

## IS SURROGACY AND MOTHERHOOD INTRINSICALLY VALUABLE?

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**Abstract.** Surrogacy involves a surrogate mother carrying a genetic child for women with health or reproductive challenges, such as uterine malformations or IVF failures. During the nine-month gestation, the surrogate undergoes a full motherhood experience, often without receiving adequate recognition for her role.

The term “intrinsic value” in surrogacy addresses the ethical implications, focusing on the perspectives of surrogate mothers, intended parents, and the child. This raises concerns about personal autonomy, exploitation, and the commodification of reproduction. Key issues include the surrogate’s agency, the intended parents’ responsibilities, and the child’s right to an identity beyond commodification. Ultimately, it emphasizes the need to consider consent, equity, and the complexities of family structures in reproductive practices.

This contribution highlights the surrogate mothers’ motherhood journey, their experiences, and the intrinsic value of the relationships formed with the baby, as well as the impact on their personal and social lives.

**Keywords:** Assisted Reproduction, Surrogacy, Surrogate Mothers, Surrogate Motherhood, Surrogate Mother-Child Relationship, Autonomy.

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## 1. Introduction

Surrogacy is a journey of motherhood through assisted reproductive technology. Generally, surrogacy involves three persons: intended parents, who are married but infertile, and a woman who is willing to be a surrogate mother. A surrogate mother is a woman who consents to get pregnant and give birth to a child, whom she would give away to the intending parents after the baby is born. The traditional concept of surrogacy involves a direct physical connection between the intended father and the commissioning surrogate for being impregnated. But a new form of surrogacy has been developed after the commencement of new reproductive technologies, which has started over the previous four decades and has become a progressively widespread practice.

Although surrogacy involves three persons, it might not always happen; the intended parent might be single, and in such cases, surrogacy engages two persons, one intended parent (father) and the surrogate mother. Surrogacy is of two types: traditional surrogacy and gestational surrogacy. In the first one, the traditional one, the sperm of the intended father is artificially inseminated in the womb of the surrogate mother, and herein the surrogate mother shares part of the genetics with the child. In the second one, the gestational, the embryo is created from both intended parents or the donor's sperm or oocyte, and then transferred to the uterus of the surrogate mother. Surrogacy might be either altruistic or commercial. In altruistic surrogacy, the bearer mother does not receive any financial assistance from the intended parents, and in commercial surrogacy, the surrogate is offered an economic incentive for her job. Currently, surrogacy has primarily become a practice with a commercial aspect where the commissioned woman consents to gestate the baby for others.

The practical application of surrogacy is not without criticism. It is a medical or professional practice subject involving too many moral obligations. Most critical evolutions are done for commercial surrogacy. Most arguments are based on the ground that the practice of surrogacy would harm the resulting product of this practice, that is, the born child. It has been speculated that though the carrier mother is not carrying the child for herself, but for the intended parents, she might not be earnest about her pregnancy. She might not take care of herself and the foetus throughout the pregnancy. Even she might not be emotionally attached to the foetus as much as a mother should be, and as a result, the pregnancy would turn into a burden to her to continue. Again, the resulting child might be harmed if the physical and psychological conditions of both intending parents and the surrogate mother are not checked properly. Above all, harm to the born child would occur if both

the intended parent and the surrogate mother refuse to take custody of the child because of the birth abnormalities or the immature decisions of the parents.

## **2. Ethical Concerns in Surrogacy**

Presently, surrogacy is primarily practiced in a commercial context, where the commissioned woman agrees to carry a child for others, raising numerous ethical, moral, and legal challenges associated with commercial surrogacy. The moral dilemmas surrounding surrogacy mainly focus on the risk of exploiting the surrogate mother, particularly in commercial arrangements, leading to concerns about the commodification of women's bodies, possible coercion, and the existence of power imbalances between the intended parents and the surrogate, particularly in international cases where the surrogate may come from a disadvantaged economic background. Other ethical dilemmas include the psychological effects on the child, the likelihood of attachment difficulties, and the intricate legal and social ramifications of having a child without a biological link to one of the parents. The following are the key ethical concerns in surrogacy:

- Critics contend that when a woman is being compensated to carry a baby, her body is treated as a commodity, which may lead to exploitation, especially where there is a notable power disparity between the intended parents and the surrogate.
- It is essential to ensure that the surrogate comprehensively understands the risks and consequences of surrogacy, including the potential for emotional distress, and willingly agrees to the arrangement without any form of coercion.
- Issues emerge when surrogacy agreements take place across different countries, where the legal safeguards for the surrogate may be inadequate, resulting in possible exploitation and trafficking concerns.
- Surrogacy might cause potential psychological effects on children conceived through it, including how they might comprehend their origins and any potential bonding issues with the surrogate mother.
- Surrogacy can prompt inquiries about parenthood's legal and social definitions, especially when the intended parents do not have a genetic connection to the child.
- Some critics suggest that surrogacy bolsters gender stereotypes by predominantly involving women as gestational carriers, potentially perpetuating the notion of women's bodies as solely instruments of reproduction.

### 3. What is Intrinsic Value?

Philosophical thoughts are variously related to ‘value theory’. In a broader sense, value theory is incorporated in every area of aesthetics, socio-political and moral philosophy, feminist philosophy, and even philosophy of science and technology. So basically, the value theory is associated with the branch of study encompassing various evaluative aspects. Narrowly, value theory is related to a relatively narrow domain of normative ethical theory. However, value theory is not solely used for consequentialist theory; in the narrow sense, it also carries a synonymy with ‘Axiology’. Axiology is a theory that classifies things and finds out what good things are and how they are good. But more profoundly, it could be depicted that value theory is a theory that is necessarily associated with moral philosophy, which is concerned with the theoretical questions relating to value and goodness in every possible field.

There are various sorts of values, like cultural values, instrumental values, financial values, individual values, dominant values, intrinsic value, organizational values, moral values, and extrinsic values. Again, humans have four core values: Truth, Respect, Responsibility, and Compassion.

Moral philosophy stands on a debate between ‘what is more acceptable in human life, a means to an end or an end in itself?’ Instrumental value is about the means to an end, and Intrinsic value is an end in itself. Instrumental or extrinsic values are not valued for themselves. Instead, it is the means of achieving a particular end that humans ultimately want. Thus, Instrumental or extrinsic value is a means to a specific goal or end.

Intrinsic value signifies a core relationship with ethics or moral philosophy. Philosophically, the intrinsic value of a thing is something that the particular thing carries ‘in-itself’. A thing ‘for its own sake’ has intrinsic value. More particularly, the intrinsic value of a thing is that thing’s ‘as such’. An object that has intrinsic value is regarded as an end. Intrinsic value to Immanuel Kant<sup>1</sup> is also an end-in-itself. Hence, intrinsic value plays a crucial role in verifying moral judgements. When an action under similar circumstances provides an intrinsically better consequence than any other action, then the action is regarded as inherently valuable and morally acceptable, or morally right or wrong. Intrinsic value is related to responsibility because one should act responsibly to provide a consequence enriched with intrinsic value and be ethically good or morally acceptable. In general, it has been thought that intrinsically pleasure is good and pain is bad. In the

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<sup>1</sup>Kant, I. (1997). *Groundwork of the Metaphysics of Morals* (M. Gregor, Trans.). Cambridge University Press. (Original work published 1785).

dialogue Protagoras, Plato declares that people condemn pleasure not because pleasure is intrinsically bad, but because pleasure sometimes brings bad consequences, contrary to its nature.<sup>2</sup> For him, pleasure is good in itself and pain is bad in itself, because pain always deprives us of having future pleasures, considering what the consequences may be. But Plato, being pessimistic about such consequences, in *Timaeus* defines pleasure as the ‘greatest allurements to evil’, whereas pain as something which ‘scars away from the good’.<sup>3</sup>

Aristotle<sup>4</sup> also agrees with Plato and mentions that pain, being bad, should be avoided, as pain is bad without any qualification or as an impediment to us. As pleasure is contradictory to pain and pain being bad, pleasure occupies the role of goodness in-itself or necessarily good. Later on, William Frankena<sup>5</sup> gave an all-encompassing list of intrinsic goods. These are, life, consciousness, activity; happiness, blessedness, contentment; all sorts of pleasure and satisfaction; all kinds of genuine opinion, knowledge, wisdom, and understanding, life’s harmony, power, honor, friendship, love, mutual affection, cooperation, freedom, achievement, peace, aesthetic experiences, moral goodness and virtue; adventure and novelty; health and strength. Hence, from Frankena’s<sup>6</sup> list, it could easily be presumed that intrinsic values are closely associated with human lives.

#### 4. Motherhood and Its Relation to Surrogacy

As we have discussed earlier that surrogacy is a complex reproductive arrangement in which a woman, referred to as the surrogate mother, carries and delivers a child for another individual or couple, known as the intended parents. This arrangement provides a vital opportunity for those who face challenges such as infertility, medical issues that hinder their ability to conceive, or same-sex couples who wish to experience parenthood.

The word Mother is a gender-specific term of parenthood. When a woman gives birth to a child, she becomes a mother. The state of being a mother is the key to entering motherhood. But giving birth is not the only way of being a mother. Through adoption, by marrying a person with children, a woman can become a mother. The term motherhood is definite and permanent. It is, at the same time, very challenging, as a mother faces various difficulties for both giving birth and raising a child, and very rewarding, too, because once a mother is

<sup>2</sup>Plato. (1956). *Protagoras*. (B. Jowett, Trans.; M. Ostwald and G. Vlastos, Eds.). The Bobbs-Merrill Company, Inc., Indianapolis, New York.

<sup>3</sup>Plato. (1888). *Timaeus*. (R. D. Archer-Hind, Trans.). Cambridge University Press.

<sup>4</sup>Aristotle. (1925). *Nicomachean Ethics*. (D. Ross, Trans.). Oxford University Press.

<sup>5</sup>Frankena, W. K. (1973, 2nd ed.). *Ethics*. Englewood Cliffs: Prentice Hall.

<sup>6</sup>*Ibid.*

always a mother. It can be said undoubtedly that motherhood is the most challenging job that someone will ever experience, and most woman wants to perform it with pleasure. However, it should be mentioned that motherhood is not only associated with giving birth and recognizing oneself as a mother. Motherhood is about the inherent instinct of a woman towards her child to provide unconditional love, enough care, nurture, and protection from all sorts of experiences, to experience the growth and blossoming of her child, and to feel delighted for doing her job.

Hence, motherhood is naturally supposed to be associated with a woman who carries her baby in her womb and gives birth. But in the 21 st century, many mothers have developed through the help of advanced medical science and technology, where a woman carries and gives birth to a baby who is not her own. After a successful delivery, she gave the baby to the baby's real parents. This process of motherhood, of carrying and giving birth to another person's baby, is known as 'Surrogate Motherhood'. 'Surrogate' means 'substitute' or 'replacement of one for another'. Thus, surrogate mothers are those women who are being substituted or appointed to carry and bear a baby for another woman. Therefore, surrogates are also mothers who experience motherhood. However, they lack the process of motherhood that a real mother experiences as her child grows and blossoms daily.

There are primarily two types of surrogacy: traditional and gestational. Traditional surrogacy involves the surrogate using her eggs, making her the biological mother of the child, while gestational surrogacy, which is the more prevalent form, entails the implantation of an embryo created via in vitro fertilization (IVF) using the eggs and sperm of the intended parents or donors. In gestational surrogacy, the surrogate has no genetic connection to the child she carries, as her role is purely to provide the gestational environment necessary for the embryo's development.

### **5. What role does Motherhood play in Surrogacy?**

In the realm of surrogacy, the concept of 'motherhood' encompasses a multifaceted and nuanced definition that involves the roles of both the surrogate mother and the intended parents. The surrogate mother plays a pivotal role by carrying the pregnancy and ultimately giving birth to the child. Her physical and biological contributions are integral, as she nurtures the developing foetus, undergoing all the physiological changes associated with pregnancy.

Conversely, the intended mother, who may not necessarily share a genetic connection to the child, is commonly acknowledged as the child's mother, particularly in the context of

gestational surrogacy. In these arrangements, she may provide her egg, or utilize a donor egg alongside her partner's sperm or a donor's sperm to create an embryo. This embryo is then implanted in the surrogate mother's uterus. The emotional and psychological bonds formed during this process further solidify her role as the mother, even if there is no direct biological tie.

This complex interplay between the surrogate and the intended mother highlights the diverse dimensions of motherhood in surrogacy, illustrating how the journey to parenthood can intertwine various forms of connection, love, and commitment.

The mother is considered the most important person in every child's life. The bond between a mother and a child is unique, and there is no comparison. But in the case of surrogacy, motherhood, the known, unique, permanent, and selfless bond between a mother and a baby changes to time-bound, rule-bound, temporary, and overall contractual and commercialized. This raises a serious moral issue in the surrogacy debates. The necessity of surrogacy motherhood has become popular because of the motivation or wish to have biological children for infertile couples. Though gestational surrogacy rewards needy intending parents with a biological baby, the norms of motherhood, thus, parenthood are replacing day by day regarding the custody and rights of the children.

In surrogacy, the concept of motherhood is thought-provoking. Traditionally, by birth, a child gets only one mother (though in the case of adoption, the number of mothers may vary). Still, in surrogacy, since ovulation, the child is associated with two women, one gestating or surrogate mother and a commissioning or intended mother. However, a debate continues over 'who is the real mother of the child?' A child's interest is one of the main presumptive factors in declaring who would be the child's real mother, the genetic mother, or the surrogate mother. In fact, we never know how a newborn thinks about her relationship with the mother and what precisely the child's interest is. So, to explain motherhood, some statements can be made, depending on the child's interests.

- (i) A widespread belief is that a genetic procreator has a default right to have their genetic child. This default right necessarily implies the right to parent. David Valleman<sup>7</sup> Believes that children should be nurtured by their genetic parents only, because children are so closely acquainted with their genetic procreators that it seems morally wrong to rear a child through surrogacy. He shares such a view

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<sup>7</sup>Gheaus, A. and Straehle, C. (2024). *Debating Surrogacy*. Oxford University Press.

because, according to him, in creating a child's identity formation and self-knowledge, genetic procreators play a crucial role. Close acquaintance with the biological parents provides the child with a broader knowledge of life, based on which the child can create a meaningful life compared to one raised by someone other than their genetic parents or the genetic mother.

- (ii) Melissa Moschella<sup>8</sup> states that there is a personal relationship between the genetic procreator and the child. The biological mother and the child are genetically connected, which signifies that the relationship between them is the basis of the child's genetic make-up, which, according to Moschella, is the child's identity. This genetic makeup provides the bodily aspect to the child. She further says a genetic mother's love is special for a child. Hence, it could be said that a genetic mother's non-transferable duty is to love and raise her child. If this duty is transferred to another woman, then this would create a discontinuity in the genetic mother and child's relationship. So, if the genetic mother is regarded as the real mother and gets the right to parent the child, only then can she fulfill her non-transferable duty of raising the child with pure love.

However, depending on both views, it could be said that there is no specific relevance that only genetic parents are the ones who can raise the children properly. The child's only interest is to know who is mostly available, the genetic mother or the surrogate mother. The most crucial duty of motherhood should be the availability to their child. Hence, Valleman's<sup>9</sup> the argument of close acquaintance with the genetic procreator does not always serve the Child's best interest, because, if parenting is seen under a child-centered view, then a good candidate for proper care of the child might be either the genetic mother or the surrogate mother. Again, on the account of Melissa Moschella,<sup>10</sup> it could be mentioned that, although genetic connectedness between the genetic procreator and the child gives the child a bodily aspect, this does not involve physical closeness. When a baby is gestated in the surrogate's womb, this physical contact is made between the surrogate mother and the child, not with the genetic mother. Hence, the required emotional attachment that is made up in every pregnancy, with the genetic mother, is not formed here in surrogacy. But this emotional attachment occurs with the surrogate mother.

A surrogacy contract does not give any legal status to surrogate mothers to be the mother of the born child. There are no parental rights for surrogate mothers to relinquish. Parental

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<sup>8</sup>Ibid.

<sup>9</sup>Ibid.

<sup>10</sup>Ibid.



rights are subject to the genetic link. Genetically related intending parents would be the legal parents of the child, because in gestational surrogacy, commissioning parents first ideologically wish for the child and then turn it into a practicality. At first, the intended parents provide their genetic material and then, by commissioning a surrogate mother, they practically live and taste their dream. A commissioning mother should be counted as a mother because the physical boundary for birthing a child cannot be misconstrued as motherhood. Because the leading standard of child-rearing is the child's best interest, that is posited in the mother's mind. A mother, an intending or surrogate, would always act in the child's best interest.

The debate about motherhood also brings to mind the thought that a surrogate should also be regarded as a parent. But to what extent? Deciding on a real mother for the child in a surrogacy agreement is very difficult. Parenting and the right to custody should be regarded as two different aspects. Children do not know what custody is, but they only know what love is. The child knows who can parent them with pure love and who can fulfill their emotional needs. Becoming a mother does not require being the child's custodian. A real mother would be the person who would parent her child out of pure love and respect. A genetic mother would love her child because she wants her genetic child so intensely that she has hired a surrogate who can help her gestate the child. But the fact that can never be ignored is that during gestation, the surrogate develops a unique physical and emotional bond with the child.

The emotional connections between the mother and the child in both traditional and surrogacy motherhood are unique and real. But in the case of surrogacy, this emotional connection seems quite complex and nuanced. The mentioned emotional attachment formed in surrogacy between the surrogate mother and the child, especially from the side of the surrogate mother, is so subtle that it leads to significant differences in her emotional experiences. It should be kept in mind that in surrogacy, the surrogates go through an agreement that necessarily impacts the shape of prenatal bonding compared to traditional mothers. Among most of the surrogate mothers, higher levels of instrumental value are seen, as they are bound by the prenatal agreement and their pragmatic commitment to keep the baby safe during pregnancy and give birth to a healthy child. Hence, emotional bonding is somewhat replaced by instrumental bonding in the context of the surrogacy contract. Again, it could be said that emotional bonding is sometimes shaped by the intention of both the surrogate and intended mother. A surrogate mother knows very well that she must transfer the child after birth as per the contract, and for this, she is paid. The intended mother, on the other hand, seems more emotional as she has suffered infertility for a long period,

and this is the time when she will have a genetically linked child. Though theoretically it could be said that surrogates develop less emotional connections with the fetus than traditional mothers, in practice, it is actually a hard task. It has been found that surrogates go through tremendous pressure, intense disturbance, fear, and uncertainty when not creating a bond or creating a weaker bond with the child. Such complexities only reside in surrogacy, which occasionally leads the surrogates to gather negative experiences regarding surrogacy. Finally, it could be observed that emotional attachments that the surrogate mothers experience with the foetus are not identical to traditional mothers. The emotional connection in surrogacy is unique, and it has its own distinct set of emotional challenges, dynamics, and motivations.

It may be suggested that, even if from the background of science, biology, socio-politics, and legality genetic mother would be considered as a mother with the right to custody of the child; the surrogate mother would at least be regarded as a gestational mother, who can love the child unconditionally and serves for the well-being of the child. If a surrogate mother is viewed as a parent, then she might confer some rights that are owed to her, and if required, she can renege on the original contract for the sake of the child or herself. If a surrogate would not convey any right of being a mother, she would only become a surrogate, firmly speaking, a substitute who is employed only for her body. She should be an extrinsic value-laden person who is a means to achieve a particular goal of having a biological child.

## **6. The Intrinsic Value of the Relationship between Motherhood and Surrogacy**

The term “intrinsic value” in the context of surrogacy, though lacking a universally accepted definition, typically pertains to the inherent worth and ethical implications connected to the practice. This complex concept encompasses the viewpoints of all stakeholders involved, specifically the surrogate mother, the intended parents, and the child. It prompts critical discussions about personal autonomy, potential exploitation, and the commodification of human reproduction. For instance, one might explore how surrogates navigate their choices within socioeconomic frameworks that may pressure them into the arrangement, raising ethical concerns about their agency. Similarly, the intended parents’ desire for a child may clash with the moral responsibilities they owe to the surrogate and the child. In contrast, the child’s entitlement to an identity that is not strictly tied to commodified relationships becomes a vital consideration. Overall, the intrinsic value of surrogacy invites a nuanced examination of the moral landscape surrounding reproduction, touching on themes of consent, equity, and the complexities of familial structures.

The intrinsic value of the relationship between motherhood and surrogacy is multifaceted, encompassing a range of biological, emotional, and social dimensions. Surrogacy can serve as a vital alternative for individuals and couples grappling with infertility, providing them with a hopeful pathway to parenthood when other options may have been exhausted. However, this practice also evokes profound questions regarding the essence of motherhood, as it challenges traditional notions of maternal bonds and biological connections. Additionally, there are significant considerations surrounding the rights and well-being of the surrogate mother, who undertakes the physical and emotional demands of carrying a child for another, as well as the rights of the child born through this arrangement. Moreover, the potential for exploitation within surrogacy agreements raises ethical concerns, particularly when financial incentives may unduly influence the decision-making of surrogates or when disparities in social and economic status come into play. These complexities make the discussion around motherhood and surrogacy rich and intricate, inviting deeper examination of the values we assign to parenthood.

Surrogacy is practiced under the aspiration of creating a human baby with the help of a third person besides the real parents of the baby. Hence, bringing children into existence and acquiring custody of such babies by their parents are the primary tasks of surrogacy. The main tool through which the practice is made possible is a woman's body and her reproductive power. It has been claimed that, in surrogacy, women are treated as objects. The random use of a woman's body, reproductive power, which in turn is also associated with her mind, raises serious ethical problems. The involvement of a surrogate woman in the process of baby-making raises specific queries on several aspects that truly value the intrinsic nature of surrogacy. These are,

- (a) The relationship between the mother and the baby would decide surrogacy's acceptability, sustainability, and success rate.
- (b) Surrogates come from vulnerable economic and educational situations. Lack of proper education and excessive poverty forced women to give away permission over their bodies and to do jobs without any leave.
- (c) Surrogacy or Commercial surrogacy is regarded as a profession that women should choose depending on their will. So, signifying a surrogate mother's autonomy and freedom to use her body is essential for the surrogacy contract.

If surrogacy is invented to offer reproductive help to the ill-fated couples and wishes to be accepted without any dilemma or criticism, then in the foremost manner, it should be a non-exploitative practice.

One may claim that surrogacy is an unusual kind of work, as the woman's body is involved. At first, the woman should prepare her body for pregnancy. Besides body preparation, she should be aware both physically and mentally of the upcoming pregnancy-related issues that involve significant health hazards. It is a challenge for society and practitioners that, in this work of surrogacy, no one can dominate or exploit the surrogate mother. The surrogate should be paid equally to workers working in other jobs. But in reality, surrogates are paid significantly less for their work.

Financial incentives are one of the main concerns for surrogacy arguments, as they might pressure surrogates, especially women from vulnerable socioeconomic backgrounds, to make reproductive choices that are not fully autonomous. However, in a true sense, this decision-making should be made with complete freedom. There are several reasons that cause pressurized consents. Economic helplessness is one of the main reasons why women from poor or unstable financial backgrounds receive surrogacy compensation as a life-changing and life-saving amount of money. Such situations can make monetary compensations the primary motivator for surrogacy work. This results in coercive circumstances, where monetary incentives become more powerful than a genuine desire to help others. The unequal distribution of power between financially advanced intended couples and economically marginalized surrogate women can also affect autonomous decisions. For this reason, sometimes surrogate women become unable to assert their rights, negotiate terms and conditions, or make free and autonomous decisions of their choices. It is very often the case that surrogates from financially weaker sections are mostly non-educated or less educated. The intermediaries, such as fertility clinics or agents, obtain the surrogates' consent by promising to give them fruitful incentives. But at the end of the work, they keep a large amount of compensation for themselves and defraud those financially vulnerable surrogates. Sometimes, women are being pressured both emotionally and financially by society or their families to become a surrogate and earn money that would benefit their families financially. Due to the lack of education, women are not fully aware and informed of the comprehensive understanding of the psychological and physical risks of surrogacy. The clinics do not provide a fruitful counseling session to the surrogates where they can speak up for their fears or concerns freely; hence, as a result, they give consents only depending on monetary support without a proper knowledge about surrogacy.

But the financial incentives that are paid in surrogacy would not coerce the women's choices if strong and specific regulations for surrogacy agreements are considered. The surrogacy agreement must ensure autonomous consents from surrogates. For this, the surrogacy agreement should undergo a stringent consent process. A thorough counseling

on the medical, legal, and practical risks associated with surrogate pregnancy should be done. However, by doing this, she can recognize the risk factors and her own worth, and, depending on her own decision, can give free consent without being coerced by any external force or power. This counseling session is recommended to be done independently, separate from the intended parents. Legal enforcement against coercive consent given by the name of financial incentives and abuse of women's bodies by the name of surrogacy should be considered as human trafficking, and criminal penalties must be imposed on those who are associated with this offense. Therefore, in cases where free consent is given for a financial incentive, the regulators of the surrogacy agreement must ensure that fair compensation is provided to the surrogates. If the fair compensation rule turned out to be successful, then no one can exploit surrogates for their economically vulnerable backgrounds.

Every person wants a secure relationship for their betterment. Similarly, a child only gains a sense of self in a safe relationship. A secure relationship provides all the necessary senses of a good childhood. But with whom could a child born through a surrogacy contract grow securely? How should the relationship between the child and the surrogate mother be? Before birth, the child develops an intimate relationship with the gestational mother. In the surrogacy contract, this pre-birth intimate relationship is developed between the child and the surrogate mother. Though at first, such an intimate bond emerges physically, later it transfers to both physical and psychological. The surrogate mother gestates the baby over the nine months, and this is the most developed bond that can exist between the newborn and the surrogate mother, and such a relationship is worthy of protection. Gestation is the basis of such a relationship, which starts with the surrogate mother here. So, it might happen that, for the gestational mother (here the surrogate mother), to some extent, it would be a good reason for claiming the right to protection of this relationship. Hence, does the surrogate claim the custody of the child for the right to protection?

Christine Straehle finds Anca Gheaus's explanation of custody from the surrogate's side erroneous, where it has been said that the surrogate's custody is based on biological determinism.<sup>11</sup> Biological determinism refers to the idea that the surrogate would have some relationship with the fetus, but from the fetus's side, it is merely an instinctive one that is driven purely by physical needs. But it should make clear that, to protect the relationship between her and the child, the gestational surrogate mother does not need to be the custodian of the child, because if a surrogate truly wants to protect the relationship, she would do it out of selfless love towards her gestating child. Sometimes, in a child-centered

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<sup>11</sup>Gheaus, A. and Straehle, C. (2024). *Debating Surrogacy*. Oxford University Press.

case, the priority to the right to rear is given to the gestational mother over the genetic parents. It is done mainly when all relevant aspects and capacities between the prospective custodians are equal. However, in comparison to the surrogate mother, the intending parents associate a conceptual and social relationship with the child. Intending parents, by securing the child's well-being, focus on care and respect for the child's interests.

The child is considered a social being. From this standpoint, although the surrogate mother holds a relationship based on biological dependency, it is not as significant as the conceptual and social relationship that the intending parents convey with the child. But separating the newborn from her gestational mother seems very cruel and even inhumane. This is an act of cruelty from the side of the babies, too, because at the time of separation, they are unwilling to be separated. The psychological status of adults could be known, but what the newborn thought about the mother-fetus relationship is hard to understand. However, a straightforward thing that could be anticipated as a newborn's interest is that the newborn wants to be parented by someone closely attached to her/him. When the separation of the surrogate mother and the newborn is considered cruel, this cruelty charge is made based on the belief that a remarkable attachment between the surrogate and the newborn is already in place.

Each year, the number of child births through surrogacy increases. In surrogacy, the lack of a gestational or genetic link with the mother is seen. In return, such a relationship is shaped between the surrogate mother and the baby. One way to respond to the argument that surrogacy's emotional difficulties could harm a child's perception of family and identity is to highlight that numerous studies have shown that surrogate children get along well with their intended parents and families. The key to a child's view of healthy relationships, family, and identity formation depends on open communication and constant support towards the child, not the method through which the child is born. Even though the child is born through natural conception and natural procedure, if the child lacks such open communication and support from their parents or family members, the child could develop emotional breakdown and personality disorder. Hence, openness and understanding are the keys to making a good identity and personality. Nowadays, reproduction through the surrogacy process is quite common and acceptable in society. The society is more open about the detailed process of surrogacy. It reduces the potential of secrecy and stigma about it, which potentially stipulates a negative impact on the child's mind. Therefore, if there are healthy adjustments in the family, supportive intended parents, and a healthy relationship between all of them, then the child born through surrogacy could easily adjust to the intended family without any kind of identity or emotional challenges.

A profession should be chosen freely. A person should be involved in a profession they could select uncoercedly, of their own free will. Like every profession, the choice in surrogacy, too, should be voluntary in its true nature, because it has been claimed that, in surrogacy, especially in international surrogacy, women are forced to engage in the act of surrogacy. It is also claimed that the targeted women are being pressurised to choose surrogacy as their profession, sometimes by giving threats or by making surrogacy a prime and readily available monetary option, depending on which women can provide a good life to their families. But for being forced to choose surrogacy as a profession, women become the puppets of the system. Thus, surrogacy as a profession upholds serious issues like individual agency and individual autonomy of the surrogate mother. Critic of Surrogacy, Margaret Atwood, in the novel, *A Handmaid's Tale*<sup>12</sup>, described future-day women as “living incubators”, who are enslaved for the nation’s well-being, and their lives are ruled by the dominant class. It is also apparent here that women, treated as ‘living incubators’, are thrown into this situation in a coerced way; they are not choosing this designation freely. A free decision necessarily implies a free consent. The choice of a profession would only be designated as freely chosen if the concerned person gives consent out of free will, not by being forced. But in the case of surrogacy, women are giving consent depending on several social, gendered, and patriarchal backgrounds.

Humans have two properties: freedom and power. Every human is, by nature, the proprietor of their personhood. But this self-personhood of a surrogate mother may be harmed by the intended parents and the surrogacy policies when they impose a contract on the surrogate mother that restricts the autonomy of her own body. However, she must agree to act according to them not only in the prenatal care stage but also in later stages of pregnancy. Sometimes the surrogate mother must accept amniocentesis and, relying on the result, she must follow the orders of the intended parents for either to abort the foetus or to continue the pregnancy. Naturally, such contracts seem like friendly, non-binding ones to her, but these contracts violate human rights. In many cases, after agreeing to the surrogacy contract out of family pressure, the surrogate mother refuses to carry on the process. Sometimes the husband of the surrogate mother disagrees with her job and refuses to accept her because she consents to carry another person’s child in her womb, or he might disapprove of the job just because the task, pregnancy, is a risky undertaking. He is more concerned about his children and family than others. The rights and justification of surrogacy started with liberal rights discourse, encompassing freedom of

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<sup>12</sup>Panitch, V. (2013, Spring). Surrogate Tourism and Reproductive Rights. *Hypatia*. 28(2), 274–289.

contract and subjective choice. The freedom which comes through the freedom of contract of surrogacy argument does not occur within a disembodied individualist framework, but a particular social context is present there. This social context is challengeable on the grounds of women's long-standing structural disfavor and deep-rooted beliefs concerning women and their bodies, and motherhood.<sup>13</sup>

Surrogacy provides a possible way to be a mother for those women who face several medical and reproductive problems or infertility. Since the beginning of the surrogacy practice, many families have experienced parenthood that at once seems impossible to them. An intense desire for a genetically or biologically connected child, couples go for surrogacy. Appointing a healthy woman to reproduce another woman's baby resolves various issues. Surrogacy helps women, like those with uterine problems, for those women who have an unhealthy uterus or have no uterus, or women with repeated miscarriages, or IVFs, or women with life-threatening health complications, like severe heart disease, renal failure, or cancer.

However, even though surrogacy has these helpful features, it is criticized in many ways. Surrogacy is framed as it commodifies women and their bodies, and children born through this process, and it exploits economically vulnerable women. Again, it is claimed from a religious point of view that assisted reproductive technologies (ART) try to play the role of God and go against nature. But as answers to these arguments, it could be said that most couples' legitimate desire is to have a genetic or biological child. But for couples who have faced several failures in attempting to have a genetic child on their own, who go through various emotional and financial challenges due to infertility, and who have exhausted all other fertility options, for those couples, surrogacy seems the most meaningful, effective, positive, and necessary way of having a genetic child who has a genetic link with at least one parent. Surrogate mothers not only give birth to children, instead work for a healthy family-building program. Hence, it could be said that, though surrogacy involves various ethical, legal, and emotional issues, these arguments show surrogacy could be a good and empowering option for those in need (for both the intended parents and surrogates, only if it is used in the right way), which, by reframing abstract principles, provides lived experiences to needy families.

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<sup>13</sup>Gheaus, A. and Straehle, C. (2024). *Debating Surrogacy*. Oxford University Press.



## 7. Conclusion

The surrogacy settlement has been developed as a means of helping those couples who are unable to give birth to children, and also realizing that the fundamental interest of individuals might lie in having and parenting biological children. In the defense of surrogacy, it could be said that surrogacy as a work provides opportunities for achieving individual self-respect and self-realization, and by doing so, it advances women's autonomy. Surrogacy, in its true sense, would give a ground where women can employ their bodies as per their wishes, and non-harmful wishes. If it happens, then women's body and their reproductive power would be regarded as an end, not as a means, and would be considered as intrinsically value-laden. If they can do it according to their free will, then surrogacy again would be able to provide a basis for women's autonomy. But several reports show that nowadays in surrogacy practice, none of the above rules are being maintained due to excessive demand and the institutionalization of surrogacy.

Surrogacy is not only women-centered, but children are also a significant aspect of surrogacy. The interests of children can be divided into two aspects, respect interests and well-being interests, which are the basis of the development of children's capacity for autonomy. The interest of the child is equally and morally weighty as that of the parties, the surrogate mother, and the intended parents. Hence, authority or custody over children must be justified by their well-being. This authority would not depend on the adults' need to have such rights. Parenting is a privileged job, and a parent's moral right to parent should not be alienated at all. But surrogacy is considered an act where the surrogate woman has to alienate her child-rearing to the intended parents. It is also true that, if custody is neither gifted nor sold, then the surrogacy work would not be legitimately commissioned by anyone. Finally, it can be said that surrogacy neither provides justice to the surrogate mothers nor respects the moral status of the foetus. Commercial surrogacy may be a solution to the debate. Still, it not only devalues the gestational relationship that is created between the surrogate mother and the child, but it also creates an unusual, constricting labour contract for the surrogates. The discussion on commercial surrogacy sparks vital reflections on ethics, legality, and societal values, emphasizing the importance of safeguarding the dignity of surrogates and respecting the sanctity of life. While many champion the freedom of individuals to make personal reproductive choices, including the option of commercial surrogacy, it's crucial to remain vigilant about power dynamics and the risk of exploitation, particularly in developing nations.

The discussions surrounding surrogacy are often marked by deep-seated and conflicting perspectives on crucial issues such as reproductive rights, exploitation, and the inherent significance of motherhood and childhood. Advocates for surrogacy usually view it as a legitimate expression of reproductive autonomy, highlighting its role as a viable pathway for individuals and couples, particularly those facing infertility or same-sex couples, to create families. They argue that this practice empowers women to decide about their bodies and reproductive choices.

It is true that surrogacy was invented with the intention of helping to make a family for those who are unable to reproduce their own children. For that, surrogate mothers are involved in the agreement, and they become the saviors of the infertile family. Reconsidering surrogacy as a work, surrogate mothers are compensated for their job, and through that, they could empower themselves too. But instead of positive outcomes, the financial independence of surrogate mothers sometimes seems like an illusion that masks a deeper exploitation of the less educated and economically vulnerable women by power imbalances, low wages, economic coercion, commodification of the body, physical and emotional exploitative arrangements, biased contracts, and erosion of bodily autonomy. Surrogacy would become a true path of women's economic independence and a practice to help others to form a family, only if these exploitative activities are wiped out by strict laws and regulations.

Conversely, many critics raise alarms about the potential for surrogate mothers to be exploited, particularly in cases where financial incentives may coerce vulnerable women into an arrangement they might not fully understand or desire. There is also a growing concern about the commodification of reproduction, where the act of bearing a child is viewed as a transactional service rather than a profound emotional and biological experience. This viewpoint stresses that gestation and childbirth encompass profound emotional and spiritual dimensions that resist easy commercial categorization.

The growth of assisted reproductive technology (ART) has changed the societal norms of reproduction. Surrogacy, as part of ART, changes the societal norms of motherhood. It is considered that surrogacy commodifies women and their bodies. Poor or marginalized women are the main targets of commodification for wealthy clients. Although surrogates are compensated for their work, this compensation can make them feel like a 'baby-making machine'.

But it could be said that the changes that surrogacy brings in motherhood are not for opposing the traditional motherhood system; rather, surrogate motherhood acknowledges complex dynamics. If surrogacy could involve strong regulations, free decisions, women's right to control over their own bodies and reproductive choices, and good compensation for surrogates, then surrogacy could be empowering for those who wished to be a surrogate. Opposing surrogacy would not have a good impact on society and societal norms around motherhood. Infertility is a true problem in society. Surrogacy helps infertile couples to have a genetic baby. If commercial surrogacy is banned due to the complaint of commodifying, surrogacy practice would not stop; rather, the rise of the black market in surrogacy would occur, and no protocol and regulations would be in place. Financially marginalized women who are willing to be involved in surrogacy practice would not take part in it, and hence, they would not become financially supportive of their families. A commentator might say, women can choose other work for financial support, but some women find it easier to be financially stable. However, 'freedom of choice' should be an essential aspect of surrogacy upon which the proponents of surrogacy should work. Again, surrogacy helps infertile couples in family building. If surrogacy and surrogate motherhood were only considered as a commodifying reproduction, it would vanish the dream of the infertile couples, women with serious health issues, and same-sex couples of making a family. A family built up through surrogacy deconstructs the traditional views of the family and creates a new form of family and community. Surrogate motherhood also deconstructs the societal norm of 'ideal motherhood'. In tradition, a mother should always be there, solely committed to her child. But Surrogate motherhood presents a diverse array of mothering, such as surrogate mother, intended mother, working mother, queer mother (e.g., lesbian, bisexual, and transgender mothers), and single mother. Therefore, rejecting surrogacy and surrogacy motherhood would be an easy task, whereas accepting surrogacy with all its flaws and trying to enhance it, and making it more acceptable to society, is more complex.

Moreover, detractors point out that a child's right to know their biological origins and to be raised within a stable family structure can be complicated by the dynamics introduced by surrogacy arrangements. The complexity of the relationships between intended parents, surrogate mothers, and the resulting child can pose challenges to forming traditional family bonds.

Additionally, the autonomy of surrogates themselves becomes a pivotal issue in debates over surrogacy. Critics question whether women truly have full agency in their decision-making when significant financial incentives are at play, potentially swaying their choices in ways that undermine genuine autonomy.

We can suggest that the surrogacy debate encapsulates a myriad of intricate ethical, legal, and social considerations. While it undoubtedly presents a promising option for many aspiring parents, it also raises significant concerns about potential exploitation, the commodification of life, and the overall well-being of all involved parties, especially the children born from these complex arrangements.

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