A NOTE ON SURROGATE MOTHERHOOD

The last two decades have witnessed a rapid development of technologies that assist reproduction, increasing the chances of conception and of carrying out a pregnancy to term. One such technology is in vitro fertilization. Surrogacy is one method used in such Assisted Reproductive Technologies. A surrogate mother is a woman who agrees to have an embryo generated from the sperm of a man who is not her husband/sexual partner and the oocyte of another woman implanted in her womb to carry the pregnancy to its full term and deliver the child to the biological parents.

The development of Assisted Reproductive Technologies has taken place largely within the private sector and there is no law regulating them. The existing ICMR guidelines have been found by large sections of health activists and women’s organizations working in the field of reproductive health to be grossly inadequate so far as the rights of the woman undergoing such procedures are concerned. Women who have been involved in such procedures have been found to be at a great disadvantage in terms of medical, social and economic aspects. The woman has been left at the mercy of the infertile couple as she is at a great disadvantage in terms of medical, social and economic aspects. The woman has been left at the mercy of the infertile couple.

In the US, the commercialization of assisted reproductive technologies has also led to a surge in the number of cases of surrogate motherhood. In India, where poverty is still rampant and where a woman is still subject to patriarchal pressures from family and society, there are laws that protect women and the child from exploitation. The law protects the woman from any commercial exploitation while the child is protected from child trafficking.

This is particularly applicable in the case of surrogacy where there is a commercial aspect involved and where the woman is not only exploited but is also at risk of her health. It is mainly applicable to the poor and the underprivileged as in the developed countries, surrogacy is mainly a matter of social and economic status. Women are more often than not involved in such procedures than in protecting the woman going through such procedures.

There are crucial ethical, medical and legal concerns which need to be sort out in addressing this issue. This is all the more important because there are differences within the women’s movement in our country on the issue of surrogacy. Apart from the argument that the progress of technology cannot be and should not be prevented, there is also the feeling in some quarters that the entry of the woman in the ‘market’ of baby production is a question of her own choice and involves the exercise of her right over her own body. The use of technological progress which enables childless couple to have children who are genetically theirs is undeniable, although it is likely that the already-declining incidence of adoptions will go down further in our country as a result of this.
But as in the case of pre-conception and pre-natal diagnostic techniques, we know that basically beneficial medical technologies can be grossly abused purely for purposes of monetary profits. Therefore we have to look into the larger social implications of the

ICMR bill. The question that we should ask ourselves is: Can we ethically or morally permit a woman to have a child that is not her own, or indeed to sell her body for it? This is the big question. Further, we can hardly talk of freedom of choice unless we are quite sure that the woman was fully informed of the hazards that the application of surrogate motherhood can have on her. Can we be sure of this? Since the ICMR bill makes no stand regarding the basic

The other question which the ICMR bill largely fails to address is the medical one. The same mother has to go through intense hormonal treatment which might lead to multiple pregnancy. The same might also inhibit genetic defects which might accumulate in the blood stream, and might lead to handicap in the child. But the society would not be entitled to demand that

The risk that the ICMR bill permits might as well be expressed in relation to the maximum and the minimum age prescribed for a surrogate mother. It prescribed the maximum of two-thirds of the mother’s age, but did not

Apart from this, the question of the legal rights of the surrogate mother and of the child/her/his blood of surrogate motherhood has also to be pondered upon. For instance, the ICMR bill provides that the child is the legal and natural child of the surrogate mother, the child will of course have the right to his identity, and the rights of the child are to be given to the child by the

Malini Bhattacharya