



Trade of Human Eggs- A Current Trend of Reproductive Organ Trafficking

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ABSTRACT

Commercial Surrogacy has become one of the most flourishing industries for revenue generation. A direct impact is the increased trafficking of women and children from the entire world to meet the demand of their supply in such industries and mostly the victims of such crimes are from the poor societies of the world. For the process of Gestational Surrogacy, surrogate mother as well as egg donor is required and the egg should not belong to surrogate mother. The procedure of egg removal involves various severe side-effects because of the use of Synthetic Hormones and sometimes results in death of the egg donor. An infamous example of such dire consequence of egg removal is the Romanian Scandal in 2009 and the death case of Sushma Pandey of India, in 2010. Such instances grabbed the attention of the researchers, lawyers, medical professionals and human right activists universally and important questions relating to law regarding right and life of the egg donors and their trafficking are being raised and debated.

The lack of laws and guidelines both at international and national level, for the removal of human eggs for surrogacy, is one of the reasons for victimization of egg donors. Neither the World Health Organization's "Draft Guiding Principles on Human Organ Transplantation", nor The Transplantation of Organs Act, 1994 in India deals with transplant and trade of human eggs. Even the ART Bill, 2008 of India is silent on this issue. Thus there is a need felt for international and national laws regulating removal of eggs and its trade for Commercial Surrogacy. The authors in this paper aim to survey the existing literature and propose appropriate guidelines and strict laws for the same.

KEYWORDS : Commercial Surrogacy, Synthetic Hormone, Egg trafficking, ART Bill, Egg donor

INTRODUCTION

There has been exponential growth in use of new assisted reproductive technologies (ARTs) and the same has benefitted many parties by successfully treating various kinds of infertility. Such reproductive technologies like that of womb lending, sperm donation, female egg donation has become a pervasive phenomenon in which triggers deep divide between the rich and privileged and exploited lower income women. While commoditization of reproductive parts have brought smile on faces on many, but the same tends to fuel unequal transactions based on inadequate informed consent, low payments, poor health facilities and increased risk of death for both the egg donors and the surrogate mothers.

Putting aside questions regarding the effect on the child conceived through such commercialized process, this research paper would focus more on trade in female human eggs or ovum and how it is intrinsically interlinked with concepts of commercial surrogacy and trafficking of women.

REPRODUCTIVE ORGAN TRADE

Primarily, the trade in reproductive parts can be broadly divided into two categories: a) trade in human eggs and b) trade by surrogate mother for Commercial Surrogacy. These two categories are often merged and becomes an even more complex issue.

The concept of egg harvesting from a woman's ovaries developed during 1970s where women who would not produce eggs or who had fault in their ovaries due to Turner's syndrome or premature menopause would become mother through eggs from other women.

For this the egg donors undergo a procedure of almost 6 weeks for a single cycle of egg donation. Such women are subjected to synthetic hormones to grow unnaturally more eggs in both ovaries simultaneously in a single cycle. This egg retrieval process is a very lengthy and complex medical procedure where there are several risks involved. While in a short period of time symptoms of ovarian hyper stimulation syndrome (OHSS), blood clotting, ovarian torsion, cramps, headaches, etc... are common, in long run the same may result into infertility, cancer disease and even in death of the donor.

Even it has been found that the synthetic hormone which is used for the egg removal procedure for the treatment of infertility is also used in the Commercial Surrogacy for egg removal and as no prescribed

dosage is mentioned in anywhere in the law including India, there is a great chance of misusing such hormone by the reproductive clinics for the removal of eggs and thus become the great concern for the doctors, lawyers and Human rights activist regarding the health and life of the women who act as egg-donors.

An example of the disastrous uncontrolled effect of trade in human eggs is that of Romanian Scandal. In the year 2009, a human trafficking racket was exposed where Israeli Doctors extracted eggs from the minor girls in one of the clinic named SABYC Clinic in Romania.

ETHICAL ISSUES RELATING TO EGG-DONATION AND SURROGACY

Dignity is one of the core inalienable rights of a human being. United Nation's Universal Declaration of Human Rights 1948 specifically mentions under Article 1 that "All human beings are born free and equal in dignity and rights".

Philosopher M.C. Nussbaum has intrinsically linked the concept of dignity with human capabilities like bodily health and bodily integrity. Thus the ability to have good health (including reproductive health) and have nourished body is a keystone to human dignity.

Therefore, where human beings are treated purely as means to the end, it is an undignified behavior according to Immanuel Kant. So when a clinic objectifies or commodifies females as egg donors they are basically treating them as a means to the clinics' commercial ends. Even from altruistic point of view, if egg extraction happens from women to serve better causes of infertility, the same is an undignified act according to Kant. Similarly, surrogacy is undignified act.

Once we have linked dignity with the commercial aspect of egg trade, this can be further elaborated with how consent is often not taken from the egg donors and even if taken it is through fraudulent ways with half-truths about the long term and short term hazards associated with egg-extraction.

The recent case of Yuma Sherpa, a shop assistant who was persuaded by agents to donate eggs. After being injected with synthetic hormones, Yuma wanted to back out due to physical uncomfortableness. But the doctors informed her that she could not opt out of the procedure anymore and assured that the pain would cease once her eggs

were harvested. She passed away after the surgery at the age of 26 and with a daughter of 3 years at home.

The part which is needed to be highlighted is that no one, neither the agent or the doctors informed Yuma about the darker sides of egg extraction and she with her husband had did not have the wildest clue that egg donation could be this fatal. The situation can be linked back to Kant's theory where the clinics bleat about the positive sides of volunteering for surrogacy or how we can gain along with contributing to societal benefit but fail to recognize that we are violating the donor's dignity as a rational human being by not disclosing all possible impacts of such egg donation.

This second category of advantageous exploitation becomes vital when linked with the aforesaid discussed concept of consent. Exploitation reaches its zenith when egg donors are manipulated or their consents are not voluntary and in defense to harm caused to them it is said that they have mutually benefitted, this is termed as a advantageous exploitation. As Robert E. Goodin rightly said: "There is nothing about acts that make them intrinsically exploitative. It all depends on the context in which they are performed – on the nature of the game that people think they are playing."

INTERNATIONAL LAWS AND VIEWS RELATING TO COMMERCIAL SURROGACY

The Council of Europe's Convention on Human Rights and Biomedicine along with European Parliament Resolution on the trade in human egg cells "prohibits making human body and its constituent parts a source of financial gain." While in United States of America egg donation is not banned but is left to ethical principles embodied in the Ethics Committee of the American Society of Reproductive Medicine.

Even at international level under the UNODC Model Law against Trafficking in Persons, prepared by UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, has mentioned that "the use of women as surrogate mother" should be as exploitation and we know that exploitation of human beings come under violation of Human Rights.

Again, in an article published by Kathleen Sloan, the author said that the treatment given to surrogate mothers is that of a device commercial industry and the product of such industry is the baby born. The European Parliament in the year 2011 has also declared that the process of surrogacy violates the human rights of the women. Even recently the Thailand Military Government has given approval for a drafted bill by which commercial surrogacy in Thailand will amount to be a criminal offence and thereby banning it.

NATIONAL LAWS RELATING TO REMOVAL OF EGGS

The point that needs to be highlighted is there are no specific laws

in India governing Assisted Reproductive Technology (ART), whereas Commercial Surrogacy is legal in India from 2002. It was in the case of Baby Manji Yamada v. Union of India & Anr. [2008] INSC 1656 whereby Supreme Court in its judgment declared that commercial surrogacy is legal and is permissible in India. In addition, Supreme Court in its judgment asked the Legislature to pass a law governing surrogacy. The Indian Parliament has prepared a bill called Assisted Reproductive Technologies (ART) Regulation Draft Bill 2010 but even after several amendments the same is still pending for its approval.

ARGUMENTS FOR CONSIDERING REPRODUCTIVE ORGAN UNDER ORGAN TRANSPLANTATION ACT

It is argued by many researchers that the reproductive organ like ova should be considered under Guiding Principles on Human Organ Transplantation of WHO (1991) and Transplantation of Human Organs Act, 1994 as it is not considered presently under any law. This absence of law about trade in reproductive eggs, womb for surrogacy, etc... and transplantation of reproductive parts poses a great risk of misuse and trafficking of human reproductive organs as well as women to serve the demands of market. Considering the great risks and danger to the health and life of the egg donor reproductive parts should not be exempted from the definition of organs under various transplantation laws but should be considered under Organ Transplantation Law both at national and global level.

SUGGESTIONS

- 1) There is a need of strong uniform international law to control the trafficking related to trade of reproductive organ in the entire world to protect the rights, life and privilege of women.
- 2) The pending Assisted Reproductive Technologies (ART) Bill, 2010 has to be passed immediately with necessary amendments relating to egg removal procedure.
- 3) Reproductive Organ especially Egg or Ova should be considered under Guiding Principles on Human Organ Transplantation of WHO and also in The Transplantation of Human Organs Act, 1994, of India.
- 4) There must be a uniform law and guidelines about the dosage of Gonadotropin injection or any other synthetic hormone which is used in the procedure of egg removal.

CONCLUSION

In absence of law relating to transfer, trade and removal of reproductive organ especially Ova which it is not easily available and the procedure of its removal is also very risky, we have seen that how reproductive clinics, mediator and trafficker exploits the women from poor financial societies. So a strong need is felt so that the trade of Ova or Human eggs should be considered under Guiding Principles on Human Organ Transplantation of WHO and also in The Transplantation of Human Organs Act, 1994 in India.

REFERENCES

- [1] Call for an International Declaration on Abuses of Human Rights In Human Reproduction, available at: <http://www.reprojustice.org/3-call-for-a-un-declaration/> (Visited on September 18, 2014). [2] Danish Council of Ethics, Report: International Trade in Human eggs, surrogacy and organs, available at: <http://etiskraad.dk/en/Udgivelse/~media/bibliotek/rapporter/2013/International-trade-in-human-eggs-surrogacy-and-organs.pdf> (Visited on September 15, 2014). [3] Turner's syndrome is a genetic syndrome that affects girls and often results in average height untreated 4'8", ovarian failure and infertility, heart abnormalities, etc... in women. See "The Turner Syndrome Foundation", available at: <http://www.turnersyndromefoundation.org/> (Visited on September 25, 2014). [4] Supra note 1. [5] "Donor Deaths in India Highlight Surrogacy Perils", Thomson Reuters Foundation, available at: <http://www.trust.org/item/20140617101347-iu0x4/> (Last Modified on June 16 2014). [6] Hedva Eyal, "Reproductive Trafficking", available at: <http://www.councilforresponsiblegenetics.org/genewatch/GeneWatchPage.aspx?pagelid=313> (Visited on July 19, 2014). [7] Preamble, United Nation's Universal Declaration of Human Rights 1948, available at: <http://www.un.org/en/documents/udhr/> (Visited on September 5, 2014). [8] Danish Council of Ethics, Report: International Trade in Human eggs, surrogacy and organs, available at: <http://etiskraad.dk/en/Udgivelse/~media/bibliotek/rapporter/2013/International-trade-in-human-eggs-surrogacy-and-organs.pdf> (Visited on September 15, 2014). [9] James Rachels, "Kantian Theory: The Idea of Human Dignity", available at: http://public.callutheran.edu/~chenxi/phil345_022.pdf (Visited on September 20, 2014). [10] Durgesh Nandan Jha, "Time for law to protect egg donors", The Times of India, available at: <http://timesofindia.indiatimes.com/city/delhi/Time-for-law-to-protect-egg-donors/articleshow/31863487.cms2014-03-11> (Last Modified on March 12, 2014). [11] Swapna Majundar, "Donor Deaths in India Highlight Surrogacy Perils", available at: <http://www.councilforresponsiblegenetics.org/blog/post/Donor-Deaths-in-India-Highlight-Surrogacy-Perils.aspx> (Visited on September 8, 2014). [12] "Death in the birth industry", available at: http://www.livemint.com/Opinion/jaLf5RYkFQKSPHGZhr42M/Minority-report-Death-in-the-birth-industry.html?utm_source=copy (Visited on September 24, 2014). [13] Supra note 8 at 29. [14] P6_TA (2005) 0074, available at: <http://www.europa.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2005-0074+0+DOC+XML+V0/EN> (Visited on September 27, 2014). [15] Supra note 8. [16] United Nations Office on Drugs and Crime, Model Law Against Trafficking in Persons, available at: http://www.unodc.org/documents/humantrafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf (Visited on September 18, 2014). [17] Ibid, Section 2(f). [18] Kathleen Sloan, "Inconvenient Truths about Commercial Surrogacy", available at: <http://www.geneticsandsociety.org/article.php?id=7663> (Last Modified on April 1, 2014). [19] Reuters in Bangkok, "Thailand To Ban Commercial Surrogacy In Wake Of Gammy Scandal", The Guardian, available at: <http://www.theguardian.com/lifeandstyle/2014/aug/13/thailand-ban-surrogacy-gammy> (Last Modified on August 13, 2014).