Throughout our study, we have noticed that the applications of surrogate motherhood have received various degrees of appreciations. A large section of thinkers believes that surrogate motherhood, as a practice, is potentially exploitative and also entails some harms which are symbolic in nature (such as commodification, degradation etc.). Since the applications of this technology are considered as morally wrongful, surrogacy should be strictly prohibited under law. Few others assume that surrogacy, as a complicated technology, inherently possesses some risk-factors, which, could be minimized under strict state supervision. And, the rest group thinks that the practice involves neither any risk-factor nor any immoral concerns. So, any form of surrogacy may be allowed. Our next query is: why do people remain so largely divergent in evaluating surrogacy? What are the points of their disputes? What are the root causes of these moral disagreements?

In course of our discussion, we have seen that the controversies regarding applications of surrogate motherhood fundamentally rest on some significant issues. Few of them are as follows:

- Are reproductive services like gestation treated just like a wage labor,
- Whether a birth-parent of a child could relinquish and surrender his/her parental right to another birth-parent of the child,
- Are parental rights commensurable rights?
- Can we use parental rights just like property rights? Are parent owners of their children?
- Are market norms appropriate for free, open market also suitable for reproductive services?
- Who is the real mother of a child? Genetic? Gestational? Or, social?
- What is the proper scope of one’s reproductive liberty?
- Is unlimited, absolute principle of procreative liberty, which may, finally, cause harm to the resulting child, women or family, morally and legally justifiable?
✓ Is it morally justified to use women as means, not as ends?
✓ Are children or women market tradable commodities?
✓ Can we approve the in-uterus donation of egg provided by surrogate mothers like what happened normal case of ova donation?
✓ Who is the real mother of the child born through surrogacy? Genetic or gestational or nurturing mother of the child?
✓ Is it ethically justifiable to separate children from their gestational or genetic-gestational mother for that may create identity crisis to them?

Throughout our study, we have seen that most of these contentious issues remain unresolved. The proponents and opponents of surrogacy arrangement offer their strong defenses in their favour. In this chapter, the prime objective of my study is to find out the root causes of these disputes regarding surrogacy arrangements. Our next query, therefore, is: why are these issues remain unresolved? Who are the proponents of this arrangement? Who are the opponents? Which approach do they adopt?

Now, before we begin our query, our study has noticed that not all these contentious issues, which we summarize above, are of the same type. Few questions are deeply rooted in our traditional moral beliefs, some issues are connected with our traditional cultural beliefs and few issues stem from the socio-economic inequalities and racially stereotyped gender relations that are deeply rooted on the socio-political conditions of society. In fact, these critiques have nothing to do with the ethical questions posed above. It is matter of ideology. Now, I would like to discuss and finally, assess the entire controversies regarding the applications of surrogacy arrangements under two broad headings:

☐ Controversies regarding moral concerns and
☐ Controversies related to social, economic and political issues.

Controversies regarding our cultural beliefs have been either advocated or denied both by two opposing camps—proponent and opponent—according to their own theoretical standpoints. Now, both the proponents and opponents of surrogacy arrangements try to resolve these issues in such ways that ultimately become suitable solutions to defend their own standpoints. Followers, thinkers, commentators of both the opposing camps uphold and employed divergent
theoretical foundations and ideologies either to support or to oppose the arrangement.

5.1 On moral Issues – conflict between Utilitarianism and Deontological Approach

Now, the question is: who are the proponents and opponents of this arrangement? What are the moral standpoints they adopt in evaluating this technology? In my opinion, the moral disputes of surrogacy arrangement mainly originate for adopting divergent moral doctrines. While the proponents mostly employ the utilitarian dictum, the opponents, in contrast, fundamentally adopt the deontological view to evaluate the moral values of this technology. Since the ethical norms and moral dictums of these two approaches—utilitarian and deontological—are significantly different, so, the moral assessment of the controversial issues differ very prominently. In my opinion, in evaluating surrogacy arrangement, both the opposing camps reached some conclusions which are not only diverse in nature, the controversies finally remain unresolved, because, both assessments are true to some extent.

Before we discuss how utilitarian and deontological assessments of surrogacy arrangement conclude with divergent standpoints, I would like to discuss, in very brief, what are main tenets of utilitarianism and deontological thesis and how do these doctrines differ from each other?

Utilitarianism is an ethical doctrine mainly formulated by philosophers like John Stuart Mill and Jeremy Bentham. Utilitarianism believes that to maximize the happiness within a society is the most desirable, ethical thing which an individual can do. Utilitarians believe that actions have measurable outcomes and each and every ethical choice has outcomes which lead to the maximum happiness to the maximum members of a society. Utilitarianism is thus often considered a 'consequentialist' philosophical outlook because it both believes that outcomes can be predicted and because it judges actions based on their outcomes. Thus, utilitarianism is often associated with the phrase ‘the ends justify the means.’
Deontology is an alternative ethical system that is usually attributed to the philosophy of Immanuel Kant. Whereas utilitarianism focuses on the outcomes, or ends, of actions, deontology demands that the actions, or means, themselves must be ethical. Deontologists argue that there are transcendent ethical norms and truths that are universally applicable to all people. Deontology holds that some actions are immoral regardless of their outcomes; these actions are wrong in themselves. Kant gives a 'categorical imperative' to act morally at all times. The categorical imperative, in its most widely used formulation, demands that humans act as though their actions would be universalized into a general rule of nature. Kant believes that all people come to moral conclusions about right and wrong based on rational thought. Deontology is roughly associated with the maxim 'the means must justify the ends.'

Kant's ethical arguments can be put very briefly as follows:
- ✓ Only motive matters in the rightness of an action,
- ✓ Therefore, the only good desire is the desire to act morally.
- ✓ Moreover, the desire to act morally is the desire to act in accordance with a moral law,
- ✓ Therefore, to act morally is to act in accordance with a general law-like principle that one could want to govern everyone's actions.

Kant's three significant formulations of the categorical imperative are:
- Act only according to that maxim by which you can also will that it would become a universal law.
- Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.
- Act as though you were, through your maxims, a law-making member of a kingdom of ends.

5.2 Utilitarianism vs Deontology

In fact, the theoretical underpinning of Kantian deontology stands in direct opposition to the utilitarian dictum of Jeremy Bentham and J.S Mill. The essence
of the deontological position is that actions are morally right when they conform to a relevant principle or duty. Deontology stresses that the moral status of an act should not be judged by its consequences, but by the 'intention.' Deontology uses as a criterion for judging the morality of an act, not the ends it aspires to achieve, but, the moral duty it disrespects. So, one should treat others as an end, not as a means. It is a judgement which one must take independently of the consequences of one’s act is known.

Now, throughout our study, we have discussed that surrogate motherhood provides two prominent options to the contracting parties. The first option is: it resolves the problem of childlessness of couples and the second option is: the remuneration, which a surrogate would receive after rendering her reproductive labor. Most utilitarians would like to conclude that since both the commissioning couple and the surrogate are benefited from the transaction, surrogate motherhood would, no doubt, be considered as beneficial practice for its contracting parties. In contrast, Kantian deontologists would like to conclude that to employ a woman as surrogate is wrong in accordance to universal moral truth. Let us discuss the issue in some details.

In assessing surrogacy arrangement, utilitarians mainly focus on three significant features: the benefits of this technology, the economic welfare of poor, underprivileged woman and the best solution to the problem of childlessness by achieving a genetically-linked child for both sub-fertile and infertile couples. Now, these evaluations solely depend on the well-known utilitarian maxim: the greatest good for the greatest number. In fact, the notion of child-birth, procreative intent of individual—all these concerns are deeply attached to our emotional appeals which are basically utilitarian in nature, because, all these issues profoundly follow the moral principle of action advocated by utilitarianism: “what makes an action right is its maximizing total or average utility.” Now, the question is: how does surrogate motherhood maximize the total utility of this arrangement? Any utilitarian would evaluate this arrangement on the basis of its outcomes. When all the concerned parties related to this arrangement are benefited from this transaction and when the ends of an arrangement justify the means of the practice, then, applications of such arrangement could never be immoral under utilitarian
maxim. In surrogacy, two contracting parties—the commissioning parents and the surrogate mother—both gain from this arrangement. While the commissioning couple would get a child to initiate a family of their own, the surrogate would also receive a good amount of remuneration which may facilitate to meet her hardship. The autonomous decisions of two contracting parties should be encouraged because it provides the increased happiness (parenthood and remuneration) for increased number of individuals, who would otherwise remain unhappy (childless and poor). To a utilitarian, the choice that yields the greatest benefit to the most people is the choice that is ethically correct. Therefore, any proponent would adopt utilitarian approach and claims that there is no moral harm to employ a surrogate.

In opposition to this utilitarian defense, opponents of surrogacy arrangement may adopt deontological approach suggested by Immanuel Kant. Kantian underpinning mainly focuses on two vital issues—the alleged baby-selling dispute and the commodification of women who act as surrogates. Both these objections stems from the second categorical imperative of Kant’s formulations. This formulation states that to “act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.” According to Kant, if the value of a thing is dependent on external factors, it would be considered as the object of inclination. Take an example. A cell-phone is considered as an object of inclination, because, the value of this phone depends on its ability to fulfill the function for which it has been designed. But, if this thing, for some reasons, becomes somehow unable to fulfill the desired function, its value would be reduced to the point where it may become necessary to dispose of it and becomes valueless. This is the clarification of what Kant suggests by referring to ‘means to an end.’ In contrast, the notion of end-in-itself refers to something that possesses intrinsic value as the part of it. The worth of a human being is an example of end-in-itself. For Kant, “rational beings ...are called persons because their nature already marks them out as ends in themselves—that is, as something which ought not be used merely as a means—and consequently imposes to that extent a limit on all arbitrary treatment of them (and is an object of reverence).” Thus, the value of things exclusively depends on the exterior value which human beings assign to it. Human beings or persons
possess their own goal, motivations and aspirations. They are capable of self-motivation. We regard persons as being intrinsically valuable. Now, within these Kantian interpretations of categorical imperative, surrogate motherhood has been criticized.

Surrogate motherhood has been evaluated and criticized by Kantian deontological approach in several ways:

✓ No one should treat other person merely as a means to fulfill his own ends. Surrogate motherhood approves treating women as mere means, not an ends. This practice would never recognize a surrogate as a mother, it only utilizes her reproductive labor. She has been reduced to a mere fetal container, a breeder machine.

✓ In commercial surrogacy, all concerned parties participate in commercial surrogacy—the commissioning couple, the commercial surrogate and the agency which administers the arrangement—are conceiving and treating the resulting child born through surrogacy as a thing rather than as a human being—person.

✓ The deontological position states that the goodness of the ultimate consequences does not guarantee the rightness of the actions which produced them. Thus, although commercial contractual pregnancy arrangements might satisfy/meet specific reproductive desires, desires which when satisfied/met increase individual well-being or happiness; this does not mean that the activity of commercial contractual pregnancy itself is morally right. Moral rightness itself should be determined primarily on the basis of reason and by acting in accordance with duty-based activity.

✓ I will initially argue that surrogate mothers who engage in this type of reproductive arrangement are denied their own rational agency. Denied rational agency means that surrogate mothers are forced to relinquish their freedom or autonomy. The loss of freedom in turn minimizes or negates the third formulation of Kant's categorical imperative. It is in the third formulation that Kant states that the rational being must regard himself always as legislative in a realm of ends possible through the Freedom of the will.
Since the theoretical foundations of both utilitarianism and deontological view are radically different, the nature of analysis and the mode of solution of any contentious issue are different. Let us take an example to show how these two opposing standpoints differ from each other while assessing the same issue.

Now, consider the alleged commodification of women and children debate once more. Begin with a question: is it always wrong to treat people as commodity? According to deontologists like Kant, to treat humanity as a mere means, not as ends, is always degrading and inconsistent with human dignity. The same issue has been differently assessed by a utilitarian. According to consequentialist, in the era of slavery, Africans were kidnapped against their will and sold as property. They were purchased by their masters as mere commodities, which was woefully unjust. Suppose a situation where there is no other alternative to free slaves excepting to purchase them and, after that transaction, gave them complete freedom. Now, the question is: is this treatment of human being wrong? Modern utilitarians like McLachlan and Swales point out that all examples of commodification are not morally wrongful. In some context, it is not inappropriate to treat any living being as commodity. It would be considered as proper when we set fire on a piece of coal, but, it is improper when we set fire on a live cat. However, it is wrong to treat cats and coal in all respects. In some respects, they are same and in some other respect, they differ. The appropriateness of such use exclusively depends on the nature of the application or the nature of the context. Similarly, not all uses of human beings as commodities are wrongful. It is unethical only when such treatments of human beings derive severe harmful effects on themselves (i.e. the loss of autonomy, the subjugation to potential abuse, etc.) Commodification of human being is unethical only when such harmful treatment of human beings becomes an approved practice.

5.3 On socio-political issues – conflicts between different wings of feminism

At the initial stage of second wave of feminism, feminist agenda primarily concentrates on a vital issue—the choice and safety of reproduction. From the movement of abortion right, there is an unbroken feminist dictum. 'Biology is not the destiny,' 'our bodies our own' are the expressions of protest against the
overmedicalization of pregnancy and child birth. Now, the reproductive freedom by both choice and control gradually become the crucial part in achieving the structural equality and cultural liberation of woman. In feminist discourse, medical science has been described as part of the system of social control which both extends and legitimizes the patriarchal status quo.

In reality, feminism is a set of diverse ideas with a few key points in common. First, feminists believe that women are not treated equally with men in our society. Violence against women, the differences between wages and undermining the value of women’s labor—all these are the evidences of this claims. Secondly, they believe that women should be treated equally with men: their work should be valued fairly, whether at home or elsewhere.

In general, the reproductive right of an individual has been classically treated as right to privacy. The right to have children is also set out in Article 16 of United Nations Declaration of Human Rights. But, with the advent and applications of modern technologies, the notion of reproductive right becomes the subjects of scrutiny and requires further extensions. The crucial issues like: how far these applications incorporate the ethical codes of medicine? How much demand of an autonomous individual would be met? Non-coital reproductions like surrogate parenting raise more complex issues: is motherhood biological or social? How do we assess the competence of mothers? Does a family require two parents? What role do the third party and a donor play? etc.

There is an abundant and growing feminist literature that examines the implications of reproductive technologies variedly. Most of these literatures explain the development of these technologies in terms of motivations of men (either as scientists or lawyers or technodocs etc.), highlight the victimization of women by the medical and legal institutions and the commodification of these technologies. In our study, I mainly consider four major wings of feminism—Liberal, Radical, Social and Marxist.

Liberal feminists exclusively follow the liberal doctrines in assuming that what distinguish human beings from the rest of nature are their rational capacities. The
bodily differences between male and female or reproductive uniqueness of both of
them could not be relevant parts in determining the human features of individuals,
except insofar as they impede our ability to develop ourselves as rational and
autonomous beings. This moral right to develop rational powers forms the ground
of liberal feminist’s claim to reproductive freedom and control. It has gradually
taken the form of right to privacy. The autonomous individual for whom bodily
autonomy is a precondition stands at the centre of this moral universe. Liberal
feminists, therefore, favor the development of new reproductive technologies on
the ground that they appear to increase individual women’s choice and hence
control over reproductive life. Their contribution to the debates has generally been
to rivet attention to the power, dignity and the right to individual women to
determine their own reproductive lives. In so doing, they have raised concerns
about the nature of contracts, conceptions of property, women’s autonomy and
paternal state power.

Now, this focus on individual choice has been criticized by most of the other
schools of feminism. Social feminists have carefully scrutinized whether the social
conditions of women’s lives are such that it is meaningful to talk of free choice
with respect to reproductive life. Among other things, they argue that economic
inequality, forcible motherhood and compulsory heterosexuality are incompatible
with such freedom. Until these features of social life remain unchanged, the
demand for women’s right to control must be steadfastly affirmed. For the
socialist feminists, nature, both in its human and non-human forms, has been
produced through the social labor of production and reproduction. The moral
assessments of these new reproductive technologies focus on the extent to which
these new capabilities contribute to the social forces that weaken and deny the
reproductive capacity of woman for productive life. Woman’s right to control,
grounded in socially defined need, remains the dominant horizon for their
reflections.

According to radical feminist, women’s control over their own reproductive lives
occupies the most crucial issue, because, the biological differences between the
sexes play a very crucial role in procreation. The biological differences between
the sexes with respect to reproductive life harmonize women and far closer, more
profound connection to nature and the life than man. This specific humanness must be closely tied to the life-giving forces and to the cycles of life on earth. These radical feminists consider male domination to control women’s reproductive lives to assure biological paternity and to sustain patriarchy. Radical feminists tend to oppose the use and development of new reproductive technologies, because, they consider all these efforts of male-dominated medical science to dominate women.

Marxist feminist perspective examines these technologies locating their sources in the overall development of the forces of production; that is, in structural changes irreducible to their microfoundations. In the process of changing the biological conditions of intergenerational social production, these technologies have established the material basis for the structural separation between the mode of procreation (open to public scrutiny, medical intervention and state supervision) and the mode of social and physical reproduction (which functions in the privacy of households). These structural changes are generating new identities and forms of consciousness that clash with taken-for-granted ideas about motherhood.

For liberal feminists, these technologies should be regulated to promote equal access and to protect women from their indiscriminate or unnecessary use. Radical feminists worry about the fact that these technologies are developed and implemented in an environment which is male dominated. For radicals, these technologies can only be liberating if women only control them. Social feminists argue that the new reproductive technologies will further oppress women as long as they are used in the context of capital patriarchy.

So, in feminist literatures, the status, position and control of woman on her sexual and reproductive life widely vary; because different schools of feminism uphold different theoretical foundations. As a result, feminists are divided on the issue of surrogacy, especially on commercial surrogacy. Those who support surrogate motherhood often emphasize on the augmentation of freedom it conveys. Surrogacy contract allow women to exercise additional choices over their reproduction. Any attempt to prohibit such contract fails to give due respect to the choices women would make. If a woman freely enters into a contract to produce a
child, it is paternalistic to prevent her choice. The defenders of commercial surrogacy very carefully distinguish it from baby-selling. Since, we allow autonomous individuals to sell sperm, why should women be prevented from participating in an analogous transaction?

Feminist critics of commercial surrogacy, on the other hand, offer a diversity of objections. The most common objection is based on the claim that gestational labor is different from other types of labor. But, why this type of labor is different from other types of labor? On this issue different schools of feminism uphold different ideologies. Radical feminists worry about the fact that surrogate motherhood is implemented in an environment which is purely male dominated. For Radical feminists, this application can only be liberating if women only control them. Social feminists argue that this application will oppress women as long as they are used in the context of capital patriarchy. According to the Marxist feminists, like all technologies, surrogate motherhood has the potential to change people's lives. The effect of this technology depends on the social and political context in which they are used. It is the context in which gender inequalities already prevail. Surrogate motherhood constitutes a change in the forces of reproduction, creates a material basis for the emergence of a mode of procreation that is separate from the mode of social production. The participation of a surrogate mother in relation to procreation is not freely chosen because of her economic need and lack of desirable alternative.

As a result, the numerous questions about surrogacy and other new reproductive technologies are raised and resolved differently. Do these technologies enhance women's control over their own lives or do they serve other's efforts to control women? Do they serve to further entrench the ideology of motherhood or do they expand a woman's liberty by expanding her choices? Do they masculinize a feminine sphere? Are there class and race dimensions to the problem of infertility that obscures the discourse of patriarchy? So, feminist thinking about reproductive technology reflects the dominant paradigms within feminist thought. Some school of feminism stresses the role of patriarchy in oppressing women through the new reproductive technologies, while others focus the interaction between patriarchy and capitalism. Thus, the divergent feminist ideologies authenticate divergent assessment of surrogate motherhood. As a result, just like the moral issues, the
socio-political controversies of surrogacy arrangement persist so long as the feminist ideologies disagree to each other.

5.4 Our assessment

It is hardly possible for us to conclude which moral doctrine is more relevant and significant than the other—utilitarianism or deontological thesis? In my opinion, both doctrines have some moral significance. Both utilitarianism and deontological thesis, to some extent, are justified and appropriate. The utilitarian justification of benefits of surrogacy arrangement for both the contracting parties can not be ignored. But, at the same time, it is also true that poor, deprived women are employed to perform harmful, hazardous task only out of pecuniary motivation. Such treatment, no doubt, becomes problematic to any kind of moral assessment. So, deontological analysis of this arrangement is also inevitable and justified.

Similarly, on the socio-economic and socio-political issues, the different wings of feminism assess this technology in accordance with their theoretical underpinning. Except liberal feminism, other schools of feminism do not encourage to employ surrogate motherhood for various grounds—racially stereotyped sexism, social injustice, gender stereotype, male domination, class discrimination etc. The society which indulges all these inequalities and subjugations of women, would never protect women, especially bottom women, to perform certain roles—the roles of prostitutes, the roles of slave mothers, wet-nurses or maidservants. Modern technology assigns another role for these bottom women—the role of surrogate mother. In fact, the sustainability of surrogate motherhood depends on two conditions: one positive and one negative. Until the discovery of the novel technology called ‘ectogenesis,’ we are still reliant on the surrogacy arrangement. But, on the other hand, the application of this technology also depends on the availability of surrogate mother. Excluding altruistic surrogacy, commercial surrogates all come from poor, underprivileged, deprived families. So long as the stratification of society indulges social discrimination or inequalities, subjugations of women persists in multifaceted forms, the availability of adequate numbers of surrogate mothers would prolong the application of this technology.