, there are various modes of valuation. ‘Use’ is a proper mode of valuation which is appropriate for commodities. But, there are some kinds of object or activity which are not commodities, but, are appreciated for their aesthetic or historical values; these objects would not be ‘used’ just like commodities. Personhood is also a rich notion only to evaluate human beings and their activities. So, we need an enriched mode than ‘use.’ We would people ‘respect’ rather ‘use’ them. Market choice is an inappropriate mode of evaluation to realize the intrinsic value of human beings and their activities rather than their instrumental value. Thus, for Anderson, values are plural, incommensurable and socially mediated.

Within this theoretical framework, Anderson addresses the application of contract pregnancy. She objects that surrogacy involves ‘commodification’ of both children and women and their reproductive labor. We would discuss the alleged commodification of children, and women under two broad headings, though, to some extent, all these issues are correlated to each other. But, for the sake of clarity, I would discuss this issue separately: (i) Commodification of children and (ii) Commodification of women and their reproductive labor.
Commodification of child

In her article “Is women’s labor a commodity?” (Philosophy and Public Affairs, Vol. 19, No. 1. (Winter, 1990, pp. 71-92)), Elizabeth Anderson, has stated that commercial surrogacy involves the wrongful commodification of children. To treat children as commodities virtually fails to recognize them as beings worthy of respect. Such treatment reduces them to mere object of use. In her defense, Anderson shows how application of surrogate motherhood commodifies the resulting children in various ways. In short,

(i) Children are to be loved and respected by their parents, not to be used for personal use. Parental love is a kind of passion, an unconditional commitment to nurture babies. Parental rights should be exercised only for the sake of child as a matter of trust. But, surrogate motherhood compels a biological mother to use her child as a means for profit making. Parental rights are no longer to be treated as a matter of trust. A biological mother deliberately conceives a child with an intension to relinquish for pecuniary benefits. The remuneration, which a surrogate mother receives, is not for the welfare of the child, but, for the sake of the surrogate and her family. Both the contracting parties—use parental right like a property right. One party sells and other buys. The child born, thus, is treated like a commodity, which could be bought or sold in accordance with market norms.

(ii) The proper application of market norms also shows that the ‘product’ of the arrangement, i.e, the child, is handed over to the purchaser—to the commissioning couple, at the end of the transaction. The situation is comparable to any normal case of market transaction.

(iii) The market related to reproductive labor virtually offers people great opportunities to ‘shop’ for children, to find out convenient arrangements only to maximize the value of their offspring. Surrogacy provides enormous opportunities to couple to select a prospective surrogate mother with specific physical and mental traits. It is expected that a surrogate with desirable height, weight, I.Q, race, skin color etc. may pass on these physical and mental traits to their children. Parental love is, thus, conditioned on having a child with specific physical and mental attributes. The situation is very
close to a market situation, where the consumer demands determine the quality of a commodity.

(iv) In a surrogacy arrangement, legal practitioners, broker and other professionals act as agents of commissioning couple. They actually pre-plan—how to regulate and execute this arrangement, what would be the future relationship between a mother with her fetus. All these take places by using persuasion and money. Moreover, the threats for lawsuit not only weaken, but also destroy a natural, maternal bond which automatically evolves in any normal cases of pregnancy.

(v) In another article, Why Commercial Surrogate Motherhood unethically commodifies women and children: Reply to McLachlan and Swales (Published in Health Care Analysis, No. 8, pp. 19-26, 2000), Anderson compares the resolutions of custody dispute under two legal regimes: the regime where commercial surrogacy is considered as null and void and the regime where surrogacy is considered as valid and enforceable. According to Anderson, the custodial dispute of children born through surrogacy arrangement could be resolved differently in these two legal regimes. The regime where surrogate motherhood is considered as outlaw, court ruling only concentrates on the best interest of the child and nothing else. Neither the consent of one parent to relinquish her child to other nor alienation of parental rights—is considered justifiable. But, in contrast, where surrogacy is treated valid and enforceable, the dispute would be resolved in accordance with the relinquishment clause of the surrogacy contract. Within this legal regime, the child is not a party to the suit over the breach of contract. He or she (the child) has been treated as a mere object over which possession is disputed. The custody of the child has been awarded according to the terms of the contract without considering the best interest of the concerned child.

In any modern society, the idea of good parenting depends on the fulfillment of certain conditions: “the means and the willingness to provide for the physical needs of the children...(to) love them—i.e., express genuine pleasure in their existence and hold their well-being to be as important as their own.” (Moral order
and Social disorder: The American Search For Civil Society, by Frank Hearn,© 1997 by Transaction Publisher, pp 12). Parental responsibility always requires the capacity to elicit trust and security from other human beings, to cooperate without regard for immediate personal benefit, to make sacrifices, and to accept enduring responsibilities. The application of market norms to child-birth is not only inappropriate, the subsequent commodification destructs the conditions on which good and effective parenting rests.

4. (C). 5. 2

- **Commodification of women and her reproductive labor**

Before we discuss Anderson’s analysis on the issues of commodification of woman and her reproductive labor, I like to refer to a feminist doctrine pertinent in this context. This is ‘asymmetry’ thesis of reproductive labor. Though the doctrine is named by Debra Satz in her scholarly article, ‘Markets in Women’s Reproductive labor,’ Published in Philosophy and Public affairs, Vol. 21, No. 2. (Spring, 1992), pp. 107, but, the theoretical underpinning of this doctrine has been shared and illustrated by many feminists. The essence of the thesis is: the reproductive labor of woman is intrinsically different from other forms of labor. To treat reproductive labor as commodity and to apply the principle of supply-demand which is appropriate to any economic market to reproductive market is unjustified and morally wrong. Elizabeth Anderson, Van Niekerk and Van Zyl, some essentialist thinkers, Carol Pateman, Susan Okin, Debra Satz—they all strongly defend the asymmetry thesis, though their reasoning, mode of analysis is different. Commodification, alienation, proprietary self—these are all applicable, conceivable, permissible and morally appreciable for any mode of production, except women’s reproductive labor. In short, I like to refer few versions of asymmetry thesis offered by Carole Pateman, Elizabeth Anderson and Debra Satz.

- **Asymmetry thesis: Pateman’s Version**

In her book, The Sexual Contract (Published By Stanford University Press, ©1988 Carole Pateman, pp. 189-218), Carole Pateman states that it is the very nature of labor power that it originates, gradually develops and finally becomes a distinctive part of laborer’s identity. The notion of wage depends on a fallacious notion,
called—proprietary self. In fact, wage of labor or recognition of proprietary self permit us to separate a laborer from his labor power and the product. In any kind of wage labor, workers are more or less attached to their labor power and product. But, there are some forms of labor which are unique in nature. Sexual labors like prostitution or reproductive services like gestation involve the selves of laborers so intimately, so directly, than do other forms of productive labor. For Pateman, sexual activities or human pregnancy both constitute more ‘integral’ parts of laborer’s self and identity.

According to Pateman, like prostitution, surrogate motherhood involves a higher degree of self-alienation, because, pregnancy involves women’s physical, emotional and sexual attachment in a more intimate way. Surrogate motherhood ignores “…any intrinsic relation between the female owner, her body a reproductive capacities. She stands to her property in exactly the same external relation as the male owner stands to his labor power….” (Pateman, pp. 216)

**Observation on Pateman’s thesis**

Pateman’s interpretation on asymmetry thesis is largely opposed by two thinkers: Debra Satz and Van Niekerk-Van Zyl, though for distinct reasons. According to Satz, Pateman’s analysis keeps proper balance with a general thesis rather than asymmetry thesis. This general thesis suggests: not to alienate those activities which are closely related to a person’s identity. So, apart from reproductive labor, the thesis is also applicable to other segments of human life. Moreover, the thesis is not always tenable at all. There are certain things, such as, a person’s house, an artist’s painting or manuscripts of book to a writer—which may be connected to person’s identity in some intimate ways. But, sometimes, they could sell these articles without losing their identity. (Markets in Women’s Reproductive Labor, Published in Philosophy and Public affairs, Vol. 21, No. 2. (Spring, 1992), pp. 114-115)

Van-Niekerk and Van Zyl oppose Pateman’s interpretation on distinct ground. They think that Pateman actually fails to recognize the essence of pregnancy. “And this is exactly what distinguishes women’s reproductive labour from other
forms of labour, namely that the product of their labour is not something but someone.” (Through Ethics of Surrogacy: Women’s Reproductive Labour, By Anton van Niekerk and Liezl van Zyl, Published in Journal of Medical Ethics, Vol. 21, 1995, pp. 347)

So, I would next, consider a further version of asymmetry doctrine which would suggest that commodification of reproductive labor mistakenly portrays two types of relationship: (i) relationship between mother and fetus; (ii) relationship between mother and her child. Elizabeth Anderson's interpretation incorporates all these issues.

➢ Asymmetry thesis: Anderson’s Version

In defending the asymmetry thesis of reproductive labor, Elizabeth Anderson, in her article ‘Is Women’s Reproductive Labor’, has offered several reasons to establish the fact that pregnancy develops a unique bond that could be formed either through mother-fetus relationship or through mother-child relationship. Her evaluation is as follows:

(i) At first glance, it seems true that pregnancy is purely an organic act, a biological form of labor. So, to gestate a fetus for others and then relinquish the resulting child to them after giving birth—would create no great harm to a surrogate mother. But, according to Elizabeth Anderson, the situation is not as simple as it seems. Apart from physiological activities, human gestation or pregnancy has some social significance. The biological process of pregnancy gradually develops some positive, active expectations to couples or other family members which ultimately lead them to arrange adequate preparations anticipating the birth of a child. Human procreation, thus, involves some psychological and social considerations, through which a bond develops with the growing fetus. As soon as the time of delivery comes closer, it becomes quite natural for a birthing mother to realize that she is going to give birth to a child who is closely tied up with herself. What seems problematic to a surrogacy arrangement is that the practice deliberately separates pregnancy—from its psycho-social considerations—from a conscious knowledge that, instead of her child, she is going to give birth of her child. A surrogate mother
is enforced to allow that she is going to give birth to their child. Surrogate pregnancy, thus, introduces an artificial form of mother-fetus relationship, a series of stipulated behaviour and relationship to experience pregnancy and child-birthing in a novel way. Surrogate pregnancy, thus, loses its social significance and reduces a biological mother to ‘human incubator’ for someone else’s child.

(ii) In commercial surrogacy, a surrogate is renting her body parts as if body parts were rented without the presence of a being who possesses these parts. Is it logically possible to rent out a uterus without renting the woman concerned? When a woman becomes pregnant, her whole body, even her soul is involved in her acts. Changes in her hair to swollen feet—proves how intricately a woman’s physical and mental affairs are affected by her pregnancy. Surrogate motherhood oversimplifies the process of pregnancy and places a price tag on a surrogate’s pregnancy. This also approves the sale of both—her service and product. And, like any other wage labors, surrogate mother forcibly accepts her alienation of work from the product of her labor. The baby, like other commodity, belongs to the purchaser—to the commissioning parents, not to the producer—to the surrogate mother.

Our study closely observes that Anderson’s interpretation of asymmetry thesis greatly influences her view on of artificial form of surrogate pregnancy.

(a) To manipulate a surrogate’s evolving perspective towards her pregnancy and to ignore the legitimacy of her feeling and to disregard her relationship with the fetus—not only establishes the application of market norms in women’s reproductive lives, it also degrades her labor. According to Anderson, the mode of valuation of each thing is not same. To apply an inferior mode of valuation in assessing an act or behaviour, which is appropriate for higher level of valuation, degrades the act or the behaviour. So, to repress, to manipulate or to ignore a legitimate bond, genuine feeling or natural relationship, prominently degrades the practice.

(b) Any kind of manipulation reveals that domination of a surrogate mother is fundamentally inconsistent with her autonomy. Supremacy of one party is in no way compatible to other party’s autonomy.
Now, to repress any kind of emotional tie or parental love what a surrogate mother feels for the child—reduces her reproductive act into a form of alienated labor. It is true that not all kinds of alienated labor are wrong or forbidden, especially in any liberal country. But, some form of labor requires some special respect and considerations. To reduce these inalienable, incommensurable forms of labor into market alienable commodity is wrong and degrading. In a surrogacy arrangement, pregnancy being an inalienable, incommensurable form of labor has been treated as market alienable commodity, which is wrong, immoral and should be forbidden.

➢ Asymmetry thesis: Debra Satz’s Version

Satz’s version of asymmetry thesis mainly focuses the gender inequality of society. In any gendered stereotyped society, gender inequality prominently indulges inequal social role for women, including commodification of various attributes of women. In particular, reproduction is a sphere which has been historically marked as a field of inequalities. Men and women do not share equal command over the reproduction and institutions related to reproduction. According to Satz, surrogate motherhood very prominently expresses the stereotyped gender roles and inequalities in three ways:

(i) Surrogacy gives enormous opportunities to others to access and to control women’s bodies. This means: in surrogacy, the body, which belongs to a woman, is controlled within a social framework that has historically subordinated women’s interests to men, primarily through its control over her sexuality and reproduction. (Satz, ‘Markets in Women’s Reproductive labor,’ published in ‘Philosophy and Public affairs,’ Vol. 21, No. 2. (Spring, 1992), pp. 125)

(ii) Surrogacy reinforces gender stereotypes about the proper role of women in the reproductive division of labor. Pregnancy contract reestablishes a traditional division of labor based on gender stereotype—men at work, women in the home. (Satz, pp. 127)

(iii) Surrogacy reinstates a stereotype principle of parenthood, which is exclusively depended on genetic contributions.
4. (C). 6 Kant, categorical Imperative and surrogacy

Apart from the asymmetry theses, our study has noticed that Kantian formulations of categorical imperative also oppose the applications of surrogate motherhood. According to the second formulation of the categorical imperative, Kant says: "Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only." Thus it has been claimed that when an individual who acts as a surrogate mother is using herself as 'a mere means.' The practice fails to recognize the special dignity of a woman's body and consequently demeans her. Kant argues that commercial surrogacy exploits the personhood or humanity of surrogate mothers by not treating them as ends-in-themselves. Commercial surrogacy degrades a being as a whole, because, the practice forced a woman to surrender her autonomy. If an individual treats the other in a way to which he or she could not possibly give consent due to coercion or fraud, then, there should be an element in which the autonomy of the individual as a decision maker is undermined.

Though I have discussed the feminist interpretations of asymmetry thesis and Kantian objection against surrogacy under the same heading, the approach of these two analyses is totally different. While the feminist ethics places too much emphasis on the women as moral actors, Kantian ethics only considers the ethical conduct of men as moral agents. In place of the capitalist instrumental definition that is assigned to women, Kantian ethics promotes a greater awareness of the humanity (personhood) of commercial surrogate mothers. It connects autonomous activity with a respect for the humanity of all persons.

4. (C). 7 Reply to the alleged commodification of children and woman

We have noticed that the entire debate on commodification issue mainly depends on three major issues:

1. **Children** are treated like commodities and the best interest of the resulting child is ignored.
2. **Reproductive labors** like gestation are treated like other productive labors. But, unlike other productive labors, reproductive labor which has some unique, inalienable features.
3. **Parental rights**, which are actually inalienable in nature, are used just like property rights.

Now, no one would accept that children or women are market tradable commodities. Any practice which involves maltreatment either of children or of women just like *negotiable* goods, *‘objects’* of property or *consumer durable* products, or, if any practice which fails to recognize the intrinsic value of children or women as human being, then, no matter, whether the practice is baby selling or prostitution or commercial surrogacy, that would be treated as immoral and should be outlawed. Thus, any proponent of surrogacy arrangement also opposes commodification of children and woman. But, for them, application of surrogacy neither commodifies children nor women. The alleged commodification is inappropriate and misunderstood.

In this context, I would like to mention three major defenses offered by (1) Anton van Niekerk and Liezl van Zyl, (2) by Hugh V McLachlan and Kim J. Swales and (iii) by Richard J. Arneson. Unlike the rest of commentators, Van Niekerk and Van Zyl accept the alleged commodification of woman and her reproductive labor. They only reject the alleged commodification of children.

4. (C). 8 Reply to Commodification of children

(i) According to Van Niekerk and Van Zyl, children are not wrongly commodified in surrogacy arrangement. For them, when a man purchases a new car his treatment towards the new car is no way comparable with that of commissioning parents who paid a surrogate mother. In fact, a commissioning couple only wants to get a child genetically related to at least one of them. Unlike a car buyer, (i) commissioning parents do not *buy the right to treat the child as an object*, (ii) to pay someone to handover her parental right does not mean that “they will use this child as an instrument or object to do their housework or to compete with their neighbours, or that they will sell the child when it has lost its use value. (Commercial Surrogacy and the commodification of children: An Ethical Perspective, by Anthon Van Niekerk and Liezl van Zyl, Published in International Journal of Medicine and Law, Vol. 14, No. 3/4, 1995, pp. 167-68) and (iii) *What is being sold by a surrogate mother is not the*
child, but the right to be the legal parent of the child. A surrogate, in fact, agrees to relinquish her right to claim legal parenthood of the ensuing child. (pp.169)

(ii) In their article, ‘Babies, Child Bearers and Commodification: Anderson, Braizer et. al. and the Political Economy of Commercial Surrogate Motherhood,’ Published in Health Care Analysis, Vol. 8. No. 1) Hugh V. McLachlan and Kim J. Swales reject the alleged commodification of children on the following ground:

✓ Through a surrogacy arrangement, commissioning couple expect to avail two things: the custody and the legal parenthood of the resulting child. Now, the custody of the child is not owned by a surrogate mother, so that she could not sell it. She only refrained herself from these two claims. Let us think of two persons who validly applied for driving licence. Suppose, due to some valid reason, only one could avail licence. If, under this circumstance, one person does not pursue his claim, then, the other person would get the licence on the logic of his claim. No matter, whether the person, who refrained from pursuing his claim, was given money or not. Compare this situation with surrogate motherhood where one of the biological parents does not pursuit her custodial claim and claim of legal parenthood. If a surrogate mother were to sell her right to custody and parenthood to others, then, only the highest bidder would buy these rights, not by one of the biological parents.

(iii) Richard Arneson’s defense is strongly grounded on Egalitarian Welfarism. Egalitarian Welfarism, a version of utilitarianism, gives special attention to the interests of the worse-off. Within this egalitarian framework, Arneson evaluates the commodification objections against surrogacy. Arneson in his article, Commodification and Commercial Surrogacy, Published in: Philosophical and Public Affairs, Vol. 19, No. 2, (Winter, 1994), pp. 148-151, assumes that: (a) a surrogate knows it very well, even before signing a contract, that, in any surrogacy arrangement, there would be two potential parent figures—commissioning father and the commissioning mother, who very strongly desire to be the parents of the baby whom she would carry. Why it would become immoral to permit a surrogate mother to relinquish her
parental responsibilities even by sale? (b) If a surrogate mother feels that she is fulfilling her responsibilities as a natural parent of the child and she is convinced by the fact that some responsible parties would undertake the full responsibilities of parenthood, what is unfair about it? According to Arneson, there are several instances of motherhood for which it becomes impossible to nurture the baby by both of his parents. If single parenthood is legally and morally justifiable, then, why not surrogate motherhood?

4. (C) 9 Reply to alleged commodification of women and their reproductive labor: Critical assessments of Anderson’s asymmetry thesis

Van Niekerk and Van Zyl think: “The problem with surrogacy arrangements is ... that it causes a woman to be pregnant while expecting her not to acknowledge the fact that she is expecting her child. It tries to divorce pregnancy from the conscious knowledge that you are going to give birth to your child. In this way the surrogate becomes a mere ‘environment’ or ‘human incubator’ for someone else’s child.” (The Ethics of Surrogacy: Women’s Reproductive Labor, Published in, Journal of Medical Ethics, No. 21, 1995, pp. 347) Van Niekerk and van Zyl, therefore, deny that surrogacy arrangement involves immoral commodification of children; but, at the same time, they also maintain that the practice involves sale of parental right and reduces women’s reproductive labor to a form of alienated and dehumanized labor.

(i) Richard Arneson in his article, ‘Commodification and Commercial Surrogacy,’ by Richard J. Arneson, Published in: Philosophy and Public Affairs, Vol. 21, No. 2. (Spring, 1992), pp 154) rejected Anderson’s asymmetry thesis on two grounds:

✔ Firstly, Arneson denies the legitimacy of a pregnant mother’s evolving perspective on the ground that any contract, to some extent, deals with the future behaviour of the contracting parties. Thus, to agree to perform specific activities does not mean that the perspective of contracting parties would never change during interim period. But, Arneson suggests that the undergoing changes in one’s own perspective or feeling does not change the terms of the contract. To acknowledge any such interim change would never modify the
purpose of the contract. A contract basically reveals the mutual assurances of contracting parties: how do they act in future.

✔ Secondly, Arneson also holds that a surrogacy contract never insist to suppress a surrogate's feeling, but, only directs to act in the way stipulated by the contract. For him, a surrogacy contract “does not require the surrogate mother to feel in certain ways, but rather to act in certain ways.” He also acknowledges that the contract ‘might require the surrogate woman to act against her feeling in order to fulfill its terms’ and that to this extent her labor might turn out to be alienated labor. Arneson continues, in a liberal society, ‘alienated labor is not forbidden.’ (Arneson, pp. 158)


✔ Firstly, it has been sometimes argued that surrogacy treats a woman as an incubator, as a fetal container. Such treatment not only degrades the practice, it also disregards a woman who acts as a surrogate and her reproductive labor. According to McLachlan and Swales, if a surrogate mother is disrespectfully treated by the other parties, then, this would be the problem with some particular people, who treat her in this way. Not all people think so. Thus, degradation, mistreatment, lack of respect—these are not the inherent problem of a surrogacy arrangement.

✔ Secondly, in general, contracts are the vehicles to express the autonomy and personal perspective of contracting parties to it. Surrogacy contract is no different from any contract in opening up some opportunities by foreclosing others. So, as long as the surrogacy contract has been voluntarily accepted by the surrogate, it is no violation of her autonomy or dignity to enforce it. Rather, it would be a violation of autonomy, if she could be prevented from entering into such contract.

4. (C). 10 Our assessment

Throughout this topic, we have considered numerous views offered by both proponents and opponents of surrogacy arrangement. The alleged
commodification of children, women and their reproductive labor originate from divergent theoretical underpinning. Whether reproductive services like gestation would be treated just like market-alienable commodities, whether human gestation should be considered as incommensurable service, whether applications of market norms in reproductive services are morally justified or not—all these issues are defended or counter-defended by addressing diverse economic or social doctrines. In our study, we have discussed various theses about market-economy, feminist evaluations, Kantian interpretations and also some moral dictums in this regard. Each doctrine has its own merits and also demerits. It is rather impossible to reconcile these cultural divergences.

Considering these theoretical differences, one may ask: which doctrine, discussed above, is more correctly interprets the alleged commodification of surrogacy arrangement? Do applications of surrogate motherhood really commodify women and the resulting children at all? To reply this question, I would suggest that the Kantian doctrine of human dignity, to some extent, is not relevant in assessing surrogacy arrangement. It has been objected that surrogacy arrangement uses women just like means to fulfill other's ends. Such treatment not only degrades the entire practice, it also undermines the dignity of woman who acts as a surrogate. Now, the question is: is this Kantian interpretation always tenable? To reply, let us consider some examples of paid services or wage labors. There are some hazardous services like fire service or armed force. When fire-servicemen are send to rescue others or when an army commander places an order to a fighter pilot to counter the opponent's attack, do we think that they all are used just as means? In fact, it is the very nature of any paid service or wage labor to assign instrumental value to laborers. In my opinion, when human beings are employed for some noble cause, to fulfill the objectives beneficial to mankind, then, such treatment could never be considered as use and it does not degrade the practice. The service of a woman who acts as a surrogate is one of the paradigm cases of such treatment. A surrogate serves a social purpose—to help childless couples with children.
4. (D) Surrogacy and Prostitution

The social recognition of a practice is primarily determined: whether the practice is morally wrong or not. It is a common practice among us to evaluate a practice as legal or illegal on the basis of the moral soundness of the practice or to find out close resemblances with some other which are already considered as immoral one. This means that a practice will be considered as illegal, if and only if, the alleged practice is morally wrong or akin to some immoral practices. Such approach towards morality is commonly known as 'legal moralism.' Our study has noticed that people who vehemently oppose surrogate motherhood and try to prohibit surrogacy by imposing a total ban on this practice—are very much concerned to find out the similarities between surrogacy and other immoral institutions or practices, like slavery, baby-selling, prostitution. In 1982, British Government sets up an enquiry committee to evaluate different applications of reproductive technologies, potential developments in science and medicine that are related to human fertilization and embryology. Under the chairmanship of Mary Warnock, this committee published a report on July 1984. The report was popularly known as 'The Report of the Warnock Committee on Human Fertilization and Embryology.' (Cited in, 'Assisted Reproduction: Developments in England,' by Jacqueline A. Priest, Published in The International and Comparative Law Quarterly, Vol. 37, No. 3. (Jul., 1988), pp. 535-550). To establish that surrogacy is an immoral practice, this report, for the first time, officially declared that surrogacy is “a form of exploitation analogous to prostitution.” (1) Later on, different wings of feminism also assert that ‘surrogacy is reproductive prostitution.’ We would elaborately discuss this feminist approach afterward.

4. (D). 1 Definition of Prostitution

Before we begin to discuss whether surrogacy is a ‘form of exploitation analogous to prostitution’ or not, let us, at first, discuss: what actually prostitution is. In our study, I would like to analyze the nature of prostitution from two distinct perspectives: one from conventional moralistic view and the other from feminist view. Again, not all wings of feminism share the same view about prostitution. On this issue, Liberal feminism drastically opposes the views held by other wings of feminism—especially Radical feminism. Different schools of feminism differ
from one another due to divergences in their ideologies. As a result, they also differ on the issue of prostitution. For this reason, we propose to discuss whether surrogate motherhood is akin to prostitution or not, under two broad headings: interpretation from traditional moral perspective and from feminist approaches.

4. (D). 2 Prostitution as a form of commercial sex

Prostitution is ordinarily defined as a commercial enterprise. It is assumed that the prostitute—the woman who engages in this practice—do it only for pecuniary gains. Ordinarily, any type of sex act or service which is performed only for financial gains has been labeled as 'commercial' sex or sex work. So, prostitution is, no doubt, an example of sex work or commercial sex. But, except prostitution, there are various other forms of sex works, for example, model of pornography, strippers, telephonic sex partner, erotic dancer etc. What distinguishes prostitution, exclusively, from other forms of commercial sex is: prostitution grants the customer of a prostitute direct sexual access to a prostitute; while other types of commercial sex never approve any such direct sexual accession.

In different literatures on—sociology, moral philosophy, political philosophy, we find a large variety of definitions about prostitution. Since the moral and social attitude towards prostitution varies, consequently, the legal status of prostitution varies according to change of place and time. In some societies, prostitution is legalized, some recommend decriminalization; while some other prescribe criminalization of prostitution. In our study, we would not elaborate our discussion—how these variant statuses actually manifest different theoretical underpinning in defining prostitution. For the sake of convenience, we simply mean that prostitution is “a sexual exchange for money or other valuables.” (2)

4. (D). 3 Unique features of prostitution

In every society, it is believed that prostitution is the oldest, but the most stigmatized practice among other sex services. Traditional moral reasoning treats the practice—as ‘a social evil representing a flagrant defiance of common decency,’ (3)—as a serious threat to family and reduces a prostitute to a sinful being who ought to be banned from civil society. Now, the question arises: why conventional morality expresses such a hostile, punitive attitude of society towards
prostitution? In reply, our study mainly concentrates on two major issues: firstly, on some occupational hazards that are closely associated with prostitution. These hazards may create serious problems to an individual or to society. For example, a prostitute endures the risk of being hurt—either physically or mentally or by both. So, there always remains a potential risk-factor of getting infected by some diseases. Some forms of venereal diseases, certain types of urosis, compulsive behaviour, neurosis, self-destructive behaviour—are very common among prostitutes. And, secondly, prostitution is commonly treated as an undesirable practice; because, it degrades all parties involved in it, especially the woman who sells her sex. Now, the question is: why should prostitution is considered as the most degrading, stigmatized practice? In this connection, I would like to present a comparative discussion among three practices that are related to human sexuality—prostitution, temple priestess and marriage.

4. (D). 4  Prostitution, Temple Priestess and Marriage – A comparison

In our study, we have noticed that, in any society, the social ranking of sexual institutions varies. Let us, briefly, clarify the position. To make the issue more comprehensible, I would like to mention three different institutions that are closely related to human sexuality. These three institutions are: Temple priestess, Prostitution and Marriage. No doubt, these three institutions receive varying degrees of respect and social recognition from any society. The common feature of among these three institutions is: each practice is exercised within an institutional framework to satisfy sex desires, but, for fulfilling different aims and goals. Each practice has its own unique features and secures a social rank in accordance with its social recognition, significance and respect.

In India, the practice employing temple priestess is alternatively known as ‘Devadāsi Prathā’ and the woman who acts as a temple priestess is ‘Devadāsi.’ In many Hindu traditions, Gods and Goddesses were worshiped in temples through dance. To avail those dancing girls regularly became difficult. Gradually, a ritual was introduced in which these women were symbolically married to God and provided house and lands to earn their own livelihood. Thus, they led a pious, devoted livelihood throughout their lifespan by offering their performance to God.
This system is popularly called ‘Devadasi Pratha.’ Etymologically, the word ‘Devadasi’ means the maid-servant of God. In fact, the idea of employing a Devadasi theoretically inherited from ancient Mesopotamia, Egypt and Greece, where this practice of temple priestess began thousands of years earlier than in India. Like a devadasi, the temple priestess in ancient Greece and Rome, who was popularly known as ‘Vestal Virgin,’ was ritually married to the God, though the word ‘virgin’ was used with an unusual connotation. A virgin was an unmarried woman, but, it would not mean a woman inexperienced in sex acts. This sacred form of prostitution actually portrayed a social system through which men employed a virtuous temple priestess as a means to gain a deeper spiritual connection with the deity to whom temple priestess or devadasi was symbolically married. Virginal power denoted ‘power unto oneself as a woman,” the positive expression of independent power. Thus, in pre-patriarchal society, ‘Devadasi’ or temple priestess, “who performed sexual rituals as channels of goddess power, where goddess power represented virginal power” would never have been described as a prostitute.(Bodied Mindfulness, Women’s spirits, Bodies and places, by Winnie Tomm, pp. 216). But, in due course of time, the divine purpose of these practices gradually was distorted. Members of royal families, rich landlords, Zamindars—all reduced the practice to mere prostitution. In their book, ‘Trafficking in women and children in India,’ (Published By Oriental Longman Private Limited, © 2005, pp 160-61) P. M. Nair and Sankar Sen, state that, now a days, devadasins are recognized as sex workers; but in a specific sense. Their sex activities are practiced within restricted limits. They possess a much higher social rank than common prostitutes.

In prostitution, both the client and the prostitute use sex not for any societal purpose, but, for personal enjoyment. One enjoys physical pleasure; the other is fascinated for money. Money and sexual gratification—are the primary objectives to both customer and the prostitute. Apart from these two reasons, the practice has no other social significance. In a common form of prostitution, the practice reduces a woman to a mere means of enjoyment; an intimate act is performed only for monetary gain; and a prostitute lacks self-determination during her
service. For these reasons, in any society, prostitution neither receives any social recognition nor demands any respect.

4. (D). 5 Distinctive features of Marriage and its significance

Among these three institutions, marriage is the most respected, renowned and socially acknowledged practice of sex institution. Now, the question is: why marriage, being a sexual institution, enjoys such high recognitions—both socially and universally? Our study has noticed that in any cultural society, sexual institutions are socially ranked on the basis of its association with reproduction. Any form of sex activity that lacks reproductive expressions or desires for procreation—leaves a social stigma on this activity or practice. Now, this mode of evaluation offers high respect and worth to monogamous marriage system. In fact, marriage provides a social platform within which human sexuality transforms into reproduction. The association with reproduction, strong defenses both from judiciary and legislative bodies—all these favourable conditions place marriage as the highest sex institution. Marriage primarily performs two crucial social functions: it regulates and legitimatizes human sexuality and secondly, it also allocates socially sanctioned role on parents. This social network of marriage stabilizes the responsibilities of parents towards their children. Thus, marriage plays crucial roles in regulating sexual behaviour, child-bearing and child-rearing. Unlike marriage, any sexual act that is performed only for pecuniary reasons and not for procreation, would never receive social recognition or approval.

From the above discussion, we have noticed that, sex morality depends on two prominent criteria: connection to reproduction and close association with marriage. Any practice would become problematic unless it proves its association with relevant expressions or behaviour of married couple related to procreation. Sex without procreation and procreation without marriage—both are strictly forbidden and stigmatized as a degrading practice. Since prostitution and other kind of sex services are neither reproductive nor involve marital relationship, there are sufficient grounds to consider these practices as immoral.
4. (D). 6 Surrogate motherhood is a novel form of prostitution—some similarities

From the above discussion, we have noticed that prostitution is a kind of commercial sex, which (i) grants its customer direct sexual access to the prostitute, (ii) is non-reproductive in nature, (iii) involves extra-marital relationships and (iv) is exercised only for pecuniary gain. On the basis of these features of prostitution, we would try to find out the points of similarities between two practices—surrogate motherhood and prostitution.

Now, the question is: how surrogacy is comparable to prostitution. What are the points of similarities? Thus, at this point, aim of our study is to find out the points of resemblances between these two practices.

✓ Prostitution requires two individuals: one (the prostitute), who is willing to exchange her sexual service for money, or equivalent tangible goods, and the other person (the client) willing to exchange money, or its equivalent, for sex. In each act of prostitution, money is the primary motivation for a prostitute; while sexual gratification is the primary motivation for her client. The similarity between commercial surrogacy and prostitution lies in the fact that, in both cases, the woman sells some kind of intimate bodily services in exchange of remunerations. Both the two practices, thus, depend on inferior feeling of material imperative. The only difference is: a prostitute sells sex, using her vagina, while a surrogate sells reproduction utilizing her womb.

✓ Secondly, in prostitution, persons who purchase prostitute’s service are termed as customers or clients. Thus, the partners of prostitutes are considered not as human beings but as customers or clients. Similar type of commercial attitude has been employed in case of surrogate motherhood. It has been commonly thought that all surrogates are service-providers; they are not ‘mothers’ of children, in true sense of the term. A surrogate would never receive proper respect and recognition as a mother, either socially or legally. In most of the countries, including India, surrogates are designated as patients, not as mothers. The birth-certificate of child born through surrogate pregnancy exposes a surrogate as patient.
Thirdly, remuneration plays a crucial role in both prostitution and surrogacy. In both these practices, the payment of money is made for the use of woman’s body for a period of time, though the time span of use of body or bodily services is different. The use of a surrogate’s body, in comparison with a prostitute, is comparatively too lengthy and diverse.

Fourthly, like a prostitute, a surrogate mother also performs what she is told to do, and would be enforced to surrender the contract on the demand of other contracting party. During the period of contract, each and every act a prostitute is exclusively determined or chosen by her client. Similarly, every activities of a surrogate mother, during her pregnancy, would be planned or decided by the commissioning couples; where to begin and how to stop—all crucial decisions are made only by commissioning parents. Applications of high-risk diagnostic tests like amniocentesis, different cycles of IVF, abortion, implantation of two to three embryos at a time in a surrogate’s womb—all these vital decisions are made by commissioning parents only. Like a prostitute, a surrogate mother has no choice, has no valid opinion about what is going on her body. They are bound to do what commissioning parents really want. Like a prostitute, a surrogate mother also lacks self-determination.

Fifthly, most of the opponents of surrogacy arrangement argue that both practices create an intermediary—broker class. An individual or an agency may act as a mediator. The role played by mediator, in both practices, are almost the same. In case of surrogacy, any surrogate agency or clinic would act like a procurer who brings together parties for contract and receives handsome amount of commission from both contracting parties. These agencies act like pimps (in case of prostitution), who arrange customers for a prostitute and receives their commissions from both contract parties. These structural resemblances also express that both practices have the potentials to become harmful for being exploited by these mediators. In most cases, contracting parties are trapped by the third party only to squeeze more money from them.

Sixthly, both prostitutes and surrogates come from financially marginalized families. They are the victims of monetary needs. It is their financial urgency
which actually enforces them to become a prostitute or to act as a surrogate mother. It sounds rather ridiculous that a needy woman would satisfy her sex urge through prostitution. Similarly, it seems untrue that a woman who acts as a surrogate enjoys pregnancy. If there be any other alternative for employment to fulfill their needs, they would never become prostitutes or surrogates. Neither surrogacy nor prostitution is a recognized form of employment.

✓ **Seventhly**, in any cultural society, the stratification of society mainly depends on different types of stereotypes—gender stereotype, class stereotype, racial stereotype or sexual stereotype. Racialized gender-stereotype states that in cultural society, there are three prominent classes of members: Man, Woman and ‘Bottom’ Woman. This class of bottom woman would serve the other members of remaining two classes in various ways. These bottom women would serve as slaves, prostitutes, breast feeders, maid-servants, wet nurse etc. One of the significant features of both surrogacy and prostitution is: both a prostitute and a surrogate mother are bottom women.

✓ **Eighthly**, both prostitution and surrogacy degrade human sexuality. Both the practices deny the traditional unification of marriage-sexuality-procreation. It is believed, especially in Catholic teaching, that such unification is crucial for human life. Prostitution separates sexuality from marriage, while surrogacy dislocates—sexuality from procreation and also procreation from marital relationships. The traditional unification has been vehemently challenged by these two practices. Both a surrogate and a prostitute offer bodily services to men outside marital relationship. And, the services provided by prostitute and surrogate, could never be fulfilled by his female partner. So, both prostitution and surrogate motherhood threaten to erode the sexual as well as the reproductive codes of society.

And **finally**, both these practices have the potentials to jeopardize the family unity, promote infidelity and boost the loss of self-confidence. Additionally, both practices enhance the risks to health, transmission of disease among contracting parties, in some cases.
Conservative critics very often point out that prostitution, by nature, is a lazy person's job to exploit her own natural resources. This type of criticism primarily rests on a general criticism of prostitution. This criticism holds that a woman would become a prostitute due to her preference to adopt comparatively effortless way of living by utilizing her intricate body features and sexual services. Christine Overall, a well known feminist, holds, "(surrogacy)...cannot be merely one career choice among others. It is not a real alternative. It is implausible to suppose that fond parents would want it for their daughters. We are unlikely to set up training courses for surrogate mothers....And surrogate motherhood does not seem to be the kind of thing one would put on one's curriculum vitae." (Cited on Reproducing Persons: Issues in Feminist Bioethics, by Laura M. Purdy, published by Cornell University Press, 1996, pp. 93)

4. (D). 7 Surrogate motherhood – “a form of exploitation analogous to prostitution”—Feminist interpretations

In feminist ideologies, sex markets occupy a crucial place, because, any type of 'skin trade' predominantly depends on two parties—service-providers and consumers. One of the unique features of the sex-market is that all its consumers are male and all its service-providers are female. Thus, domination of patriarchy, gender stereotypes, inherent sex politics, enforceability of sex contracts—are the key issues for any feminist ideology, though these issues are interpreted variously by different wings of feminism. Not only this, feminism also focuses on—whether sex markets like pornography or sex services like prostitution—causes threat to women, degrades all related parties, exploits coerced women, commodifies sexual labor, utilizes intricate, intimate bodily services, whether sale of sex is equivalent to other kinds of wage labor or not. Now, different schools of feminism analyze and resolve these issues according to their own theoretical foundation. As a result, we find a large variety of distinct analysis about the nature and scope of these sex markets or services like prostitution. Some feminists maintain that when a service-provider is paid for her sex work, a male client essentially contracts her to surrender her autonomy, while some others argue that selling sex may cause harm to women only because the service carries a stigma. This stigma actually originates from the negative attitudes towards sex and from the double standards about sexual morality. The liberal school of feminism tries to emancipate women
from oppressive male domination. For this reason, liberals seek equality of rights and freedom of women. The choice of a woman to become a prostitute is a political right of a woman, which does not necessarily mean that they all approve prostitution in a moral sense.

4. (D). 8 Reproduction—views of different wings of feminism

Like sex services, reproduction also occupies a vital position in feminist discourse. It has been biologically pre-determined that women would bear the burden of reproduction. The reproductive capacity of woman has been described divergently by many feminists—either as a means of enslavement or as source of empowerment. But, they all agree on the issue that reproductive ability of woman actually represents her right to self-determination on own body. Now, the applications of different assisted reproductive technologies make it clear that the scientific control over reproduction becomes an efficient means to reinforce the patriarchal subjugation of woman either as object of sex or as a mere breeder. In surrogate motherhood, we are primarily concerned with—alienation of women from their reproductive activities, commodification of women and exploitation of marginalized woman by reducing them to a breeder class. The control of reproduction by male-dominated medical professionals enables us to use a surrogate mother as an additional means, which ultimately reduces her to a breeder machine. So, apparently, it seems obvious that sexual services like prostitution and reproductive services like surrogate motherhood—have some common features: commodification and degradation of women who act either as prostitutes or as surrogates; alienation of—prostitute from her sex acts and alienation of a surrogate mother from her child; uses of coerced women in both prostitution and surrogate motherhood under patriarchal subjugation. Now, these points of similarities inspire different schools of feminism to compare surrogate motherhood with prostitution and impose a ban or restriction on applications of surrogacy. But, to find out resemblances between these two practices is not as simple as it seems. Except Liberal feminism, other schools of feminism acknowledge that surrogate motherhood is akin to prostitution; but, for different ideological grounds. Within feminist dialogues, the entire controversy regarding the resemblances between surrogate motherhood and prostitution, originates from a key issue: whether reproductive labor would be treated as a kind of wage labor.
like prostitution. In prostitution, the sexual labor of a prostitute is reduced to mere commodity. The issue is—whether the reproductive labor of woman could be commodified like prostitution. On this issue, the entire feminist camp is divided into two broad groups: those who acknowledge that prostitution is essentially bound up with degradation or oppression of women and prostitution can never be equated with other kind of wage labour and on the other, those who think that prostitution is a kind of sex work or occupation; as a practice it is unobjectionable. The latter position is mainly maintained by the liberal school of feminism; while the former view has been shared by other schools of feminism—Radical feminism, Marxist feminism, Social feminism etc. In our study, we mainly concentrate on these three schools of feminism—Radical feminism, Marxist feminism and Liberal feminism.

In short, Liberal feminism mainly focuses on the economic as well as socio-political equalities of beings by exercising their individual autonomy, freedom and choice. Radical feminism concentrates on—male domination and patriarchal pattern of society as the root cause of woman oppression. Marxist feminists employ the Marxian theory to develop how capitalism indulges the oppression of woman.

Radical feminists like Shulamith Firestone (in her book, The Dialectic of Sex) believed that woman is the most oppressed being in this universe and the oppression derives from her capacity of reproduction. In any patriarchal society, women are utilized as means to fulfill the goal of men in two ways: used as a sex object to satisfy the sexual gratification of men and secondly, treated as a mere means to assist men in reproduction. Thus, the sex role of women, their reproductive capacities and responsibilities—all these weaken women’s abilities to become full human beings. A woman could free herself, only when, she could free herself from the burden of reproduction. So, to fulfill their own interests, men always try to control the body of women—either for fulfill his procreative inclination or to enjoy sexual gratification. For these reasons, American Radical feminist—Andre Dworkin in her book ‘Right-Wing—Women: The politics of domesticated female,’ © 1983 by Joel Avirom, pp. 174, has suggested two models of patriarchy that essentially determine the social control of women—Brothel model and Faring model.
The brothel model suggests that men can use women by controlling various means and throw them after use. These women could be easily replaced by men. For this reason, a large section of women has been collected only for use and throw after fulfilling men's desire. A relationship of man with a prostitute is a good example of Brothel model. The farming model suggests that man and woman could form a more intimate bond rather than in Brothel model. Relationship of a man with his married wife—is a common example of farming model. Unlike a prostitute, man uses, but, not wastes a woman—his wife—only for his own interest, to fulfill his own purpose. Woman, for him, is a permanent investment in aiding reproduction. Man’s relationship with women in farming model would be comparable to that of brothel model if woman’s role in reproduction has been forfeited.

Andre Dworkin in her book ‘Right-Wing—Women: The politics of domesticated female,’ states, “Motherhood is becoming a new branch of female prostitution with the scientists who want access to the womb for experimentation and for power. A doctor can be the agent of fertilization; he can dominate and control conception and reproduction. Women can sell reproductive capacities the same way old-time prostitutes sold sexual ones but without the stigma of whoring because there is no penile intrusion. It is the womb, not the vagina that is being bought” (pp. 186)

Artificial insemination, in vitro fertilization, sex selection, genetic engineering, fetal monitoring, artificial womb, fetal surgery—all these reproductive intrusions make the womb the province of the doctor, not the woman; all make the womb extractable from the woman as a whole person in the way the vagina (or sex)…..make reproduction controllable by men on a scale heretofore imaginable.” (Dworkin, pp. 187, cited in Birth Power: The case for Surrogacy, by Carmel Shalev, Published By Yale University Press, 1989, pp. 146-49). Within this cultural parameter, surrogate motherhood amounts to a new form of prostitution under brothel model. In brothel model, women are collected to fulfill the purpose of sex of men; in a similar fashion under Farming model, reproductive women are collected only to reproduce for the men. And, for this reason, Andre Dworkin designates surrogate motherhood as ‘reproductive prostitution.’
Carole Pateman, in her book 'The Sexual Contract,' (Published By Stanford University Press, 1988, pp. 189-218) told that, in a patriarchal society, a contract always designates a man’s freedom and woman’s subjugation. Freedom is not a universal concept, it is masculine in nature. Through a contract, a man’s desire is reflected through controlling woman’s body. Prostitution is originally a sexual contract—it enables men to buy sex from women and to exercise their patriarchal rights. Any employment contract offers an employer to enjoy the right to command over the body and self of his employee. Similarly, a woman who enters into contract to become a prostitute also lacks control over her own body, her self-determination. Male body and his sexual capacities constitute an integral part of male identity, but the woman who works as a prostitute sells not only her body or self, she also surrenders her womanhood to her male client. In the same way, a surrogacy contract enables a man to utilize the reproductive service of a woman who acts as a surrogate. Woman’s reproductive labor is an integral part of her identity than her other productive services. So, reproductive service like surrogacy should not be treated as an alienable commodity. Thus, the contractual subjugation of women remains the same in both practices—prostitution and surrogate motherhood.

According to Marxist feminism, wage is a form of oppression, through which laborers inevitably become enslaved under a system of production, deprived of knowledge and skill. They are reduced to nothing. Prostitution is a form of labor and also is designated as corruption of wage labor. There are many thinkers or commentators who are very close to Marxian interpretation of prostitution. But, for some commentators like Liezl van Zyl, sexual labor or reproductive labor of woman—are intrinsically dissimilar from other forms of wage labor. Woman’s labor—no matter whether it is a sexual service or reproductive—should not be reduced to alienated forms of labor. Now, sexual services like intercourse or reproductive services like gestation require some special values. Women’s reproductive labor and her sexual labor should not be compared to any other forms of physical labor. Pregnancy is not only a biological process; it is a social process too. Various social expectations and considerations are deeply rooted on women’s gestational labor. So, it is incorrect to reduce reproductive services like gestation to a form of alienated labor.
In liberal feminism, prostitution is conceived as a private business transaction in the same sense a contractarian does. The liberal contends that a woman is free to enter into contract. No matter, whether the contract is made by a prostitute to sell her sex or by a surrogate to sell her reproductive service to commissioning parents. According to Liberals, when anyone looks for a professional, such as a doctor, lawyer, plumber, or mechanic, no one is primarily concerned with the person related to this professional work, but only the service provided by them. So, like doctor, lawyer or professor, both prostitutes and surrogate mothers—are the service-providers and nothing else.

4. (D). 9 Is surrogate motherhood reproductive prostitution? Our assessment

Throughout our discussion, we have considered the close resemblances between surrogate motherhood and prostitution from two perspectives: conventional moralist approach and different wings of feminism. In short, the analogy between prostitution and surrogacy is based on following few points: (1) remuneration for bodily services, (2) lack of self-determination, (3) the function of mediator to bring together intending parties, (4) irrelevance of marital relationships. Thus, for some critics, the exploitation and commodification of women, alienated form of labor, treating woman as mere means—are same in both practices, though they serve different purposes.

Our study closely observes that though both prostitution and surrogacy share some common features such resemblances are insignificant and trivial. These apparent resemblances do not imply that surrogacy is akin to prostitution. Let us clarify our position in some details.

✓ Surrogate motherhood is purely asexual technology. In application, in-vitro-fertilization (IVF) plays a vital role. In traditional surrogacy, a surrogate mother contributes her ovum. She is artificially inseminated through the help of a petri dish, outside her womb. After fertilization, in a desirable stage of maturation, the resulting embryo has been implanted to the uterine wall of the surrogate mother. In case of gestational surrogacy, the embryo reproduced by the commissioning couple has been transferred to the surrogate mother through in vitro fertilization. So, both forms of surrogacy are simply asexual in nature.
A surrogate never encounters any physical or sexual contact with the male partner of the commissioning couple. Surrogacy requires no natural fertilization. But, in prostitution, direct physical or sexual contact is unavoidable. Surrogate motherhood would be more akin to prostitution, if natural fertilization takes place without using in-vitro-fertilization. The use of in-vitro-fertilization strongly defends and protects surrogacy from alleged dispute over prostitution.

✓ The motive that inspires a couple to employ a surrogate mother is hardly comparable to the motive of a client to hire a prostitute. A couple invites a surrogate mother only to resolve the problem of childlessness due to medical reasons. Couple allows the intrusion of third party with a hope to achieve a baby who may be genetically related to at least one of them. It provides an option of last resort. Though surrogacy is one of the most complicated reproductive technologies, it offers a better solution to a couple to begin a family unit for their own. But, the motive that inspires a customer to hire a prostitute is radically different from it. A client's aim is to attain physical enjoyment and sexual gratification. A surrogate mother assists a couple through reproduction; a prostitute assists a customer for sexual enjoyment. Therefore, while surrogate motherhood is a reproductive service, prostitution is a sexual one.

✓ Surrogate motherhood is basically an arrangement. This arrangement includes various applications of reproductive technologies together with skilled professionals from different fields. Expert physicians and technicians, legal practitioners, sperm or egg donors, broker, psychological counselor, fertility clinic and overall two contracting parties—the surrogate mother and the commissioning parents—all take active parts in implementing surrogate pregnancy. In fact, the practice is a teamwork. The intention of commissioning couples, the gestation of the surrogate mother, psychological counseling of both parties, medical advise of physicians, technical assistance of skillful technicians, an well-equipped fertility clinic, a legal contract made by a legal practitioner, a broker who seeks for a suitable surrogate mother—all play a vital role for the successful completion of surrogacy arrangement. In fact, surrogate motherhood is highly intentional arrangement to commissioning couples who afford such a big amount to execute this technology. But, unlike
surrogacy, prostitution often takes places under the veil of secrecy. Both the
prostitute and her client keep the practice covert, secret to others, even to their
family members.

✓ Prostitution is a profession; a systematized skin trade, in which woman sells
her sex throughout her life span as long as her health and will permit. Unlike
prostitution, surrogate motherhood is not a profession. In most of the countries,
a woman could act as a surrogate mother, if she primarily satisfies at least two
conditions: she should be married and she should give birth of at least one
child of her own. An unmarried, childless woman could never be act as a
surrogate mother. A woman can perform as a surrogate two or three times
during her lifetime.

✓ Some occupational hazards related with prostitution may create serious health
problems to the prostitutes. There remain high chances of prostitutes of getting
infected by some venereal diseases. Certain specific forms of urosis are very
common among prostitutes. Sometimes, it has been suspected that some
genetic diseases could be transmitted from the fetus to the surrogate mothers or
from the surrogate to the fetus. But, such suspicion is unjustified. In any
surrogacy arrangement, during pre-implantation phase, several diagnostic
procedures take places, such as, fetal monitoring, amniocentesis etc.

✓ According to conventional moral perspective, any sex institution would receive
social recognition if the practice is attached to procreation or any kind of
procreation behaviour and such activities would be confined within marital
relationships. Prostitution is a kind of sex work that is neither reproductive nor
involves marital relationship. And, for these reasons, in cultural society,
prostitution is considered as immoral practice. Neither it is related to
reproduction nor does it involve marital relationship. In contrast, surrogate
motherhood satisfies the traditional criteria of social approval partially. In both
forms of surrogacy, the fetus is only gestated by a surrogate till birth and in
traditional surrogacy, she also contributes her ova along with her gestation. A
surrogate, thus, assists married couples in procreation to achieve a child. Apart
from few applications of surrogacy employed by gay-lesbian couples,
surrogate motherhood sustains the traditional values of reproduction and
marriage.
In the second part of our discussion, we have discussed different feminist views about the nature of prostitution and their assessments on similarities between surrogacy and prostitution. Reproductive capacity of woman has been assessed differently by different schools of feminism, either as a means of empowerment or as a source of enslavement. In each feminist view, women’s power is fundamentally dependent on her ability to control birth and what results from conception. Thus, in feminist’s discourse, reproduction is basically women’s right to self-determination on her body.

Now, our study has noticed that the entire feminist controversy on the issue whether surrogacy is akin to prostitution exclusively depends on a single issue—whether reproductive labor is a kind of wage labor or not? We observe that the entire feminist school is divided into two major groups on this issue. Some feminists, like Liberals, believe that reproductive labors or sexual labors are analogous to other productive services. Professors, doctors, opera singers or lawyers—all of them employ their body parts during service period and in exchange, they receive some wages. All have, more or less, some control over their working conditions. In a similar fashion, a prostitute sells her sexual labor and a surrogate mother sells her reproductive labor rendering some bodily services in exchange of some wages. So, both surrogacy and prostitution are recognized form of wage labor; there is nothing immoral in it. But, for some other wings of feminism, like Radical or Marxist feminist, unlike other productive labor, both sexual labor and reproductive labor need some special respects and considerations, because, the bodily behaviors or acts which a prostitute or a surrogate mother provide during their service period, constitute the integral part of their identities. So, to reduce sexual intercourse or human gestation into forms of alienated labor undermine, degrade, nullify woman’s identity. The analogy between surrogacy and prostitution—rests on a single issue. Both practices involve some wrongful, immoral alienated labor and nothing else.

We would conclude our discussion with two of our own observations. Throughout our discussion, we have seen that both surrogacy and prostitution involve some common features, though such features are superficial. I think, unlike prostitution, reproductive services like surrogacy ends with a new human life. So, no doubt, surrogacy allows the intrusion of third party among marital relationship, the
practice is closely attached to human procreation, asexually. Secondly, the key feature of any wage labor is to use laborers as means. In exchange of wage, laborer is used as a means, not as ends. So, it is not the fact that only a surrogate or a prostitute has been used as means fulfill the goal of the contracting parties. In everyday life, we use other people as means in numerous ways. What disturbs us is the purpose of the user. To use a surrogate mother to assist infertile, childless couples to achieve a baby—is no way comparable to the use of a woman only to satisfy the sexual gratification of her client. Unlike a prostitute, a surrogate mother is not used only for enjoyment. The birth of a child has some social significance too. We may better assess a surrogate’s service, her assistance, her contribution as a perfect ‘gift’ or ‘gift of life’ rather than a wage labor.

4. (D). 10 Notes and References:


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4. E Impact of Third Party Intrusion on Kinship Reckoning and Formation of Family

In every human society, people recognize some special types of relationships, which are deeply rooted in one of the most vital senses of human identity and through which we may express our basic notions about rights, duties and responsibilities to others. Biological relations and other relationships—like kinship, family relations, ancestry, inheritance—are all intensely connected with our basic sense of identity, personhood, rights and obligations. But, all these relations are not identical in nature. It is crucial for our study to understand how biological relations differ from other relationships, like kin relationships, family relations etc. The unique feature of any biological relationships is that: they all are homogeneous in nature. Across globe, any relationship, which is biological in nature, has no other alternative variation. But, unlike biological relations, construction of kin relations, family relations—have numerous variations. We can find out a large variety of kin construction in societies. These variations clearly show that the reckoning of kinship, formation of family, configuration of ancestry, pattern of ancestry—these are all socially constructed rather than biological. So, kinship, family, ancestry, inheritance—these are not only entangled with our basic sense of identity, these relationships are culturally constructed, thy are man-made relationships, not natural.

4. E. 1 Kinship—an anthropological definition

In our study, we would, at first, define—what actually kinship is. In most of the anthropological studies, kinship refers to a social relationship which coincides with biological relatedness (Encyclopedia of Social and Cultural Anthropology, Edited By Alan Barnard and Jonathan Spencer, Published By Routledge, 2002, pp. 311-317). So, a kin is related to other kin either by genetic relation or by social relation or by both. Genetic relationship is alternatively known as ‘consanguinity’ or blood tie. Social institutions like marriage also occupy a central role in determining kin relations. ‘Sibling’ is a relationship which relates two persons only by genetics, ‘in-law’ is a relationship which designates an association of two
kin persons tied up only through social relationship—called marriage, relationship of a child with his/her parents refers to both genetic as well as social relationship. Thus, genetic and social—these two relationships are the fundamental building blocks of kinship.

Moreover, from sociological point of view, kinship also serves some social functions. It is a mechanism which links conjugal families in such a prefixed, orderly manner that would ultimately enhance the abilities of a society.

- Firstly, through two sorts of relationships—by genetic relation (blood tie) and by social relation (marriage), kinship expresses a network of social bonding which individuals carry on throughout their life-time.
- And secondly, though the kin persons survive for a limited period of time, kinship survives over generations. (The concise encyclopedia of sociology, edited by G. Ritzer and J. Ryan, Blackwell publishing Ltd, 2011, pp. 338-39)

4. E. 2 Kinship and Descent System

Now, kinship is closely related with another concept—called ‘descent’ system. Usually, it refers to a relationship which binds a child to its “mother or father, through which the elements that constitutes the main character of their ‘status’ are transmitted. These include name, surname, heritage and so on.” (Encyclopedia of Anthropology, edited by H. James Brix, (Published By SAGE Publication, 2006), Vol-3, pp. 1369-72) There are various forms of descent system. A descent system is known as ‘unilateral’ or ‘unilineal’ if an individual’s status are transmitted through only one parent and children belong to only one parent’s kinship group. So, a unilateral descent would be two types—either ‘patrilineal’ or ‘matrilineal.’ Again, a descent system might be ‘bilateral’ or ‘cognatic,’ if the characteristics of our status are transmitted through both parents and we belong to both parents’ kin group. In most of the Western societies and in American society, people have traced their ancestry bilaterally. So, like kinship, configuration of descent system also depends exclusively on our cultural beliefs.
4. E. 3 A connection between two domains—Domain of Nature and Domain of Culture

Contemporary advanced knowledge of biological science informs us that genetic traits of an individual would be transmitted to another (to his or her offspring) through natural process called reproduction. Now, this act of reproduction and subsequent transmission of genetic substances to offspring—are commonly recognized as ‘the natural facts of life.’ It is a universal truth. On this natural foundation, we socially construct many other concepts like kinship, family and ancestry etc. So, to construct human relationships, we need two significant domains of life: domain of nature and domain of culture. Natural facts like reproduction exist in the domain of nature; but, family, kinship, ancestry—are socially constructed beliefs which connect ‘domain of nature’ with ‘domain of culture.’ Unlike reproduction—reckoning of kinship, formation of family, construction of ancestry—are neither natural nor universal—they are matters of cultural conventions. The cultural belief of one society may be different from other. So, due to cultural differences in societies, the construction of one society not only differs from that of other societies; cross-cultural applications of these notions are invalid and inappropriate.

4. E. 4 Two models of Kinship: Biological and Non-biological Model

Now, the question is: how to construct kin relationships. We have seen that there are two popular models of kin construction: either on the basis of bio-genetic relatedness or on social conventions. In some societies, it is believed that ancestry, descent system or inheritance—all these notions are deeply rooted in human biology or genealogical grid. Blood relation is the only determining factor in kinship reckoning. But, in some other societies, it is believed that kinship, ancestry, inheritance—could never be grounded in biogenetic relationships; these are all socially constructed. For them, the notion of kinship requires something more besides biology. So, broadly speaking, in anthropological literatures, we find two types of kinship model—biological model and non-biological model.
4. E. 5 Euro-American notion of kinship: Significant role of biogenetics

In American society or in its European predecessors, it is assumed that kinships—constructed on the basis of biology and genetics—are the founding stones of family structures. This means that, in Western understanding, the heterosexual act that 'produces' children is thought to be the generative knot which composes 'families' and make people 'related.' To develop this Euro-American perspective on kinship, I like to refer the work of Davis Schneider. In 1968, Schneider has published a book, named 'American Kinship: A cultural Account,' a benchmark in the history of kinship study (Published by, The University of Chicago Press, London). In this book, he recognizes two types of orders, i) the Order of Nature, and ii) the Order of Law. Kin relations drawn from 'Order of Nature' are exclusively depended on biological reproduction, through which biogenetic substances of parents are transmitted to their children. Two blood relatives, thus, "... share in some degree the stuff of a particular heredity." (pp.24). As a result, in Western kin construct, a person, by birth, is fixed within a pre-determined universe of relatives. In contrast to this 'Order of Nature', Schneider has suggested 'Order of Law.' This order of law is composed by various rules and regulations, customs and traditions. Any individual could execute this order of law by wish. Relationship between a husband and his wife—is a paradigm example of order of law. According to Schneider, these two Orders—Order of Nature and Order of Law—constitute three classes of kin person—(1) those related only by Nature; (2) those related only by Law and (3) those related by 'blood.' By blood, Schneider means relationship made in connection with both Nature and Law at the same time. In American culture, the kin class, constituted by 'blood' is highly respected and valued among other kin persons (1980, pp63.). This is the 'closest' one, like relationship between parent and child, and between siblings. The kin class constituted by 'Order of Law,' is the most fluid class, because, 'nature' has not played any vital role in constructing such kin relations. Relationships formed by law could also be terminated by law.
4. E. 6 Cultural shift from Patrilineal to Bilineal Ancestry

Now, in ‘Experiencing The New Genetics: Family And Kinship On The Medical Frontier, (Published By University Of Pennsylvania Press, 2000, pp. 30-43), Kaja Finkler has observed that till the beginning of sixth century, it has been believed that a child is exclusively possessed by his or her father, because, he provides the ‘seed’ for procreating the child. This doctrine of procreation greatly influenced the Western understanding of procreation, especially the Roman belief of procreation, personhood and kinship. Till the beginning of sixth century, Euro-American descent system exclusively followed patrilineal ancestry. But, this patrilineal descent system was transformed into bilineal descent when Catholic Church had pronounced a Church verdict in Europe at the mid sixth century. This decree approved both bilineal ancestries in place of patrilineal line up. Thus, in short, Euro-Americans not only endorse bio-genetic relatedness, they also allow bilateral ancestry.

4. E. 7 Some Non-biological models of kinship

Now, this biological construct of kinship becomes the most common pattern of kin construction which is adopted by a large section of societies across globe. In most of the society, human biology is considered as the basic foundation to select kin persons. But, in contrast, anthropologists find out various alternative form of kinship, which are radically different the Euro-American biological form of kin relations. Linda Stone and Paul F. Lurquin in their book, ‘Gene, Culture and Human Evolution,’ (Blackwell Publishing, 2007, pp. 223-29) have exhibited few popular examples of non-biological form of kinship. In some societies, some relationships are locally known and marked as ‘real kinship,’ which are not biological in nature. Such relationships, sometimes, could be formed through adoption; in some societies, regular food sharing or taking active part or participation in certain rituals—generate a ‘real’ sense of bonding or attachment among kin persons than occur in their biological connections. Thus, human kinship systems seem to be quite flexible and malleable. “They appear to be designed to not only conceptually and socially organize biological relationships among persons, but also to take in or incorporate outsiders, to literally make kin
out of persons known not to be biologically connected or among persons for whom biological connection is not considered as relevant.” (Linda Stone and Lurquin, Chapter-12, pp. 218)

4. E. 8 Nuer and Dinka Children

In the early 20th century, the Nuer, one of the largest tribal groups of East Africa, often takes Dinka children as captives from their conquered group. After a short period, these adolescent, captive Dinka children are incorporated into Nuer Lineage and become indistinguishable from Nuer born. Nuer warriors are one of the most skilled fighters in the world and Dinkans, by nature, are almost similar to Nuers. So, perhaps, to extend the population rapidly, Nuer adapted such a strategic line up for availability of skilled soldiers. So, kin persons are sometimes made, not born. Human kinship evolves through several modes of kin selection—either by genetics or by choice.

4. E. 9 Kinship in Langkawi Island of Malaysia

Here, I like to refer to some popular instances from anthropology, in which some social components of kinship are given higher priorities than their biological components. Janet Carsten (in her article, ‘The substance of kinship and the Heat of the Hearth: Feeding, Personhood, and Relatedness among Malays in Pulau Langkawi,’ published in Kinship and Family: An Anthropological Reader, Edited by Robert Parkin, 2004, pp. 309-21) has studied the fishing community of Langkawi Island of Malaysia. She closely observes how Malay people become kin persons through some daily-life practices and achieve complete personhood. Residing in a same dwelling, consuming food together with other dwellers daily, sharing substances like blood, breast milk, rice—all these indigenous practices play a crucial role in forming kin relations. According to Malays, woman can feed babies may not be her own children. Children who have suckled the breast milk of a woman are like siblings; no matter whether these babies all genetically related or not. According to Malay people, breast feeding may shape a unique form of kinship.
4. E. 10 Milk-kinship

In Islamic societies, such relationship is popularly known as 'Milk kinship.' Peter Parkes in his article, 'Milk kinship in Islam: Substance, structure, history,' Published in the journal 'Social Anthropology,' No.13, 2005/3, has informed that Iranians impose a marriage taboo on milk kinship. For them, what is forbidden for blood kinship is also forbidden for milk kinship.

4. E. 11 Zumbaguan notion of kinship

And, finally, I would like to mention the example of Zumbaguan notion of kinship (Mary J Weismantel, in ‘Food, Gender and Poverty in the Ecuadorian Andes,’ Published By University of Pennsylvania Press, 1988). In Zumbagua of Ecuador, parenthood is not determined by human genetics. For Zumbaguans, conception of fetus, giving child-birth—could never alone allocate any sort of parental claim to an individual. They believe that nurturing, caring and nourishing the child, sharing food with them for a long period of time generate a real bonding between parents and their children to form a kin relation. This perspective mainly rests on a popular maxim—those who eat food together share the same flesh.

So, in our study, we have seen that in some parts of the world, the social parenthood or social components of kinship—have been given much more importance than genetic components. As a result, kin construction, kin reckoning and selection of kin persons—are not uniform throughout the globe. There are divergent forms of kinship.

4. E. 12 A comparison between two models of kinship—Biological and Non-biological

From the above discussion, our study has noticed that the two models of kinship have some unique features. In most of the anthropological studies, kinship is defined as a relationship which connects biology with culture. But, both these two models of kinship ignore the relation between these two domains of life—domain of nature and domain of culture. The biological model approves only the domain of nature and cancels out the impact of domain of culture on it. In reverse, the non-
biological model disregards the significance of biology and concentrates exclusively on domain of culture. As a result, in any biological model of kinship, biology or more specifically reproduction plays the most crucial role in determining kin relations; it is prior to any social construction which human beings culturally build on it. Like reproduction, kinship also signifies a biological relationship. Euro-Americans believe that biological relations are not only necessary; they are ontologically prior to any social relationships. Persons are, by birth, fixed within a pre-determined universe of relatives. Thus, for any Euro-Americans, all relatives are reduced to biological relatives. A kin person means a biologically related kin, a family signifies a biological family and those who share the same gene by decent are considered as relatives. What seems unique in Euro-American belief or in biological model of kinship is that unlike non-biological models, it never acknowledge any kind of cultural intervention—in kin reckoning, in formation of family or in calculation of descent system. Biology or more specifically reproduction is the only—natural, necessary and immutable facts of life.

4. E. 13 Unique features of Biological—Euro-American notion of kinship

Now, from the above discussion, we may concentrate on the following points as the prominent features of Euro-American kinship or, widely speaking, biological model of kinship.

➢ Reproduction, more specifically, heterosexual reproduction—is a natural fact of life,

➢ Genealogical grid is—the natural foundation of reckoning kin relation—the base of family construction—the only formative factor to construct descent system. In reckoning kin relation, in formation of family or in structuring a descend system—Euro-Americans acknowledge only biological origin; nothing could be socially constructed on it.

➢ Thus, kin constructs are biological; all families are biologically formed; relative means biological relative.

➢ Institutions like marriage play a crucial role in constructing kinship (through Order of Law) and in formation of family. So, any procreation outside marital
relationship would never be granted social recognition as well as legal approval.

4. E. 14 The effects of new Assisted Reproductive Technologies on these two models

Our next query is: how applications of new assisted reproductive technologies affect these two models of kinship? How could the two models of kinship, which we discuss above, incorporate the changing scenario which takes place through the applications of new reproductive technologies? Let us discuss, in short, how these reproductive technologies assist reproductive individuals or couples in procreation and how these assistances raise significant moral debates. In our study, we mainly concentrate on technologies like artificial insemination (AI), in vitro fertilization (IVF), cryopreservation and surrogate motherhood.

- **Artificial Insemination (AI)** is relatively a simple technology, in which donated sperms are deposited into the cervix by a syringe. Artificial insemination may be of two types: artificial insemination by **husband** (AIH) and artificial insemination by **anonymous donor** (AID). From social perspective, artificial insemination by husband (AIH) is comparatively less controversial procedure, because it offers a better alternative to produce a child genetically related to both parents. But, the situation becomes more complicated when the sperm donor is anonymous. AID is applicable only when the inseminating capacity of the partner’s sperm is either marginal or indefinite.

  Now, theoretically, donation of egg is akin to sperm donation, but in practice, donation of ova needs a surgery over donor’s ovary and this procedure is not only, medically, complicated one, but also too much risky.

- **In-vitro-fertilization (IVF)** is a reproductive alternative for those female partners who suffer from infertility due to blockage of Fallopian tube in uterus. In in-vitro-fertilization, eggs are removed from uterus, fertilized by the sperm of the male partner in a petri-dish, freeze and stored in the
laboratory till the uterus is hormonally ready for implantation. The embryo, then, is implanted to the uterine wall.

In-vitro-fertilization very prominently separates human reproduction from human sexuality. Fertilization, thus, becomes asexual in nature.

- **Cryopreservation or freezing** of sperm or embryo is one of the fastest growing techniques augmented by in-vitro-fertilization. This procedure makes it possible to store the excess embryos for later use, especially for those cases where earlier implantation became unsuccessful.

The use of this technology amounts to considerable debate about the status of human embryo. Cryopreservation of embryo presents the ethical questions about the right of these entities and also the duties and obligations owed to them.

- **Surrogate motherhood** is the most complicated among techniques discussed above. It compiles more or less all these techniques stated above. Both traditional and gestational surrogacies permit the gestational assistance of third party in procreation. In gestational surrogacy, the fertilized egg of the female partner of the couple would be implanted to a surrogate mother through IVF. In addition, traditional surrogacy also approves the genetic contribution of the third party. The genetic and gestational contributions of external third party would diminish the social significance of marriage in procreation.

Our next query is, then, what are those changes that would take places by implementing these reproductive technologies? If such changes really persist, then, how these changes affect our traditional understanding of kinship, descent system or ancestry? Let us, clarify the position carefully.

Now, to understand how reproductive technologies modify the traditional interpretation of reproduction—its nature and mode, I would like to discuss, at first, the convention, traditional belief about reproduction.
Reproduction is a **organic, biological** process,

- Act of reproduction conjoins human **sexuality** with **conception, gestation and parturition**.
- A reproductive individual would perform each and every segment of reproduction accordingly. None can perform one act **separately**. Reproduction is a unified human behaviour.
- Reproduction outside **marriage** has neither social recognition nor legal approval.

4. E. 15 Assisted reproductive technologies and changes in our cultural understanding

Due to the applications of different modern, high-tech reproductive technologies, the very nature of reproduction utterly changes—not only physiologically, but also the way it connects people. **Firstly**, reproduction is no longer a purely organic process confined to woman's body, it now involves repeated technological interventions and monitoring by a large section of laboratory workers, clinicians etc. The use of ultrasound, genetic tests like amniocentesis, different forms of genetic screening of the fetus, fetal monitoring, imaging—all these applications consider the fetus an object of supervision. Research institutes, reproductive service organizations, pharmaceutical companies selling fertility drugs—these all increase the intrusions of outsiders within the most secret part of human life. Therefore, child-birth does not depend exclusively on heterosexual intercourse. In Western societies, if one is asked: who is responsible for human procreation, we get four alternative answers: God, the Church, woman and the state. (Virgin Birth and Sterile Debates, by Cris Shore, Published in 'Current Anthropology, Vol, 33, No. 3, June 1992, pp. 295-314). New assisted reproductive technologies make it possible to introduce a fifth contributor—the medical professionals or clinicians.

**Secondly**, procreation becomes an arrangement rather than a biological process. Gamete donor, donor of ova, donation of embryo—these anonymous donors are allowed to contribute their genetic substances in procreating a child for unknown couples. So, the intrusion of good number of new procreative actors in procreative field radically changes the conventional image of procreation by two married couples.
Surrogate motherhood approves the intrusion of a genetic stranger—a gestational surrogate mother. The approval of a gestational surrogate as a procreative actor acknowledges that the act of gestation could be performed separately without forming any bio-genetic relation with the fetus, without nurturing the resulting child after birth. As a result, a gestational surrogate mother is neither a genetic mother nor a nurturing mother of a child; but she is considered as one of the biological mothers of the child. Gestational surrogacy permits fragmentation of biological motherhood into two distinguishable parts: genetic and gestational. Moreover, any form of surrogacy—traditional or gestational—provides great opportunity to an individual or couple to be the parent(s) of a child who intends to procreate or commissions a surrogate mother. Surrogate motherhood, thus, includes a novel section as procreative actor—intending or commissioning parents.

The intrusion of a surrogate mother as third party makes the situation much more complicated than other technologies. In case of Artificial Insemination by husband (AIH) or In-vitro-fertilization (IVF)—the reproductive assistance provides external, technical supports only. What distinguishes surrogacy from other reproductive technologies is: the reproductive service—called ‘gestation’ of fetus. No other technology provides such a gestational service throughout a long period—for full term of pregnancy. Artificial insemination offers only genetic contribution of third party and nothing else. In-vitro-fertilization offers a technical gestation for a very short period of time. Cryopreservation restores the fetus for a long period of time, but, could never give birth of a child. Only surrogate motherhood requires gestation of an outsider—a surrogate mother, who renders exclusively a bodily service—a reproductive service, partially allied with technology.

For the sake of our discussion, in our study, we have noticed that assisted reproductive technologies have called on radical changes in reproductive arena of human life. These changes, in short, are:

✓ Procreative acts are no longer a biological acts confined among married couple. Sperm donor, ovum donor, embryo donor—these anonymous donors contributed their genetic substances in creation of a child for unknown, unrelated couples.
Assisted reproductive technologies like artificial insemination by donor, in-vitro-fertilization or surrogate motherhood—these technologies permit the intrusion of third party as procreative actor, though their procreative assistances are purely asexual in nature.

Not only heterosexual couples, but any reproductive individual would become the parent of a child with the assistance of these technologies. The advent of different reproductive technologies not only assists infertile or sub-fertile heterosexual couples, any reproductive individual or homosexual couples could avail these technological assistances for procreation.

These high-tech procedures connect reproductive peoples with their progeny in novel ways. Various technologies fragment parenthood into several parts. Artificial insemination by donor (AID) fragments fatherhood into two parts: genetic and social. Traditional surrogacy fragments motherhood into two parts: biological (both genetic and gestational) and social. Gestational surrogacy fragments biological motherhood into two parts: genetic and gestational. A child born by a gestational surrogate mother has three distinct mothers—genetic, gestational and social. So, a child would have five distinct parents if he/she takes birth by employing both artificial insemination by donor and gestational surrogacy. Genetic mother, gestational mother, social mother, genetic father and social father.

Fragmentations of parenthood have some significant effects on our social life.

(i) Any reproductive individual could single out just one task of parenthood by choice and can perform it without fulfilling other acts of parenthood. An individual could donate his/her genetic materials—sperm, ovum or embryo—without performing other duties and responsibilities of parenthood—gestational or nurturance. Those who like to contribute only their gestational services without contributing genetic or social assistance are also permitted to do so, by acting as a gestational surrogate. And, the commissioning parents are one who may perform their social duties and responsibilities without contributing any genetic or gestational relationships. Thus, the traditional image of procreation which portrays the unification of—sexual intercourse, conception, gestational and parturition and child birth is utterly changed.
(ii) Procreation by ‘choice’ is better called an **arrangement** rather than organic act. Reproduction, thus, involves two types of activities: heterosexual activities or procreation by ‘choice.’

(iii) These novel modes of procreation form **novel** constructions of kinship, unique formation of family. Like reproduction—kinship, family, **ancestry**—all depend on personal ‘choice’ rather than biology.

(iv) Institutions like **marriage** losses its social significance. To approve the genetic or the gestational contributions of external third parties in procreating a child for married couples gradually changes the conventional belief about kinship and biological families. The biological interpretation of kinship, family or relatives—gradually changes its connotation. Reproductive technologies enforce us to redefine the traditional definition of parenthood—both motherhood and fatherhood, the notion of first-degree relatives, second-degree relatives and so on.

So, our next query is: how would the aforesaid two models of kinship—biological and non-biological model—counter these changes which take places due to applications of various assisted technologies in reproductive area of human life? Our study closely observes that the non-biological form of kinship effortlessly incorporates and well accommodates all these changes within their cultural believe. These changes create no great harm to their kin construction or kin reckoning or formation of families. Relevance of social relationships rather than human genetics, significance of nurturance, sharing food, residing in a same dwelling—occupy crucial roles in constructing non-biological form of kinship and in forming family relationships rather than genetics. So, asexual reproductions through in vitro fertilization, contribution of genetic materials by anonymous donors, gestational service rendered by a surrogate mother—create no significant cultural ambiguities within this non-biological domain of kinship.

But, these changes create a big puzzlement mainly for those who recommend the biological model of kinship, especially for Euro-Americans. In our study, we closely notice that three unique features of biological model of kinship, particularly Euro-American features of kinship, may create great confusions due to implementation of assisted reproductive technologies, especially artificial insemination and surrogate motherhood. These features are:
1. **Heterosexual** reproduction is the only natural fact of life. Genealogical grid produced as an outcome of the heterosexual intercourse is the natural foundation of kin relation; family formation and configuration of descend system.

2. In Euro-American culture, **bilateral** kinship is the most recognized form of kin reckoning.

3. **Marriage** or Order of Law is another vital factor in establishing kin relations. Procreation of two married couples gets the highest priority in Euro-American society.

Let us discuss—how assisted reproductive technologies enforce to rethink the Euro-American cultural thinking about kinship reckoning, construction of family and composition of descent system.

1. We have already seen that application of different assisted reproductive technologies utterly changes the nature of reproduction. Different technological, reproductive assistances make it feasible that reproduction could not only be asexual, it also permits the intrusion of external third party. Intention of an individual occupies a crucial position in procreation. Reproduction reduced to a matter of personal choice rather than biology. With the help of donors (either sperm or/and egg or embryo) and a surrogate mother—any individual could procreate a child asexually by utilizing in vitro fertilization. So, procreation is more a technical process than biological. It loses its naturalness. And, if we admit that procreation extends its traditional connotation, then any type of relationship which rests on reproduction also loses its naturalness. It is reproduction on which Euro-Americans construct biological kinship, form biological families, and compose biological ancestry. If reproduction with its extended connotation loses its naturalness, then, how could Euro-Americans reckon their kin relations, form their families, compose their descend system in traditional interpretation of biology?

2. In Euro-American culture, true kin is genetic and a proper family structure is grounded only on blood ties, which means that the 'genitor' (genetic father) and the 'pater' (social father) is the same person. Similarly, 'genitrix' (genetic mother) and 'mater' (social mother) of a child is the same person. So, genetic relatedness plays a crucial role in constructing kin relations. Now, intrusion of
anonymous donors—either sperm or ovum—not only separates parenthood into distinct parts, it also confuses the very construction of kinship, mainly constructed by Euro-Americans. So, those who believe that genealogical grid provided by the parents is the only biological foundation for kinship—should, at first, resolve a genuine cultural puzzlement: who is the real father or mother of the child? Genetic or gestational or social? Artificial insemination by anonymous donor (AID) separates genetic fatherhood from social fatherhood, similarly, surrogate motherhood fragments motherhood into three parts: genetic, gestational and social. In past, we have seen that a child may have more than one social mother—adoptive, foster, stepmother etc. Gestational surrogacy fragments biological motherhood into two distinguishable parts: genetic and gestational.

As a result, the meaning of parenthood, especially the concept of motherhood, has been called into question by implementing reproductive technologies like surrogate motherhood or artificial insemination by anonymous donor. So, what is traditionally believed as a natural tie for kinship is radically changed. If it is believed that ancestry is composed by the shared blood contributed by both parents—father and mother, then, whose contribution is to be considered as acknowledgeable? Genetic? Gestational or social? Claims of multiple biological parents not only create identity crisis of the resulting children, it also enforces us to rethink the bio-genetic interpretation of kinship in some extended way.

3. In Euro-American culture, we have already discussed, the relationships formed through ‘blood,’ are highly prioritized and appreciable relations. A relationship will be designated as ‘blood,’ iff, a relationship is established in accordance with both by Order of Nature and by Order of Law. Children produced by two heterosexual, married couples, receive high respect from their society. Marriage, thus, occupies a significant position in reckoning kin relations.

We have seen that with the advent of different reproductive technologies, procreation no longer confined within marital relationships. Intrusion of third party as a procreative actor nullifies the significance of marriage or Order of Law. Artificial insemination by anonymous donor, donation of ovum by an anonymous
donor, gestation of fetus by a commercial surrogate mother—undermines the social significance of marriage in procreation.

4. E. 16 Our Assessment

I would conclude this chapter of discussion by presenting an overall assessment on the above discussion. Throughout our discussion, we have seen—the basic differences between biological and non-biological model of kinship. Biological or Euro-American understanding of kinship, family and relatedness, is deeply rooted on human biology. For them, reproduction is a natural, heterosexual, biological process, kinship reckoning is depended on biological relatedness, and formations of families are intensely grounded on biology, all relatives are reduced to biological relatives. This biological model of Euro-Americans encounters some serious cultural problems by implementing different assisted reproductive technologies including surrogate motherhood. But, such applications of technology create no great harm to non-biological model of kinship.

Firstly, we have also noticed that, in Euro-American society, practices like adoption get adequate social approval and is recognized as a social arrangement. In this arrangement, neither social parent is the genetic parent of the child. But, these adopted children and their offspring, later on, are cordially incorporated within the blood line and the family tree of their social parents. If children could be incorporated to a blood line genetically unrelated to them through adoption, then, what would be the harm to incorporate those children who take birth by using genetic material of anonymous donor within the blood line of their social parents? The culture that accommodates adoption as a recognized social practice could not deny the childbirths either through anonymous donors or through gestational assistance rendered by third parties, like surrogate mothers. Surrogate motherhood provides only gestational assistance, sometimes together with her ova. I feel one of the mitigating factors for any Euro-American to justify surrogate motherhood is that: in any form of surrogacy, the biological father would be one of the social the parents of the resulting child. So, surrogate motherhood at least affirms patrilineal descent system. In addition, in gestational surrogacy, since both commissioning parents are the social as well as the genetic parents of the child, consanguinity would be determined bilaterally just like normal case of childbirth.
Secondly, not only assisted reproductive technologies, but, some novel applications of genetic engineering also enforce us to rethink and to redefine the traditional mode of kinship reckoning especially in biology-genetic model of kinship.

In 1972, Paul Berg has introduced a novel technique genetic engineering by manipulating DNA. This technique is popularly known as ‘recombinant DNA’ or in short rDNA. (Genes and Genomes, by Maxine Singer and Paul Berg, published by University Science Books, USA, 1997, pp. 621-712). This technique allows different sections of unrelated DNA of different species to be cut and pasted together. The manufactured organisms, thus, share the biological connection of numerous species or human beings. The significance of recombinant DNA lies in its ability to transfer genetic information across species boundaries creating novel organisms. As a result, these novel organisms lose their genetic identity. So, not only reproductive technologies, different applications of genetic engineering enforce us the redefine the notion of biogenetic relatedness of species and also of humans. Do Euro-Americans reject all these technologies due to their cultural boundaries?

And, finally, before sixth century, Euro-Americans believed only in patrilineal descent, which means that consanguinity would be determined only by male partner of the couple. But, in early sixth century, patrilineal descent was replaced by a Church pronouncement (cited in: Experiencing the New Genetics: Family and Kinship on the Medical Frontier, By Kaja Finkler, University Of Pennsylvania Press, 2000, pp. 30). Due to the pronouncement of Roman Catholic Church, Euro-Americans alerted and approved bilineal consanguinity, which means kin relations should be reckoned by both sides of a child—paternal and maternal lineage. Now, this shift clearly proves that cultural believes are not immutable or permanent. So, if a belief could be altered by religious pronouncement, why not by technology or by science?

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4. (F) Surrogacy and Slavery

"Her name was Sophie and she lived in Tennessee. In 1850, she was about twelve years old. I know that she was purchased when she was eleven by a white lawyer named Austin Miller and she was immediately impregnated by him. She gave birth to my great grand-mother Mary, who was taken away from her to be raised as a home servant." (1) The fact exposed in this statement revealed the story of a black, slave mother, named ‘Sophie,’ the great-great-grand mother of a renowned lawyer and writer, Patricia J. Williams. In her article, ‘On being the object of property,’ she (Patricia) has claimed that the present application of surrogacy is akin to slavery. Williams is the first commentator, who acknowledges that there remain some conceptual resemblances between enslaved African-American women and commercial surrogate mothers.

In her article, Patricia has made a comparative study between two mothers—‘Mary Beth Whitehead’, a surrogate mother of the disputed Baby M case and her own great-great-grand mother, ‘Sophie.’ According to her, “In both situations, real mother had no say, no power; her powerlessness was imposed by state law that made her and her child helpless in relation to the father. My great-great-grandmother’s powerlessness came about as the result of a contract to which she was not a party; Mary Beth Whitehead’s powerlessness came about as a result of a contract that she signed at a discrete point of time—yet which over time, enslaved her. The contract-reality in both instances was no less than magic: it is illusion transformed into not-illusion. Furthermore, it masterfully disguised the brutality of enforced arrangements in which these women’s autonomy, their flesh and their blood, were locked away in word vaults, without room to consider—ever.” (2)

Patricia in her article precisely, but very logically represented her analysis. For her, contract law reduces our life to a fairy tale. Performance, in accordance with contract is equivalent to obedience, like - ‘obedience to the parent.’ Obedience is dutifully passive; and passivity is appreciated as ‘contract-socialized’ behaviour. So, any individual is judged by the contract unfolding rather than by acting autonomously. Neither a slave mother nor a surrogate mother has the power to
defy the enforceability of contract. Life history of ‘Sophie’ and Whitehead expose how the discourse of reproductive technology is supported by the legal language of contractual obligation.

Now the question is: how can arrangements like surrogacy be equated with slavery? The controversies regarding exploitations and commodification of both surrogate mother and the resulting child occupy the central position of the surrogacy debate. So, to realize how the alleged exploitation and commodification of surrogate motherhood keep resemblances to child-birthing under slavery, we have to understand, at first, the peculiar social dynamics of slavery as a whole. Before proceeding further, I would like to make it clear what is denoted by the term ‘slavery’ and like to give a brief account of American slavery system, especially occurred at the period of antebellum in North America. In fact, the resemblances between this special type of slave-system and modern applications of surrogate motherhood strengthen the claim that high-tech surrogacy is closely analogous to slavery. Within a very short discourse, a definition and some fundamental, essential characteristics of slavery have been discussed.

Slavery has been acknowledged as one of the most distressing, cruel and demoralizing phenomenon throughout human history. From classical antiquity to very recent times, slavery has been found in various places; in various forms. Africa has occupied a strong, central position in slave history mainly for two reasons, i) as one of the principal areas where slavery is common, and ii) as a major source of slaves for various ancient civilizations—American and different Islamic countries etc.

4. (F). 1 Unique features of slavery

Paul E. Lovejoy in his book ‘Transformations in slavery: A history of slavery in Africa,’ has offered a well-framed definition of slavery. For him, slavery is a ‘form of exploitation.’ (3) Though there were a large variety of forms; but the underlying ideologies of all these forms were almost the same. Few of them as follows:
a) Slaves are 'properties,' 'chattel,' like a 'commodity,' a slave can be bought or sold.

b) Slaves are the outsiders 'who are alien by origin' or who have been 'denied their heritage through judicial or other sanctions.' Religious institutions, kinship units or other groups in the same society cannot protect or recognize slaves as 'legal persons.'

c) The status of slaves as 'property' was enforced by violence—actual or threatened.

d) The labour powers of slaves are considered as the complete disposal of slave owners.

e) Massive, brutal exploitation of sexual as well as reproductive lives of female slaves. Slaves do possess any right neither over their sexuality nor over their own reproductive capacities.

f) And, finally, slave status would be inherited to the children of slave mothers unless provisions were made to reconstruct that status.

In spite of these common features, in the early days, the status of enslaved black man and black woman were different (4). In ancient times, slaves brought to the British colonies in North America were disproportionately male because of their strength and power to hard work. In late seventeenth century, the Dutch brought Africans and Creole women to New Amsterdam, only to provide company for their black male slaves, not to supplement their workforce.

Gradually, for both black men and women, slavery became a devastating experience. Both were torn from their motherland and family. Both were forced to carry out exhaustive labor, subjected to mental and physical degradation, and denied their most basic rights. Enslaved men and women were forced to tolerate immense physical violence and, regardless of sex, treated as property, sanctioned by law and constitution. Starting from antique period of time, we can different forms of slavery. The nature, features of these forms mainly rest on the socio-economic needs of their slave-masters.

4. (F). 2 Antebellum Slavery

The word 'ante' means before and 'bellum' means war. Usually, the era before Civil War (1861 to '65) or more specifically the period in between American
Revolution (1763) and Civil War is known as antebellum era in America. (A House divided: The Antebellum Slave Debates in America, 1776 – 1865, Edited By Mason Lawrence, Published By Princeton University Press, 2003). During the period of antebellum slavery in North American region, female slaves were engaged and used not only for their labor power, they were also abused sexually and utilized as reproductive means to fulfill the need of their master. Traditionally, in Africa, motherhood had been regarded as one of the most essential roles of women. Child-birthing of African woman was considered as a rite of passage which increased their social dignity. But the scenario totally changed under slavery. The image of African motherhood was debased. During antebellum slavery, women were forced to offer their sex, brutally abused, raped by their masters repeatedly and kept for long-term concubines. There were no law, no safeguard that could protect themselves from these assaults. Now, these brutalities occurred not only for sexual enjoyments, but induced a novel kind of benefits to their masters. Children, thus, born by a slave woman were counted as the properties of their birthing-master. Like their birth-mothers, these children also inherited slave status. Thus, the increased numbers of children strengthen the work-force of their master and gave enormous opportunities to their masters to sell them in exchange of money to the highest bidder. In average, most of the slave women gave birth to their first babies at early teenage and thereafter forced to carry a child in each possible reproductive cycle. Slave mothers had no legal claim over their children. Thus, the reproductive lives of female slaves had been utilized to multiply the work-force of their master.

4. (F). 3 Distinctive features of Antebellum slavery

A very close observation will show that this antebellum form of slavery has three prominent features. In the first place, the father, the slave owner did not recognize paternity of those slave children whom he has procreated by sexually exploiting the slave women; secondly, these children inherited slave status from their mothers and thirdly, the slave mother had no legal rights on her children; they are the properties of their white master, who can snatch them from her, use them or sell them at his convenience.
According to Lovejoy, throughout history, we can find various forms of slavery starting from different involuntary servitudes. In comparison to other forms of slavery, this antebellum slavery had some uniqueness. In this context, I would like to compare the antebellum slavery fundamentally with pre-European Islamic slave trade (5).

Firstly, in America, the mass productions of agricultural goods like sugar, rice, cotton, greatly depended on the labor power of the slaves. The huge production, later on, gradually led to modern capitalism and instigated vast expansion of colonies. Thus, unlike, Islamic slavery, American capitalism extremely relied on slave work-force. Secondly, American slavery was exclusively depended on racial superiorities, not on the cultural or religious superiority. Unlike religious or cultural standing of an individual, racial features could never be acquired. In American societies, the slave status of an individual was mainly determined by his or her racial or African features, and on their African lineage. But, under Islamic law, even children of concubines would gain full status of free person. Slave status was not inheritable in Islamic culture. But, race became an ineradicable attribute to a person, marking a woman and her offspring as a slave for generations to come (6). Now, this antebellum, American form of slavery in 19th century is very closely akin to the modern practice of surrogacy which will be discussed within this parameter.

Now, our next query is: How does arrangement like surrogacy be compared with slavery? In our study, we would consider the issue from three distinct standpoints. In short, these are−

I. A comparison between surrogacy and slavery simply on the basis of common features possessed by both practices. In short, to find out those analogies which would prove and justify the claim that surrogacy, specifically commercial surrogacy, is a form of slavery.

II. Comparison between these two practices exclusively from feminist standpoints. According to this second perspective, in short, slavery is fundamentally dissimilar to any form of surrogacy. The socio-economic structure that promotes slavery, the social conditions that shaped the oppressive life situations of slave mothers, are no way comparable to
surrogate motherhood. But, both—a slave woman and a surrogate mother—are the ‘different expressions of the same underlying ideological form.’ (7) III. A comparison between roles played by three mothers—Mary Beth Whitehead, a surrogate of disputed Baby M Case and two slave mothers, Roxana and Rosa King, borrowed from two popular novels, Tragedy of Pudd’ nhead Wilson, written by Mark Twain and Romance Of the Republic, by Lydia Child.

4. (F). 4

1. Common features of slavery and surrogacy

Let us consider the first kind of analogy—analogy regarding the common features of both slavery and surrogate motherhood in some details. This alternative would show that slavery is the paradigm case of a socioeconomic practice which is profoundly immoral. So, any opponent of surrogacy arrangement tries to equate surrogacy with slavery to prove that like slavery, surrogacy would also be treated as morally wrongful practice.

(a) Comparison between a salve child and child born through surrogacy

In some respects, American antebellum slavery is closely akin to the high-technology applications of surrogacy arrangement. Under slavery, slave masters were recognized not only as the owners of the slaves, but also, at the same time, they were the owners of the natural children to which the slave-mothers gave birth. These ownership rights permit themselves (slave-masters) to buy and sell salve-children to third party without the consent of their slave, birth-mothers. Sale of slave-children on the auction block in an open market to a highest bidder without considering the welfare of slave-children reduces themselves to mere commodities. Similarly, a serious objection against commercial surrogacy is that it reduces children to objects of barter by putting prices on them. The baby-selling objection against commercial surrogacy mainly originates from the fact that after completion of surrogacy arrangement, the surrogate mother receives a good amount of money excluding medical or other expenses by handing over a live baby to its commissioning parents. Thus, commercial surrogacy is no different from practices like slavery. Both the practices prominently involve the sale of
babies and under both practices, concerned parties are conceiving and treating children just as commodities rather than persons. But, children are neither owned by their parents nor are properties of their parents. So, they could never be sold by their biological parents. Now, the commodification of children is not only morally wrong, it is completely inconsistent with human dignity. To assign market value on a child virtually ignores the true value of a human life. Human life is intrinsically valuable; it is literally priceless. So, any practice, whether the practice is slavery or surrogate motherhood no matter, which disregards the inherent value of human life, is profoundly wrong. Therefore, surrogate motherhood would be strictly prohibited, because, like slavery, surrogacy also involves—sale of babies without considering their welfare, commodification of children and thus devalues human dignity.

(b) Resemblances between a slave-mother and a surrogate-mother

One of the key features of slavery is that slaves lack self-ownership. Any owner of slaves could sell, use and dominate them for their own benefits. Like slave-mothers, surrogate mothers also lack self-ownership. The lack of self-determination of both the slave-mother and of the surrogate-mother has been exposed in various ways. Like slavery, surrogate motherhood also exerts and extends considerable control of male domination over female bodies. In surrogacy, such male domination over female body exhibits in different ways. Firstly, a surrogate body is contractually made subject to others—to the commissioning couple. It not only ignores the welfare of resulting children, it also disregards health, welfare and equality of those women who act as surrogates. Rather than granting control over her own body, surrogacy transfers the control of woman’s body to others. During her pregnancy, a surrogate is virtually forced to do what commissioning parents desire. The practice deprives these women to enjoy or to exercise their ‘right to control their bodies.’ Secondly, the claim over the child pursuant to the surrogacy contract also expresses the extension of paternity claims. All slave mothers are surrogates in the sense that they lacked legal claims to children whom they bore, relinquished to their masters and were forced to separate from their children when these children were sold to others. Thirdly, both practices wrongly alienate a fundamental aspect of one’s personhood—woman’s
reproductive labor and treat the labor as marketable, tradable commodity. To treat women and their reproductive labor as tradable commodities merely reduce themselves to what Aristotle called an ‘animated tool’ of another, originate a novel class—the class of breeders. Like slavery, surrogate motherhood also degrades and dehumanizes women by treating them as breeding machine and devalues the inherent value of human being by using them as only means to fulfill other’s ends.

A large number of critics suggest that like a slave-mother, it is impossible for a woman to give an autonomous choice to become a surrogate mother mainly for two reasons. Firstly, in almost all societies, some subtle forms of social, political and economic coercions become the inevitable part of both slavery and surrogacy. Within this coercive situation, it is rather impossible to exercise the autonomous choices of women. And, secondly, the nature of pregnancy is quite unpredictable. It is rather impossible for a woman to predict the depth of her maternal bond to the child when she would relinquish the baby. Lack of voluntariness not only proves the inappropriateness of both slavery and surrogacy contract, it also challenges the legitimacy of these practices. Just as we never allow anyone to give consent to sell her into slavery or to alienate any inalienable trait or attribute to others. Similarly, the consent given by a surrogate mother would never be considered as valid or legitimate. So, like slavery, surrogacy would also be strictly prohibited.

On the basis of above discussion regarding the first perspective, it becomes clear that the similarity between these two institutions are grounded on three basic arguments: ability of conception, forming no maternal bond with the resulting child, and surrendering as well as terminating all parental rights over the child. In both practices, birth-mothers—slave or surrogate no matter—are enforced to act in accordance to other’s choice.

4. (F). 5
II. Comparison from feminist standpoint

According to some commentators, surrogacy, as a practice, is fundamentally dissimilar with slavery. Because, the socioeconomic structure that promotes slavery—the incidents of terror experienced by slave women—dehumanization
and absolute denial of self-determinations of slave women—all these features of slavery hardly be equated with surrogacy. But, the inherent politics which encourages—the commodification and of women, marketization of their reproductive labor and their children under slavery—the ideology that instigates and subjugates black women to forcibly become slave for white—it is the same ideology or politics that indulges to explore surrogacy for the benefits of upper, privileged class.

Now, the question is: what is this inherent ideology? Sarah S. Boone in her article, ‘Slavery and Contract Motherhood: A Racialized objection,’ in the book, ‘Issues in Reproductive Technology: An Anthology,’ Edited by Helen Bequaert Holmes, Published by New York University Press, 1992 (pp. 349 - 367), states that it is the “distorting ideologies of sexism and racism” which ‘partialized’ the class of woman into two prominent segments. Not only Boone, other feminist thinkers like Angela Y. Davis (8), Anita Allen (9), also recognize the same crude ideology that persists in both slavery and surrogacy.

We have already seen the intersection of slavery and sexual violence, and the perpetuation of violence under slavery for the benefits of white masters. By all accounts, the sexual assaults of enslaved women were common and extensive. This kind of maltreatment of woman under slavery is mainly grounded on—simple economics and various forms of stereotypes—gender stereotype, sexual stereotype or racial type. We have already seen that sexual assault of enslaved women by their white masters had been treated as a means of enhancing the labor force. In short, enslaved women reproduced the workforce and law and utterly failed to protect themselves from these sexual assaults.

(a) Role of various stereotypes under slave-systems: Gender stereotype, Racial stereotype, Class stereotype and Sexual stereotype

In every day social interactions, people tend to categories (other) people in various ways. The categorization of people into groups is based on some salient principles, for example—race, gender, sex, age etc. A stereotype is an oversimplified set of beliefs about members of a social group or social stratum. It is based on the tendency of human beings to categorize a person grounded on a narrow range of
perceived visible characteristics. So, what becomes salient is culturally determined.

Ordinarily, stereotype is a fixed, conventional notion of individuals or groups, which suppress individuality and critical thinking, affect many people and groups in society. However, stereotypes have special significance for women and for any other less powerful—marginalized groups, since the stereotypes applied to them are usually imposed and controlled by others and as a result, are difficult to change.

**Gender stereotype** refers to the belief associated with the characteristics and personalities appropriate to men and women. Current stereotypes of women and men have been influenced by historical views of women and men. The Cult of True Womanhood that arose during Victorian times held that women should be pious, pure, submissive, and domestic. For men, several models of masculinity show gender role stereotypes. The Male Gender Role Identity, suggests that to be successful as men, males must identify with the elements of that role, including the need to avoid all feminine activities and interests, have an achievement orientation, suppress emotions, and be aggressive and assertive. In most of the patriarchal societies, gender stereotype prominently take places.

In American culture, stratification of society had some unique features. It fundamentally originates from **class, racial and sexual** stereotypes. **Class stereotype** is a stereotype which reflects the views of the dominant classes and their self-satisfaction on the one hand and their disrespect for the subordinate on the other. Women belongs to the elite class have been stereotypes as refined, accomplished, virtuous and thus, honorable. In contrast, women belong to subordinate groups have been marked as ignorant, lazy and corrupted, and thus, dishonorable. Unlike other stereotypes, the class stereotype disparages the sexual morality of women who lie at the bottom of class hierarchies. **Racial stereotype** flourishes in the most virulent forms when race becomes the means of advancing economic goals, denying access, abridging rights or fostering inequalities. Race becomes central to the creation and perpetuation of stereotypes in America. Such racial stereotypes are the key ingredients of exploitation, oppression, genocide and
form the building-blocks of systems like slavery. The physical characteristics, mental competence, moral and ethical beliefs, sexuality and sexual behaviour—all these are the key ingredients of stereotypes which depict people of color in America as dirty, thieving, ‘less than fully human.’ The kind of stereotyping which denied humanity, intelligence, morality or capabilities of African-Americans was consistently used in support of slavery and the subsequent limitation of their rights and freedoms.

(b) Women and the interplay between race, gender and class stereotypes

The racial stereotype not only disempowers or dehumanizes the targeted group as a whole, it is also gendered to place women and men outside society’s ideal of femininity and masculinity, removing any possibility of protection. For women regardless of color, gendered stereotype tends to undermine their self-esteem—forces them to be conventional to socially set standards of speech, dress and behaviour—and assigns to them secondary place in the sexual hierarchy.

Now, almost all kinds of sexual stereotypes of women were formed mainly under racist and classist ideologies. American women of the upper or middle classes were generally restricted within the roles of wife and mother. As white man’s ideal companion and as the mother of his children, the American women were considered as ‘true’ women. True womanhood was glorified in the antebellum era. According to cult of ‘true’ womanhood, white women normally possessed—submissiveness, domesticity, purity and piousness. They would be protected by white men.

Through the distorted lens of racially gendered stereotypes, the ‘true’ womanhood became inaccessible to all women of color. In the nineteenth century enslaved women of African descent were viewed as promiscuous, overtly sexual and were expected to reproduce ‘property’ for white. They were portrayed as ‘mammy,’ ‘matriarch’ or as ‘jezebel.’ ‘Jezebel’ stereotype had been applied to black slaves. In U.S colonies, men’s sexual abuse of female slaves were excused by labeling those victims as ‘instinctively promiscuous’ women.
During American Revolution, on the demand of various anti-slavery movements, it was exposed that the births of significant numbers of slaves fathered by white men were clear evidences of rape. Enslaved black-women who were raped—either by white men or by other slaves—would never be protected by law, because, evidences would not be treated as crime at all. No law prosecuted a white man for raping a black woman. (10). But, on the contrary, treatment of enslaved black men accused of sexually assaulting white women had faced either the capital punishment or castration.

In our study, we closely observe that the racially gendered stereotypes are the root causes of all these discriminative activities—all these double standards. It had been taken for granted that a white man would maintain a lesser standard of restraint with black woman than were black man with white woman. Neither white nor black men were expected to show sexual restraint with black woman.

Thus, the stratification of Anglo-American society possesses some unique features: racially gendered stereotypes not only perpetuate ‘white’ supremacy, the stratification of American society involves a prominent hierarchy—Man, Woman and ‘bottom’ woman. Unlike ‘true’ women, ‘bottom’ women are labeled as ‘bad,’ subjected to ‘Bill of Sale,’ sexually aggressive and could not be raped since they are always ready for sex and could not control their sex desires. (11) So, the ‘moral and sexual virtue’ of white women justifies the sexual assaults of enslaved-black women by white masters. Black women gradually became an outlet of releasing white sexuality, otherwise that would ‘defile’ the ‘true’ image of white womanhood.

According to some feminists like Sarah Boone, Anita Allen, Angela Y. Davis, the experience of surrogate mother is no way equivalent to dehumanization, horrors and absolute denial of self-determination under slavery. But, the inherent ideology that underlies in perpetuating both the practices—slavery and surrogacy—is the same. Women, who are treated as ‘bottom’ women, could be enslaved for his master or act as surrogate mothers for others. Few activities are strictly limited for ‘bottom’ women—slave, breeder, prostitute, mistress or surrogate. Unlike these marginalized, ‘bottom’ women, ‘true’ women could never perform these
'partialized' roles. So, according to this second view, the resemblance between slavery and surrogacy is that the socio-economic status of both a slave mother and a surrogate mother is the same—they are bottom women. But, the unique feature of surrogate motherhood is "the end of surrogate motherhood is to produce a genetic offspring for others, unlike in slavery, it is better to reproduce children for others rather than reproducing slaves for others. (Slavery and Contract Motherhood: A Racialized Objection to the Autonomy Arguments, by Sarah Boone, in the book, 'Issues in Reproductive Technologies, Edited by Helen Bequaert Holmes, Published by New York University Press, 1992, pp 363).

4. (F). 6

III). Three mothers—Mary Beth Whitehead, Roxana and Rosa—A Comparison

To discuss, the third and final perspective, I would like to present a comparative discussion between three birth-mothers—Mary Beth Whitehead, Roxana alias Roxy and Rosa. Mary Beth Whitehead—woman who acts as a surrogate and eventually became one of the parties of the custody dispute of the resulting child—Baby Melissa (the law-suit is popularly known as 'Baby M' case), Roxana—slave mother of the child named Valet de Chambers in a popular novel, 'The tragedy of Puddn'head Wilson,' wrote by Mark Twain and Rosa King—a slave mother of her slave-child, named, Gerald Fitzgerald in the novel 'Romance of the Republic,' which is written by Lydia Maria Francis Child. In this perspective, our study mainly tries to seek out the common features of fragmented motherhood no matter whether the fragmentation occurs in surrogacy or in slavery.

Before going further, I like to sketch a outline of these two novels briefly. At first, Mark Twain’s 'The Tragedy Of Pudd'n'head Wilson.' The Tragedy Of Pudd'n'head Wilson (12) is the story of a young slave mother named 'Roxana' (Roxy) who was thrown into a panic when her master, Percy Driscoll, told that he would sell some of his misbehaving slaves. Roxana thought that her master could sell her own slave child, Valet de Chambers. Later on, she found a way out. Her master, Mr. Driscoll had another child, named, 'Tom Driscoll.' But, Tom’s mother was not alive since his birth. Roxy simply switched these two infants, who looked so much
alike that no one suspected on this interchange. Except Roxy, no one knew the reality. But, later on, during the trial of a murder case, Roxy ultimately revealed the fact.

Rosa and Flora, two sisters, are the two central characters of *A Romance of the Republic* (13). They were raised as white, but at the period of their father’s death they found that they were slaves because their mother was a slave, so they could be sold as part of the estate. Elder daughter Rosa got married for safety, but fraudulently married to Edward Fitzgerald and gave the birth of a baby, named ‘Gerald.’ Though Rosa was a concubine, she believed that she was the legal wife of Edward. Later on, she came to know that Edward married a rich lady and they also had a son. Rosa by switching her own baby with that of Edward’s legitimate white wife leads to a literal enslavement of the white child. But later on, Rosa had engaged into a custody battle with Mrs. Fitzgerald over her own child, Gerald.

And in *Baby M case*, in 1985, a New Jersey couple, William Stern and Elizabeth Stern, contracted with Mrs. Mary Beth Whitehead to pay $10,000 to be artificially inseminated with William’s sperm and carry the resulting child to term, terminating her parental right and giving up the child to Stern couple. On March 27th. 1986, Baby Melissa (Baby M) took birth by Mrs. Whitehead. But, after giving birth, Mrs. Whitehead changed her mind and informed Stern couple that she had decided to keep the child in her custody. Mary Beth Whitehead fought an unsuccessful court battle for the custody of Baby M. [Baby M case, 542 A2d 52, New Jersey Supreme Court, ch. Div.1988] (14).

(a) Some resemblances

In most of the society, it has been culturally believed that motherhood is indivisible. Each phase of motherhood—conception, gestation or nurturance—firmly intertwined with other. To fix up a wife or female partner and to attach a notion of integrated motherhood—all these are the cultural symbol of any society. Thus, when these three birth-mothers—Roxy, Rosa and Whitehead—claim: “I am the real mother of the child,” their claims virtually instigate a nationwide anxiety—an anxiety to permit a maternal body which gradually became a
'symbolic denominator' (15). In fact, when a maternal body becomes the subject to symbolic harm, her positive agency reduces to mere discouraging acts.

Now, the question is: what are common among these three mothers—Whitehead, Rosa King and Roxana? To reply this question, I would like to mention three kinds of resemblances that are exposed through the acts of both surrogate mother and of slave mothers. Firstly, Roxana, Rosa and Whitehead—these three birthmothers are bold and desperate to free their children from the governance of patriarchy; secondly, though we have experienced some social practices like adoption, which prominently restrict a birth-mother for fulfilling the act of nurturance, these three mothers wholeheartedly tried to keep intact their identities as mothers of both nature and nurture. And, finally, Rosa King, Roxana and Whitehead—three birth mothers become ‘surrogates’ not only fragmenting their maternal identities or relinquishing their children to their ‘natural father,’ they all produced conflicted and dual identities both for themselves and for their children.

Generally, motherhood possesses two kinds of identities: biological identity and legal identity. The biological identity of a woman has been manifested through her ‘abilities of conception.’ And, to acknowledge a woman as the birth-mother of the child, sanctioned by legal institutions, authenticate the legal identity of motherhood. We have noticed that both Rosa and Roxana—the slave mothers lost or better called forced to surrender these identities of motherhood to biological father of the child. How? Let us, discuss the point in some details.

Slave motherhood was very prominently subjugated under patriarchal control. Both Rosa and Roxana were forced to transfer the identities related to motherhood to the biological father of the child. Slavery recognized their identities neither as biological mothers nor as legal mothers. Both Rosa and Roxana contributed their ova in procreating children, gestated the fetus for full course of pregnancy and then surrender their maternal rights to the biological father of their offspring. Both the masters canceled out Rosa and Roxana’s identity as biological mother. Such replacement of identities not only naturalized the fatherhood of their masters, but also denaturalized the biological identities of slave mothers. Their subjugation crudely snatched both the identities of motherhood—biological as well as legal.
Neither their legal identity had been recognized by any court nor their reproductive contribution achieved proper appreciation. As a result, slave mothers possessed two types of maternal identities—one metaphysical and other temporal. While the legal identity of motherhood became metaphysical, their biological identity sustained temporally.

Similarly, a surrogacy arrangement also encourages to naturalize Mr. Stern as the only parent of Baby Melissa and relocates all the identities related to motherhood of Whitehead to Mr. Stern—both biological and legal parenthood. In fact, the custody dispute of Baby Melissa clearly shows that a surrogacy contract not only denaturalizes Whitehead’s motherhood identities, it also represents how her consent to the contract becomes problematic to her rational agency just like Rosa and Roxana.

 ✓ Firstly, through her consent, a surrogacy contract endorses other’s choices to execute on Whitehead’s body. In fact, like any other surrogacy contract, Whitehead, a surrogate mother, agrees to offer her service through her body. As a result, during her pregnancy, Whitehead becomes obligated to comply the restrictions imposed by other party, even she could not abort the fetus before the instruction of other party.

 ✓ Pregnancy or human gestation is not only a biological process, it evolves various emotional, psychological and social considerations and expectations during the course of pregnancy. Thus, when a surrogacy contract clearly directs a pregnant mother not to form any maternal bond to the growing fetus, such constraint clearly divides the cultural construction of motherhood into two parts—biological and affectional. Just like slave motherhood, surrogate motherhood also reduces to a form of alienated labor. Like Rosa and Roxana, Mary Beth Whitehead also lost her identities as mother. Thus, what seems an autonomous decision of a woman to act as a surrogate eventually ignores rational agency, negates her motherhood identities and the whole arrangement deliberately converts her self-possession to mere self-dispossession.

 ✓ Furthermore, the enforceability of surrogacy contract also quashed the legal identities of Whitehead. She is acknowledged as surrogate, not a birth mother.
of Melissa, just as any state law nullifies the legal status of slave mothers as birth mothers.

4. (F). 7 Our assessment

Throughout this topic, we closely observe the resemblances of surrogate motherhood with slavery from three distinct viewpoints—resemblances on the basis of common features of these two practices, resemblances of inherent ideology which perpetuates both slavery and surrogacy and similarities between three birth-mothers—one surrogate and two slave mothers. Now, our final query is: are these resemblances tenable and morally justified? Since slavery has already been considered as an immoral, stigmatized practice, any practice which is closely akin to slavery would be treated as immoral and should be strictly prohibited. Thus, our final observation is: is surrogacy a modern form of slavery?

At a first glance, it seems quite legitimate to assume that due to certain resemblances surrogacy is akin to slavery. Sale of baby, commodification of both women and child, lack of self-determinations, invalid-problematic consent, degradation of human dignity, uses and abuses of women as means, not as ends—all these analogies provoke us to label surrogacy as a modern form of slavery. But, a very close observation will reveal that surrogacy could hardly be equivalent to surrogacy, despite all these similarities. Surrogate motherhood has some unique features which would make it clear that surrogacy is not slavery.

✓ Any form of surrogacy is exclusively asexual in nature. In case of traditional surrogacy, the ova—contributed by the surrogate herself—has been artificial inseminated in a petri dish and then the fetus has been transplanted to the womb of the surrogate. In case of gestational surrogacy, the fetus which has already been reproduced by the commissioning couple is transplanted to uterine wall of the surrogate. Thus, in neither case of surrogacy, the surrogate mother does encounter any sexual intercourse prior to her pregnancy. Unlike slavery, surrogates are not sexually abused by the genetic father of the child anyway.

✓ Slavery is life-long subjugation. Throughout her life, an enslaved woman became pregnant numerous times and as a result, her master got many slave children through abusing a single slave woman. Normally, an enslaved woman
since her teenage reproduced at least 22-24 children all over her life time. Surrogacy, on the other hand, is not a life-long enslavement. A woman could act as a surrogate utmost for three times in her life-time. In India, the woman who is birth-mother of at least one child would act as a surrogate. The age limit of a probable surrogate mother is 20 to 45.

✓ Surrogacy is a highly expensive technology. The medical cost of each IVF cycle is very high. Excluding all medical expenses, a commercial surrogate receives a payment for the service she had rendered during her pregnancy. Proponents of surrogacy arrangement always prefer to consider this practice as a kind of wage labor. In case of altruistic surrogacy, a woman acts as a surrogate out of her altruistic motivation. Unlike surrogacy, a slave mother neither receives any remuneration for her service nor does she possess any altruistic motivation. A slave woman reproduced child by force with remunerations.

✓ One of the distinctive features of slavery is: the slave status of a child inherited from her birth-mother. A child of an enslaved woman is always a slave. A slave mother can never gives birth of a free child. Slave children are always subjects to Bill of sale. Unlike slave children, children born through surrogacy do not inherited slave status from their birth-mothers. Like their birth-mothers, they are all free human beings. Thus, neither a surrogate is a slave nor the child born through surrogacy is a slave child.

✓ Unlike slave child, the child born through a surrogate mother is not treated brutally or resold by his/her biological father. A childless couple achieves a genetic child after spending a good amount of money and labor. So, a surrogate child could not be resold like a slave child.

✓ Commercial surrogacy no way promotes baby selling. Slavery endorses sale of baby explicitly. In an open market, babies standing on auction block were sold to the highest bidder. He was stranger to the child. But, in any form of surrogacy, at least the male partner of the couple is genetically related to the baby. He is not a stranger, but, the genetic father of the child. How can a genetic father buy his own child?

✓ Unlike a slave master, the genetic father of the child cordially accepts the baby as his own. Slave-child lacks any such social recognition. The slave master, who is also genetic father of slave-child, completely denies his fatherhood of
these children. Slave child never receive any respect or appreciation either as a human being or as a child. The absolute denial of recognition reduces these children as mere chattels. The situation is completely different in case of surrogate-birthing. The male partner of a couple commissions a woman to act as a surrogate only to acquire a child who would be genetically related to him. He acquires a child through an arrangement. Surrogacy is fundamentally an arrangement. In this arrangement, besides commissioning father, physician, clinician, lawyer, donor of ova—take active part in procreating a child. The birth of a surrogate’s child is a social event. Not only the commissioning father of the child, intending mother and other family members also expect, feel emotional attachment to this child-birthing. After taking birth, these children are socialized in their parent’s family and have been warmly incorporated within family tree of their parents.

✓ Surrogacy provides an option to women. Women are free to decide whether to act or not to act as a surrogate. An option can never be a kind of subjugation. But, under slavery, a slave woman is no way free to choose whether she would give birth of a baby or not. Forced pregnancy is the key feature of slave-birthing. Unlike a surrogate, a slave mother has no free choice over her decision.

✓ In gestational surrogacy, the resulting child is genetically related to both commissioning parents. The surrogate mother only gestates the fetus produced by commissioning parents. In slavery, other than a slave mother none could produce a slave child—either genetically or gestationally.

✓ In altruistic form of surrogacy, a close relative, even a grand mother gestates the fetus produced by her daughter. Under slavery, no woman from the elite class is a slave.

In any modern society, there are various types of wage labor. Not all kinds of labor are of the same type. Surrogacy is a kind of wage labor. Surgeon, lawyer, secretary, engineer—all these professionals rent out some parts of their bodies. Like other wage earners, a surrogate temporarily rents out her body. Surrogacy as a practice is no way comparable to slavery. In fact, a slave contract is a mere contradiction. Every one has the right to breach a contract and pay the penalty for doing so. But, this assumption basically rests on a morally and legally accountable being who can choose to break the contract and be responsible for the
consequences. It is the self-ownership that makes a contractee a legally accountable person. So, how could a person who signs a contract—a slave contract—instantically loses all moral and legal accountabilities throughout her lifetime? Slave contract, thus, involves a sheer contradiction. Our study assumes that surrogacy contract is no way comparable with slave contract, but the autonomy of a surrogate mother, which she temporarily relinquished and the consequences of breach a contract are ill-defined. As a result, opponents of surrogacy arrangement find out close resemblances between these two practices—slavery and surrogacy.

Our study thinks that, in this context, feminist’s interpretation, to some extent, is tenable. Slavery is not akin to surrogate motherhood, but, the racially stereotyped sexism persists in both these practices. In fact, the racially gendered stereotype prominently trisects the entire cultural society: Man, Woman and Bottom Woman. True woman neither enjoys the life like a ‘Man’ nor suffers like a ‘Bottom Woman.’ Few roles can never be served by true ‘Women,’ but by ‘Bottom’ women. Slave motherhood, the role a mistress, the job of a prostitute, maidservant and also a surrogate mother—all these services or roles are pre-fixed for bottom women only. In our study, I, to some extent, admit this feminist account of sexism and racism. In fact, this stereotyped subjugation always forces to perform those roles that are not allowed to ‘Woman.’ Like slavery and prostitution, surrogate motherhood is the outcome of class-discrimination and racial inequality. Subordination of bottom women invalidates the proper status of woman.

**Note and References**

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4.(G) Autonomy, Reproductive Autonomy and Surrogate Motherhood

In medical profession, the use of words like, ‘autonomy,’ ‘liberty’ or ‘freedom’ is relatively new. These ideas become popular around mid twentieth century, especially, in western countries. Before that era, medical profession was chiefly regulated by medical ethics, formulated in accordance with Hippocratic Oath. In 450-370 B.C., Hippocrates of Cos, who was popularly known as ‘the father of medicine,’ formulated ethical guidelines for medical practitioners. Those moral codes of conducts were the key theme of ‘Hippocratic oath.’ In such oath, physicians primarily swore to protect their patients from any—harm, risk and injustice. A physician should act in such a way that the resulting situation would produce a greater balance of good over harm. The primary obligation of a healer was to use his knowledge only for the benefits of his patient. In Hippocratic tradition, medical ethics was solely relied on the beneficence-based ethical obligation towards patients.

Now, gradually this absolute reliance on the beneficence model of patient-caring led to ‘medical paternalism.’ Medical paternalism advocates a relationship between physician and his patients which has close resemblances with the relationship that normally occurs between a caring father and his children. Medical paternalism ordinarily takes the shape of total obedience of patient—when physician acts like a caring father towards his patient—when we believe that physician-father knows best what is good for his patient—when physician decides unilaterally—when the patient-child follows unhesitatingly doctor’s order. Till the mid twentieth century, the paternalistic role of a physician was conclusive and remained unquestionable. But, the scenario began to change just after World War II. Medical Paternalism loses its social significance. Autonomy enhancing model of medical caring got priority instead of paternalism. But, such shift in the field of medical caring is not accidental, it happens due to some tangible reasons.
4. (G). 1 The outcomes of Medical Paternalism

In era that began just after World War II, people had encountered a long series of scientific experiments on human subjects which were notable instances of ethical abuse in medical research and synonymous to some sorts of medical crimes. We had experienced, for the first time, that medicine could be used for purposes other than healing. Most of these research experiments were financially assisted by US Federal government. The misuses of human subjects not only involved profound moral sufferings but also forced us to rethink the legitimacy of paternalistic role of both physicians and scientists. Few instances of such research experiments are as follows:

- 1932 – 1972
  The Tuskegee Syphilis Study, sponsored by the U.S. Department of Health studied the effects of untreated syphilis among 400 African-American citizens. Researchers withheld treatments of these patients even when penicillin became widely available. Researchers did not inform them that they were the subjects of a research project. Most subjects, who attended the Tuskegee clinic, thought that they were getting treatment for their “bad blood.” (Bad blood: the Tuskegee syphilis experiment, by James Howard Jones, Published by Free Press, 1981, pp. 7-9)

- 1939-45
  German scientists conducted research on concentration camp prisoners. (Man, Medicine and the State: The Human body as the object of Government sponsored medical research in the 20th Century, edited by Wolfgang U. Eckart, © 2006 by Franz Steiner Verlag, pp. 139 – 156)

- 1944 – 1974
  During World War II, the US Federal govt. sponsored Manhattan Project. The main objective of this project was to find out the effects of radiation on the scientists and laborers worked for manufacturing atom bomb. For this purpose, scientists of the Manhattan Project very secretly selected prisoners as research subjects. Such research experiments include: experiments with plutonium and other atomic bomb materials, total body irradiation, nuclear weapon testing, non-therapeutic research on children, intentional release of
radiation on environments etc. (Executive Summary Report of Advisory Committee on Human Radiation Experiments (http://www.seas.gwu.edu/nsarchive/radiation)).

4. (G). 2 Significance of Individual Autonomy: In the form of Informed Consent

Each research experiment, mentioned above, reveals the extreme violation of traditional standard of ethics. Instead of being cared for, patient-cum-research subjects were all misused. All these instances of medical crime called for a new set of ethical standard, because, vulnerable patients would need not only proper medication but also adequate protection. Balance of benefit against risk, disclosure of danger—became the cornerstone of scientific research as well as of medical caring. The trust and confidence won by physicians throughout centuries, begins to fray. The word ‘informed consent’ was first used in research experiments during Nuremberg Trial, in 1947. The idea of informed consent was developed as a legal mechanism for extending the liabilities of physicians in the event of injury to patients. The ethical doctrine of informed consent virtually originated from the admiration of patient’s autonomy and their vulnerability. Historically, the root of informed consent was fundamentally grounded on three moral sources: Humanism, Liberalism and thinking about Human Rights.

In the mid twentieth century, two recognized International standards—United Nation’s Declaration of Human Rights in 1948 and ‘Declaration of Helsinki,’ approved by World Medical Association, granted individual autonomy as one the most basic rights possessed by human beings. In fact, these declarations assert that human being has certain inalienable rights that must be guaranteed to all people in all circumstances.

4. (G). 3 Several forms of Reproductive Coercion

Now, the popularity, application and recognition of notions like autonomy also extends to another field of human life—human reproduction. During a long period of time, the history of reproductive medicine and technologies affirmed a long
series of reproductive coercion in different shapes, in different places to serve different purposes. In our study, the era we have chosen to discuss begins from early twentieth century, especially in Western countries. Let us discuss, in short, the nature and types of reproductive coercion occurred in Nazi Germany and America.

In the beginning of twentieth century, a doctrine became popular in Western countries—called ‘Eugenics.’ English biologist Sir Francis Galton, in his article ‘Hereditary Talent and Character’ (in his book ‘Hereditary Geneius’), for the first time, had introduced the notion of eugenics to refer ‘well born’ or ‘good breeding.’ This scientific doctrine of Galton was inherited and developed by the Germans, though in distorted fashions. Nazi government began to exercise this eugenic rhetoric through racial policies. Eugenic ideology may be implemented in two recognized forms: positive and negative. While positive eugenics encouraged ‘most fit’ individuals to reproduce in greater numbers, negative eugenics dejected reproduction of people with poor hereditary traits. Nazi Germany under Adlof Hitler had attempted to develop a ‘pure’ German race executing both positive and negative eugenic policies. In Nazi regime, a good number of positive eugenic policies were implemented—giving award to ‘Aryan’ women, even single women, who successfully reproduced racially ‘pure’ children. In contrast, negative eugenic policies included segregation, migration, sterilization, even genocide. Though eugenic movement took proper, extensive shapes in Germany, but America was the first Western country where eugenic ideology persisted since late nineteenth century. In between 1907 and 1911, almost all states of America had enacted mandatory sterilization law for ‘feebleminded,’ criminals and insane. In Germany, involuntary sterilization was enacted by law in 1933. In American history, Forcible sterilization for genetically blind or deaf person suffering from manic depression, schizophrenia and alcoholism—were manifested as reproductive coercions.

During eighteenth and nineteenth century, American racism also indulged and utilized the black reproductive capacities by manipulating the childbearing under slavery. The fertile capacities of black women were used by their slave masters as
labour power. Status of a slave was inherited to her child from his mother. Slave mothers had no legal claim to their own progeny. In 1823, in Banks’ v. Marksberry lawsuit, US court sanctioned the ownership of master over slave women and their offspring. Thus, in USA, inherent racism, class privilege and the struggle for reproductive autonomy—significantly referred to the emancipation from stereotyped assumption that motherhood is both their destiny and their primary societal mission. The struggle for reproductive rights of black women has focused on liberation from governmental policies either of forcible pregnancy or punished childbearing.

Not only in Euro-American countries, in Asian countries like China also executed variant type of reproductive coercive under state policies. To control population Chinese government has taken long-effective family planning programme. The programme includes the extensive use of forced sterilization, forced abortion etc.. The government decided to implement one child per family.

Thus, in most cases, reproductive coercions took places through government policies either to fulfill eugenic motivations or for dominant racist culture. Now, these extreme forms of coercion indulge people to become more conscious about their reproductive freedom. For the first time in human civilization, common people realized that sexuality and procreation—are exclusively private affairs. Intervention within this private sphere of life is not only unpleasant but also immoral and illegal to some extent. When and how an individual would procreate—depends completely on individual choice. So, both human sexuality and reproduction exclusively relied on the free choices of autonomous individuals. Our next query, then, is: what is reproductive autonomy? What would be the proper extension of this freedom? To what extent, reproductive individuals would enjoy their autonomy without state interventions? Are reproductive liberties considered as basic freedom of a being? All these questions are deeply rooted in the theoretical foundation of right through which individual autonomy becomes possible.
4. (G). 4 Recognition of Reproductive Autonomy: The role of law, technology and Second-wave Feminism

During the mid twentieth century, people experienced some very crucial and radical changes in the most private sphere of human life—human sexuality and human procreation. These changes are so fundamental, basic and significant that some commentators defined them as revolutionary and the era is popularly known as the era of ‘sexual revolution.’ (Sex in the Heartland, by Beth Bailey, published by Harvard University Press, 2002, pp. 1-12) The Victorian ‘Double standard’ about human sexuality never allows women, but men, to experiment outside monogamous marital relationships. These revolutionary changes begin to encourage both men and women for sexual-reproductive experimentation. Now, these changes do not take places for a single reason. Technology, law, politics, customs—incentives from various domains form favourable environments for those changes. Applications of various reproductive technologies—use of birth control pill or oral contraceptive (Birth control pills were first marketed in USA in 1960), application of contracestive agents, such as RU486, which prevents reproduction after conception, new contraceptive technologies like Norplant system (consists of six capsules filled with synthetic progestin, inserted under skin), artificial insemination, application of in vitro fertilization, surrogate motherhood—all these reproductive technologies not only separate sexuality from reproduction, these also fragments parenthood, allow intrusion of third party within marital relationships. In landmark law-suits like Griswold vs. Connecticut (case no. 381 US. 479 (1965)) or Roe vs. Wade (410 US.113 (1973)), US Supreme Court recognized procreative liberty as constitutional right of an individual. Moreover, the resurgence of feminism in late ‘60s, which is popularly known as the second wave feminism, also plays a vital role in recognizing reproductive autonomy. I would like to refer two significant contributions of feminism in this context: first one is, liberating sexuality from religious institutions like church (specifically restrictions imposed by church on abortion, using contraceptive pills or applications of assisted reproductive technologies) and the secondly, for
admitting the inherent 'sex politics' as an interplay between three concepts—sexuality, power relation, gender role. Thus, technology, judiciary and feminism—occupy a significant role in recognizing reproductive autonomy. Till then notions like reproductive autonomy or procreative liberty or reproductive freedom—become familiar to our ordinary parlance.

4. (G). 5 Traditional interpretation of reproduction and unified image of a mother

It is very natural to think that the recognition of reproductive autonomy is new, very recent innovation. But, in fact, when an individual express any kind of reproductive choice, freedom or liberty, he/she actually exercises one of the oldest rights that human beings ever possessed—right to procreate. The notion becomes popular in mid twentieth century, but, the idea is as old as human history is.

From pre-historic period, it has been traditionally believed that (i) reproduction means heterosexual reproduction, (ii) procreation should be limited among married couples, (iii) a woman who is the mother of a child—is also the genetic, gestational and the social mother of the resulting child, (iv) the genetic father of a child is also the social father of the child. This means that ‘pater’ and ‘genitor’—is the same person. Under this cultural framework, until twentieth century, reproductive individuals enjoy, accomplish or exercise their reproductive freedom or autonomy.

4. (G). 6 Liberal interpretation of Reproductive Autonomy

Later on, some people feel it essential to redefine the traditional interpretation of right to procreate and to further extent the scope of this right. Most of the liberal schools, especially liberal wings of feminism try to redefine this right by extending the former scope. For these thinkers, reproductive autonomy requires something more than what heterosexual reproduction demands. It includes a new range of values and liberties in addition to those values which normal heterosexual reproduction already embodies. In our study, we have noticed that the liberal interpretation of reproductive autonomy is primarily indebted from two
philosophical doctrines on liberty: Locke's atomistic doctrine of liberty and Milliean version of 'liberty.' British empiricist John Locke has defined human person as an atomistic entity—a full fledged human being exists prior to a society. According to Locke, the political authority of an individual could never be transgressed without valid consent. Secondly, in his book, 'On Liberty,' John Stuart Mill has made a distinction between two types of action—self-regarding and other-regarding action and states that society might only interfere with those actions of individual which concern others and not with those actions which merely concern him. Self-regarding actions are those actions which affect only the agent and have no effect on others. Mill also suggested that there are no actions which are purely self-regarding. However, it seems clear that in order to demarcate the sphere of individual liberty properly, there would be a set of actions which are self-regarding.

4. (G). 7 Reproductive Autonomy—Various Interpretations

There are different liberal interpretations of reproductive autonomy. These different versions not only use different names, such as, procreative liberty, reproductive liberty or procreative autonomy, they also incorporate a large variety of opinions about the nature and scope of reproduction autonomy. In our study, I would like to mention four alternative versions of reproductive autonomy. These are: views of Ronald Dworkin, Laura Purdy, John Harris and John A. Robertson.

➢ Procreative Autonomy: Dworkin's interpretation

Ronald Dworkin has defined procreative autonomy as 'a right to control their own role in procreation unless the state has a compelling reason for denying them that control.' (Life's Domination, London, Harper Collins, 1993, pp. 148). Procreative autonomy is part of our democratic presumptions, since a constitution that guarantees religious freedom also protects reproductive choices based on moral grounds. Dworkin also suggested that 'procreative autonomy' has been protected by both the First and the Fourteenth Amendments to the United States Constitution. "The right to procreative autonomy follows from any competent interpretation of the due process clause and of the Supreme Court's past decisions
applying it...The First Amendment prohibits government from establishing any religion, and it guarantees all citizens free exercise of their own religion. The Fourteenth Amendment, which incorporates the First Amendment, imposes the same prohibition and same responsibility on states. These provisions also guarantee the right of procreative autonomy.” (Cited in, The Future Of Human Reproduction: Ethics, Choice And Reproduction, Edited By John Harris And Soren Holm, Published By Oxford University Press, 2003, pp. 35)

According to Dworkin, “the right of procreative autonomy has an important place ... in Western political culture more generally. The most important feature of that culture is a belief in individual human dignity: that people have the moral right—and the moral responsibility—to confront the most fundamental questions about the meaning and value of their own lives for themselves, answering to their own consciences and convictions ... The principle of procreative autonomy, in a broad sense, is embedded in any genuinely democratic culture.” (Cited in ‘Sex selection and regulated hatred,’ By John Harris, Published in: Journal of Medical Ethics, Vol. 31: 291-294, 2005)

➢ Reproductive Autonomy: Laura Purdy’s View

In her article, Women's reproductive autonomy: medicalisation and beyond (Published in Journal of Medical Ethics, Vol. 32, 2006, pp. 287-291), Laura Purdy says, “By reproductive autonomy, I mean the power to decide when, if at all, to have children; also, many—but not all—of the choices relevant to reproduction. I focus here on decisions about whether and when to have children. Women should also generally determine how their pregnancy will be carried out and how the birth will happen. New technologies are, however, continually raising new questions, and reproduction both requires and affects others (children, men, society at large); many issues therefore must be examined on a case by case basis. Reproductive autonomy thus has much in common with Robertson’s notion of procreative liberty, but is not identical with it. The desirability of women’s reproductive autonomy is in part derived from the more general benefits of reproductive
autonomy recognized by many writers in the liberal tradition. (See for example—work by Joel Feinberg, John Robertson, and John Harris.) Such autonomy is particularly important for women, however, because reproduction still takes place in women’s bodies, and because they are generally expected to take primary responsibility for child rearing. The need to locate women’s autonomy within this broader concept of autonomy, including a need to focus on options excluded from those among which subjects may choose.”

Reproductive Liberty: Harris’ version

John Harris adopts a wider concept of reproductive autonomy. For him, the notion includes “the right to reproduce with the genes we choose and to which we have legitimate access, or to reproduce in ways that express our reproductive choices and our vision for the sorts of people we think it right to create.” (Rights and Reproductive Choices, by John Harris, pp. 34-35, in the book, The Future of Human Reproduction: Ethics, Choice and Regulation, Edited By, John Harris and Soren Holm, Published By Oxford University Press, 2003). According to Harris, people who exercise these supposed rights are conceived of as doing far more than consenting to or refusing treatments proposed by professional: they are envisaged as choosing among possible lives and possible forms of (family) life. For these reasons, there is no good reason to abolish the uses of cadaveric eggs. In addition, Harris also includes donation of ova or sperms, post-menopausal fertility treatment, embryo-splitting etc. This version also approves enhancements of genetic traits by choosing genetic characteristics of future children. Harris feels that there is no good reason to forbid selections of embryos for their gender or clone one’s own genes. All these applications might be defended by extended dimension of procreative autonomy.

Procreative liberty: Robertson’s version

According to John A. Robertson, procreative liberty, at its basic level, suggests two types of right: ‘right to procreate’ and ‘right to avoid procreation.’ But, a close observation would show that the rationales lie behind these two sets of rights, i.e., ‘right to procreate’ and ‘right to avoid procreation,’ are quite different
from each other. In any case of abortion, where reproductive individuals execute their ‘right to avoid procreation’ are fundamentally emphasized on: **bodily autonomy, self-determination about the number and spacing of ‘one’s own’ child, social equality between men and women.** But, the rationale that lies behind ‘right to procreate’ is more complex in comparison to ‘right to avoid procreation.’ While procreation of children **allocates to parents a set of positive responsibilities to their children;** but, in contrast, ‘right to avoid procreation’ restrict this accountability deliberately.

To sketch a proper domain of procreative liberty, I would like to mention some of the key features of procreative liberty as proposed by Robertson.

- **Reproduction is basically genetic in nature.** It means parents-child relationship is based on genetic relatedness. According to Robertson, human pregnancy has three significant parts: genetic contribution, gestation-cum-child-birth and rearing. Any woman can voluntarily choose any single act of pregnancy separately. Thus, a woman may donate only her ova or could only gestate an unrelated fetus till child birth or she may only rear a child to fulfill her reproductive aspiration. Similarly, a man can only donate his sperm or rear a child. Thus, reproductive activities could be fragmented into convenient possible parts. Any reproductive individual can perform a single part without performing other activities. It would be an autonomous choice of individual which part he or she would chose.

- **Procreative liberty is a kind of negative right.** This means that a person would not violate any moral duties while making free reproductive decisions and at the same time, it also means other persons would not interfere to those choices. (Children Of Choice: Freedom And The New Reproductive Technologies, John A. Robertson, Published By Princeton University Press, New Jersey, 1994, pp. 23). None can expect that others would provide necessary resources for fulfilling his or her expectations.

- **Procreative liberty should be distinguished from freedom of ancillary aspects of reproduction, such as, mode of childbirth, choice of place, conduct of pregnancy etc.** Thus, for Robertson, everything that occurs in
and around reproduction does not fall within the realm of procreative liberty.

Our study observes that Robertson’s advocacy for an unlimited right to procreate leads to some consequences.

- Robertson approves not only any means possible for reproduction but also extends the range of procreative liberty by admitting the right to use any reproductive technology or arrangement. Thus, for Robertson, any reproduction—whether it is coital or non-coital no matter, reproductive individuals may choose or use anything freely. These non-coital procedures include arrangements like surrogacy, in-vitro fertilization, sex-determination, genetic testing.

- Under this unarticulated extension of procreative liberty, the right to use any reproductive technology or arrangement actually means the right to use by any reproductive persons. This provision permits unmarried, single parents, gay-lesbian couples to take active part in procreation.

In a nutshell, Robertson’s version of reproductive liberalism focuses on the following rights:

✓ The right to reproduce is just as strong as the right not to reproduce;
✓ The right of a single individual implementing his/her right to reproduce is just as strong as the right of married couples;
✓ The right to join with others in non-coital (collaborative reproduction) arrangement of procreation is just as strong as the right to procreate naturally.

Procreative liberty, for Robertson, is, deeply rooted on the assumption—individuals have the right to choose and live out the kind of life that they find meaningful and fulfilling.

Within these four different versions of reproductive autonomy, we observe that the interpretations offered by Harris and Robertson, assume more extensive interpretations of reproductive autonomy than other two accounts. Both Harris and Robertson admit that reproductive autonomy should be given presumptive priority in resolving disputes. As a result, controversial technologies like sex-selection,
choosing racial characteristics of one's own offspring, designer children, cloning—all are legitimately incorporated within the sphere of reproductive autonomy.

4. (G). 8 Surrogate motherhood and reproductive autonomy

Surrogate motherhood is a popular instance of collaborative reproduction. Through a surrogacy contract, both contracting parties—the commissioning couple and the surrogate—could exercise their reproductive autonomy. Moreover, this technology provides enough opportunities not only to couples, but also to any reproductive individual who can employ a surrogate mother for getting a child. Childless couples, both infertile and sub-fertile, even couples of same sex may employ surrogacy. In fact, it is absolutely the free choices of couples or individuals to decide what technology they would use, whether they would seek a surrogate or not. Commissioning couples or commissioning individuals could exercise their autonomy by employing a surrogate mother, similarly, it would be the free choice of an individual to make decision whether to serve her reproductive capacities for the benefits of others or not. A woman has the full liberty to choose whether to gestate an unrelated fetus for full course of pregnancy or to donate her ova along with her gestation. Like a gamete donor, a surrogate mother has no intention to rear the child. We do not resist an autonomous individual to enjoy 'partial' reproductive experience. Thus, surrogate motherhood manifests autonomy of two parties. Both parties enjoy their reproductive liberties.

In support of unlimited procreative liberty, Robertson, in his article, ‘Procreative Liberty and the Control of Conception, Pregnancy and Childbirth,’ published in, Virginia Law Review, Vol. 69, No. 3, Symposium on Biomedical Ethics. (April, 1983), pp. 406, claims, “full procreative freedom would include both the freedom not to reproduce and the freedom to reproduce when, with whom, and by what means one chooses.” For him, if bearing, begetting, or parenting children is protected as part of marital privacy or liberty, those experiences are no less important when they are achieved noncoitally with the assistance of physicians, donors of gametes and embryos, or even surrogates. Surrogacy is simply another way for couples to become parents, although he does not claim that unmarried individuals should not participate in contractual pregnancy arrangements.
In another article, “Surrogate Mothers: Not So Novel After All”, Published in The Hastings Center Report. October (1983), pp.31, Robertson also claims that any form of surrogacy, even commercial form of surrogacy also serves the purposes of the marital union. He recommends that we should allow commercial arrangements of surrogacy over non-commercial ones, because, it would be fair to pay those women who act as surrogates for their labour, especially when sperm donors and all sorts of other physical laborers are paid.

John Harris also recommends the employments of surrogate mothers to achieve a child genetically related with them. He also allows a grandmother who “might seek to have her daughter’s egg fertilized and implanted in herself, perhaps using technology which enables post-menopausal women to have children...I have no obvious objection.” (Rights and Reproductive Choice by John Harris, in The Future Of Human Reproduction: Ethics, Choice And Reproduction, Edited By John Harris And Soren Holm, Published By Oxford University Press, 2003. pp 8-9) In this article, Harris also argues that if we allow a grandmother to nurture her orphaned grandchild, “why should we object when she ‘creates’ the grandchildren her daughter never had?” (pp. 9)

Within this unlimited, unrestricted scope of reproductive autonomy, both Robertson and Harris defend the application of surrogate motherhood furthering individual autonomy. But, the question is: both these thinkers do not inquire about the suitability or appropriateness of employing surrogacy. Neither they recognize the potential stakeholders nor do they consider the relevant risk-factors. There are some critics like Maura A. Ryan (The Argument for Unlimited Procreative Liberty: A Feminist Critique, by Maura A. Ryan, Published in: The Hastings Center Report, Vol. 20, No. 4. (Jul. - Aug., 1990), pp. 6-12), who do not disregard the right to procreate, but, according to these critics, the unlimited scope of reproductive autonomy is not tenable.

Therefore, our next query is: is this unlimited, extensive scope of reproductive right justifiable? Are sex-selection, selection of racial characteristics or all applications of technologies under collaborative reproductions ethical? Are these
applications regulated by state laws? We have already seen that not all versions of reproductive liberalism approve such an extensive scope of reproductive autonomy as proposed by John Harris and John Robertson. In our study, we mainly evaluate the versions of John Harris and John A. Robertson.

4. (G). 9 Impacts of unlimited reproductive autonomy

Now, our query is: what are the impacts of the unlimited, unrestricted version of reproductive autonomy? In short, we would discuss some of these effects, especially in the context of surrogate motherhood.

✓ In any application of collaborative procreation including surrogacy and sex-selection, children are used as products, as commodities. These applications fail to recognize the respect of offspring as autonomous beings, as ends in themselves. Because, parents have the right to obtain a particular type of child and are free to manipulate reproductive process to acquire a designed child. Now, the question is: if a child comes into the world only to fulfill parental needs, how could we determine the end line of parental expectations?

✓ Few reproductive technologies like surrogacy, are complex, lengthy and quite expensive. Now, couple who can afford the expenses and bring children into the world through employing artificial means, assess the process of reproduction differently in comparison to natural reproduction. This type of procreation incorporates a sense of 'ordering' or 'purchasing' in accordance with parental needs. This commercial attitude towards child-birth devalues the child objectively.

✓ In any kind of collaborative reproduction, participation of multiple contributors in reproductive process not only fragments parenthood, it also makes complexities in parental claim. It remains unclear and unresolved who would act both socially and psychologically as the family member of the child.

✓ Usually, we think and a prenatal contract may lessen any such confusion arising from the fragmented parenthood. Family disruption, identity crisis of the resulting child—depends on the clarity and quality of the contract. Any contract related to reproductive matters is qualitatively different from ordinary contract. Unlike other productive activities, reproduction labor is completely unique in nature. In fact, it is difficult to determine the value of specific
reproductive contributions or to assess the physical or emotional attachment earlier, because these labors are deeply entangled with the nature of various collaborative roles.

Now, according to some liberalists like Robertson, the problem of multiple contribution or fragmented parenthood may be resolved by introducing 'disclosure,' which means rearing parents would disclose all relevant informations about the donor or the surrogate to their children after their adulthood. But, the problem, here, is: if a child has the right of disclosure, then, a donor or a surrogate also has the 'right to privacy' or secrecy. So, disclosure may assure a child and resolves the problem of identity crisis, but, it may significantly hamper the 'secrecy' of a donor or a surrogate, which is the crucial part of his or her autonomy. The donor or the surrogacy may like to keep this information confidential. Thus, the tassel between disclosure and secrecy should be resolved first.

In fact, this extended application of reproductive autonomy promotes some very crucial, social issues. These issues are:

- Most people believe that fertility is like a commodity where supply exceeds the demand. This means a fertile woman may conceive more times than they want. A modest size of family is not only beneficial for a family, but also for any society. Thus, a society needs babies, but not all possible babies.
- The reproductive decision of an individual may severely affect the interest of a child. The individuals with genetic diseases like Tay-Sachs or Alzheimer may choose to give birth to a baby. It is also a reproductive decision of an autonomous individual. Now, the child born with such genetic diseases would experience a miserable life which none can say as a worthy living. If a child born through surrogacy feels identity crisis and suffers for the rest of his life—is such autonomy of parent morally justifiable? How could the liberty of an individual significantly harm the resulting offspring? Is it morally justifiable to allow the liberty of one individual that invites injury to others?
- Some thinkers like Laura Purdy, Michel Freeman claim that the parental rights and duties always depend on some precondition. An individual would
procreate if and only if certain minimum conditions are satisfied. Responsible parents would provide a worthy, fulfilling life to their children in addition to—nutritive food, clean water, safe shelter, education and sufficient medical care. Is it possible to provide all these requisites to all children at all? Can they all provide the basic needs of life for their children? Are all reproductive individuals good parents? How can we make sure that all commissioning parents would become good parents?

- Uses of terms like ‘illegitimate child’ or ‘unwed mother’ show the attitudes of society towards a woman having a child outside marriage. Thus, procreation is sometimes believed as precious, but, not always. What would be the attitude of society towards a surrogate mother who procreates a child outside marital relationship?

Our study believes that before an individual exercises his or her procreative autonomy, he or she may, at first, find out solutions of these issues. In case of surrogacy, both contracting parties would consider these issues very sincerely and try to resolve them before employing surrogate motherhood.

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Throughout this fourth chapter of my study, I have considered seven controversial issues separately. In course of our discussion, we discuss the views of both proponents and opponents of surrogacy arrangement and we, finally, assess the legitimacy of these claims. Though we discuss these seven issues separately, these issues, mostly, are intimately connected with each other. For example, incommensurable attributes of woman’s reproductive labor, children or parental right—these issues are the foundation stones of controversies like commodification, baby-selling, prostitution or slavery, but, from different standpoints. According to some thinkers, commodification is a kind of moral exploitation. Thus, invalid consent due to coercion—this makes central position in both exploitation and commodification issues, but, from different perspectives.

In discussing these issues, we have also noticed that the whole range of these controversies basically rest on some issues which are still unresolved. So our next query is: what are those unresolved issues? What are the roots of these moral debates? Why are these issues remain unresolved? Are all these issues equally significant and tenable? Is there any risk-factor which is unavoidable even after the successful completion of surrogacy arrangement? In the next chapter, we would inquire about all these issues.