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SURROGATE MOTHERHOOD - ISSUES AND CHALLENGES IN CONTEMPORARY ERA: AN ETHICAL OBSERVATION

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ABSTRACT

Surrogacy or surrogate motherhood is a much-discussed issue in applied ethics. Surrogate motherhood is defined as bearing a child by one person for another person. The problem of infertility is age-old problem. Infertile couples and others may seek the services of Surrogate mothers if other procedures, such as adoption, are not options for them. On the other, it has given rise to host of ethical questions which are difficult to solve. Since last few decades there has been a rapid and profound change in the outlook and attitude, means of tradition towards marriage and the family, or of family formation. Marriage and traditional family formation has its own importance and value, but still a number of alternative ways of family formation are used by people who are infertile. With the advancement in Biology reproductive science have come in with techniques such as donor insemination, in vitro fertilization and embryo transfer methods, which have completely revolutionized the reproductive environment. These techniques have given hope to many infertile couples, who wish to have a child of their own. Motherhood was never under much scrutiny as it was the natural and conclusive fact establishing it. However, several developments in recent past made us thoughtful.

Key Words: Surrogacy, Infertile couples, Donor insemination.

INTRODUCTION:

Surrogate motherhood is defined as bearing a child by one person for another person. The term was coined in 1976. Surrogate motherhood touches on many moral and ethical issues. Some of them are:

- Allegation of adultery,
- Exploitation of
- Infertile couples,
- Surrogate mothers, and
- Children by baby brokers,
- Buying and selling of babies,
- Dehumanization of reproduction,
- Privacy rights ,
- Custody of the child, and
- Identity problems.

Infertile couples and others may seek the services of Surrogate mothers if other procedures, such as adoption, are not options for them. The problem of infertility is age-old problem. However the ethical issues relating to the problem of human infertility have reshaped by the emergence of new reproductive technologies that facilitate conception. For many the new technologies represent powerful tools that promise great benefits to those facing the

personal anguish of infertility. But others seriously question the morality and wisdom of having developed these techniques. Some theologians object to the use of any reproductive technology, believing any conception outside of sexuality is unnatural and not in accord with God's plan. Various feminists voice concern about the exploitation of women and children. Still others worry about commercialization, commodification, and social implications of the expansion of biotechnological control. It is also alleged that surrogacy is selling body parts or even selling babies. Despite these objections this reproductive technologies have been developed and are increasingly being employed, and their use has led to a number of moral and legal issues.

The new reproductive technologies include artificial insemination, egg retrieval, *in-vitro* fertilization etc. the simplest and most frequently used of these reproductive interventions is artificial insemination, in which male sperm is collected and mechanically introduced into women's reproductive system. The sperm may come from woman's partner or from a donor. The most publicized of these new technologies is *in vitro* fertilization. In 1978, the birth of Louise Brown, the first human baby resulting from this procedure, seized the public's attention. This procedure is understood in the popular imagination as producing 'test tube babies'. It represents a complex technology that involves collecting eggs and sperm, combining them in a glass dish, growing any resulting fertilized eggs to the two-to eight-cell stage, and introducing them into a women uterus.

Another procedure is that the husband of a woman may impregnate a second woman by their union. Surrogate motherhood is also called contractual parenthood. After the birth the surrogate mother agrees to give up the child to be raised by the genetic father and his wife. Thus the contractual mother can be either the genetic and/or gestational biological parent. Theologians express concern about the separation of sexuality and procreation and therefore also parenting by contract. It argues that children, marriage and procreation are denigrated when procreation is removed from the realm of bodily love. It also expresses concerns that reproduction would be reduced to a scientific enterprise and warned that a child cannot be desired or conceived as the product of an intervention of medical or biological technologies. It would reduce him to an object of scientific technology.

With the use of new reproductive technology, the separation of biological and social fatherhood becomes more of a possibility. Motherhood also becomes fractured into the multiple components of genetic, gestational, and social, generating multiple parents with sets of conflicting rights. Decisions also have to be made about the disposition of genetic materials when they exist separate from the bodies of either of the originators. The use of artificial insemination is shrouded in secrecy. Many times the couple conceals it, wishing to protect the male partner from the stigma of infertility, many would argue that responsible parenting demands that the parents be honest with the child about how he/she was conceived. Similarly, the identity of the donor almost always remains anonymous although enough information about the donor is collected to allow for matching traits, such as race etc. the sperm donor's right to anonymity is upheld to prevent future children from making legal, financial, or emotional claims. However, his right to anonymity conflicts with the right of his biological children to know, especially in an era when genetic history is increasingly relevant medical information.

MORAL DILEMMA:

Let us explain some of the ethical concerns with the help of 'baby M case'. William and Elizabeth Stern were a couple. They wanted a baby, but could not have one on their own, or at least not without medical risk to Elizabeth. So they contacted an infertility center that arranged surrogate pregnancies. One woman who had answered the ads was Mary Beth Whitehead, a twenty-nine-year-old mother of two children, and the wife of a sanitation worker. William Stern and Mary Beth Whitehead signed a contract. Mary Beth Whitehead agreed to be artificially inseminated with William's sperm, to bear the child, and to hand it over to William upon birth. She also agreed to give up her maternal rights, so that Elizabeth Stern could adopt the child. After several artificial inseminations Mary Beth Whitehead became pregnant and gave birth to a baby girl (Melissa). But Mary Beth Whitehead decided she could not part with the child and wanted to keep it. She fled to Florida with the baby, but the Sterns got a court order requiring her to hand over the child. Florida police searched out Mary Beth Whitehead, the baby was given to the Sterns, and the custody fight went to Supreme Court of New Jersey. The issue is William and Mary Beth Whitehead had entered into a contract. Morally speaking, should it have been enforced?

The strongest argument in upholding the contract was that ‘a deal is a deal’. Two consenting adults had entered into a voluntary agreement that offered benefits to both parties. However, it was not an ordinary commercial deal. The moot points here are

- One might doubt a women’s agreement to have a baby and give it up for money is fully informed. Can she really anticipate how she will feel once the time comes to give up the child. It might be argued that her initial consent was forced by the need for money, and by the lack of adequate knowledge about what it would be like to part with her child.
- One might find it objectionable to buy and sell babies, or to rent the reproductive capacity of women, even if both parties freely agree to do so. It could be argued that this practice turns children into commodities and exploits women by treating pregnancy and child bearing as a money-making business.

The trial judge (Harvey R. Sorkow) was not persuaded by either of these objections. He upheld the agreement, invoking the sanctity of contracts: a deal is a deal, and the birth mother had no right to break the contract only because she had changed her mind. The judge addressed both objections. He rejected the notion that Mary Beth Whitehead’s agreement was less than voluntary: ‘neither party has a superior bargaining position. Each had what the other wanted. A price for the service each was to perform was struck and a bargain reached. Neither had expertise that left the other at a disadvantage.’

The judge rejected the notion that surrogacy amounts to baby selling. William Stern had not bought a baby from Mary Beth Whitehead. He had paid her for the service of carrying his child to term. It is William’s biologically genetically related child. He cannot purchase what is already his. Since the baby was conceived with William’s sperm, it was his baby. Thus no baby selling was involved. The payment given was for service (the pregnancy) and not for product (the child). On the point that providing such a service exploits women, the said judge compared paid pregnancy to paid sperm donation. Since men are allowed to sell their sperm, women should be allowed to sell their reproductive capacities.

Mary Beth Whitehead appealed the case to the Supreme Court of New Jersey. The court overturned the above judgement and ruled that the surrogacy contract was invalid. It restored Mary Beth Whitehead’s status as the child’s mother. Rejecting the surrogacy contract it argued that it was not truly voluntary, and that it amounted to baby-selling.

- Mary Beth Whitehead’s agreement to bear a child and surrender it at birth was not voluntary, because it was not fully informed. The natural mother commits before she knows the strength of her bond with her child. She does not make a voluntary and informed decision for any decision prior to the baby’s birth is uninformed. Once the baby is born, the mother is in a better position to make an informed choice. But by then, her decision is not free, but is compelled by-
 - The threat of a lawsuit
 - Inducement of payment (the need for money makes it likely that poor women will choose to become surrogate mothers for the affluent. It is doubtful that infertile couples in the low income bracket will find upper income surrogates.)
- Setting aside the compelling need for money and her understanding of the consequences, the judges suggested that her consent was irrelevant. In a civilized society, there are something that money cannot buy.
- The judges argued that commercial surrogacy amounts to baby selling and baby-selling is wrong, however, voluntary it may be. They rejected the view that the payment was for the surrogate’s service and not for the child (product). As per contract the payment will be made only upon surrender of custody and termination of her (Mary Beth Whitehead) parental rights. This is the sale of a child, the sale of a mother’s right to her child. Only mitigating factor is that the purchaser is the father. The middle man, propelled by profit promotes the sale. Whatever idealism may have motivated any of the participants, the profit motive predominates, permeates and ultimately governs the transaction.

The question is which judgement— the trial court’s judgement (which enforced the contract) or the higher judgement (that invalidated it) — is right. To answer this we need to assess the moral force of contracts and the two objections raised against the surrogacy contract.

The arguments for upholding surrogacy contracts draws on two theories — libertarianism and utilitarianism.

- The Libertarian case for contracts is that they reflect freedom of choice. To uphold a contract between two consenting adults is to respect their liberty.
- The Utilitarian case for contracts is that they promote the general welfare. If both parties agree to a deal, both must derive some benefit or happiness from the agreement — otherwise, they would not have made it. So unless it can be shown that the deal reduces someone else’s utility — and by more than it benefits the parties — mutually advantageous exchanges should be upheld.

OBJECTIONS: TAINTED CONSENT

Was Mary Beth Whitehead’s agreement was truly voluntary? It raises questions about the conditions under which people make choices. It is argued that we can exercise free choice only if we are not unduly pressured — say, by the need of money — and if we were reasonable well informed about the alternatives. What counts as undue pressure or the lack of informed consent is open to argument. The point of such arguments is to determine when a supposedly voluntary agreement is really voluntary and when it is not. It is important to note that this debate about the background conditions necessary for meaningful consent is actually a family quarrel and is of the different approaches to justice. The one is justice means respecting freedom. Libertarianism, one approach to justice, holds that justice requires respect for whatever choices people make, provided the choices do not violate anyone’s rights. Other theories that view justice as respecting freedom impose some restrictions on the conditions of choice. They say that choices made under pressure, or in the absence of informed consent, are not truly voluntary. John Rawls rejects the libertarian account of justice.

DEGRADATION

It is said that there are something that money should not buy — here babies and women’s reproductive capacities. What exactly is wrong with buying and selling these things? The most compelling answer is that treating babies and pregnancy as commodities degrades them, or fails to value them appropriately. Underlying this answer is — the right way of valuing goods and social practices is not simply up to us. Certain modes of valuation are appropriate to certain goods and practices. In the case of material commodities, the proper way of valuing them is to use them, or to make them or sell them for profit. But it is a mistake to treat all things as if they were commodities. It would be wrong to treat human beings as commodities, mere things to be bought and sold. That is because human beings are persons worthy of respect, not objects to be used. Respect and use are two different modes of valuation.

A contemporary moral philosopher Elizabeth Anderson has applied the above argument to the surrogacy debate. She argues that surrogacy contracts degrade children and women’s labour by treating them as if they were commodities. By degradation she means treating something in accordance with a lower mode of valuation than is proper to it. We value things not just ‘more’ or ‘less’, but in qualitatively higher and lower ways. To love and respect someone is to value her in a higher way than one would if one merely used her. Commercial surrogacy degrades children insofar as it treats them as commodities. It uses them as instruments of profit rather than cherishes them as persons worthy of love and care.

Commercial surrogacy also degrades women. By treating their bodies as factories and by paying them not to bond with the children they bear. It replaces the parental norms which usually govern the practice of gestating children with economic norms which govern ordinary production. By requiring the surrogate mother to repress whatever parental love she feels for the child, writes Anderson, surrogacy contracts convert women’s labour into a form of alienated labour. Her labour is alienated, because she must divert parent-child relationship from the end — an emotional bond with her child — which the social practices of pregnancy rightly promote. Anderson’s argument explains why there are some things that money should not buy.

The above argument poses a challenge to utilitarianism. If justice is simply a matter of maximizing the balance of pleasure over pain, we need a single, uniform way of weighing and valuing all goods and the pleasure or pain they give us. Bentham invented the concept of utility for precisely this purpose. But Anderson argues that valuing everything according to utility degrades those goods and social practices that are properly valued according to higher norms. But what are those higher norms, and how can we know what modes of valuation are appropriate to what goods and social practices? One approach to this question begins with the idea of freedom. Since human beings are capable of freedom, they should not be used as if they were mere objects, but should be treated instead with and respect. This approach emphasizes the distinction between persons (worthy of respect) and mere objects or things (open to use) as the fundamental distinction to morality. The greatest defender to this approach is Kant.

DILEMMA OF POVERTY AND EXPLOITATION

Ethicists object to surrogacy on the ground that surrogate herself be coerced into that role through poverty or unemployment. The surrogate can conceivably be regarded as the victim of an unfair social order. Without denying this, it seems rather counterproductive to deny her this option. Given a choice between poverty and exploitation, many people may prefer the latter. The dilemma recalls to mind the view of a person who said that she never gives money to intellectually handicapped children collecting from the occupants of stationary cars at traffic lights because they were underpaid and exploited by the charities that employed them. But the question is where else these children could have looked for a source of income.

Another moot point is whether access to the services of a surrogate should be restricted to those people who for medical reasons are unable to bear a child and should be denied to those women who, though physically capable of giving birth, do not do so either because they are too busy or because their careers require certain aesthetic standards which would not be met if they were pregnant.

At the epicentre of the dilemma is whether a surrogate mother should be compellable to relinquish custody of a child in favour of his or her genetic parent(s). It is one thing to recognize that a person may validly relinquish control of a child to another person who then assumes parental responsibilities in relation to the child. It is another proposition entirely to suggest that the person should be compelled to do so.

Krimmel argues that the child who discovers the conditions of her birth may grow up with the knowledge that she was created to be given away and feel devalued and experience a loss of self-worth.

OBSERVATION AND CONCLUSION:

Reproductive technologies also have to be evaluated within a social and political context. Some question the wisdom of 'creating' new babies in a world where population pressures are increasingly putting strains. Others worry that the development of reproductive technologies leads to and perpetuates the misuse of scarce medical resources. In other words the use of reproductive technologies means medical services are not available for saving lives or improving the quality of existing lives.

On the other hand, it is important to recognize that infertility can be personally devastating. Many of the infertile feel a strong desire to bring into being and rear children who represent an extension of their own bodies and genetic lineage. The urge to reproduce one's self offers a hedge against mortality, and it connects us to past and future generations. It represents a quest for transcendence, and a desire for creativity.

Liberal feminists argue that women and men should be allowed to use whatever reproductive technologies they want provided they do no harm in the process. They assert an analogy between a woman's right for reproductive control of her body defended in the pro-choice stance on abortion and her right for reproductive control of her body when faced with infertility. They claim that the ability to choose if and when to have a child is as important for the woman faced with infertility as it is for the woman faced with an unwanted pregnancy.

There are some who argue that an individual's desire and preferences are not simply autonomously determined but must be understood within the context of socially construed meaning. For them, infertility is not merely a biological condition. It is a social category that structures and influences an individual's response to the biological fact of infertility and to the options available. The discovery that one is infertile elicits a diverse repertoire of feelings and behaviours - acceptance, denial, a change in one's partners, or adoption. Sherwin claims

that the emphasis on reproductive technologies as a solution to infertility has weakened the case for nonmedical options. She wants us to view infertility within the context of a society that increasingly offers a technological fix for problems that are interpersonal and social.

Many fears that the use of reproductive technologies will lead to many children not being adopted who need to be. Adoption also offers the advantage of not increasing the population. Some believe that we live in a society that overvalues genetic connection and undervalues social linkage. This reinforces the notion that biological children are more one's own than children one has adopted. To help remedy this, Mahoney advocates a concept of parenthood based on nurturing rather than one based on genetics.

It has also been opined that IVF and contractual parenthood represent options that are beyond the reach of most infertile women or couples. Some maintain that these expensive reproductive technologies reinforce the message that it is more important for the affluent to reproduce children of their own genetic kind than to adopt children of different backgrounds.

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