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**INDIVIDUAL AUTONOMY IN J. S. MILL'S PHILOSOPHY: EXAMINING GESTATIONAL
SURROGACY IN ASSISTED REPRODUCTION**

EZE-OSI, BLESSING CHIGOZI

**Department of Philosophy, Faculty of Humanities
University of Port Harcourt, Rivers State, Nigeria**

And

PROF. LUCKY AKARUESE

**Department of Philosophy, Faculty of Humanities
University of Port Harcourt, Rivers State, Nigeria**

ABSTRACT

The argument about personal autonomy has always been, and will remain at the centre of discussions on reproduction. Reproduction being central to the continuity of every specie, could be seen as one of the motivating factors for the continuous development of technologies aimed at tackling any health condition that threatens this ability. The emergence of In Vitro Fertilization (IVF) technology, gave rise to a new form of assisted reproduction known as gestational surrogacy. This has received heated arguments regarding the extent to which reproductive autonomy is morally permissible in this form of assisted reproduction. The aim of this work is to examine the concept of autonomy in J.S Mill's thought, focusing on its relevance to the limit of reproductive autonomy morally permissible in gestational surrogacy. Having established that 'harm' to another individual or the society is the only reason the society or government is permitted to interfere with the liberty of an individual adult in Mill's thought, this work will argue that individual autonomy in J.S. Mill's thought places no limit to the act of gestational surrogacy in this aspect of reproductive autonomy.

Keywords: Autonomy; Gestational Surrogacy; Reproduction; Assisted Reproductive Technology (ART).

INTRODUCTION

Advances in modern biotechnologies and access to these technologies have further widened the options for reproductive choices open to prospective parents battling with infertility. IVF is a form of biotechnology which makes it possible for fertilization of human embryos to take place outside the uterus. This paved way for women to now succeed in carrying a pregnancy of a baby or babies who are not genetically related to them. This has raised ethical questions regarding the morality of such act. Some philosophers have argued that this act can be regarded as morally right only when it is done for altruistic purposes. Some have argued that it is a morally right act,

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whether it is done on altruistic basis or commercial bases. While others have argued that it is a morally wrong act, be it on altruistic or commercial bases.

A survey of surrogacy will show the extent to which reproductive autonomy is maximized. Under what circumstances should this reproductive autonomy be granted to women? Is it in altruistic (womb lending) or commercial (womb leasing) practices of surrogacy? Most of the discussions here will be centered on gestational surrogacy. The issue of individual autonomy or respect for autonomy in biomedical ethics coupled with the development of Assisted Reproductive Technology (ART) like In Vitro Fertilization (IVF) has compounded the already existing ethical dilemmas facing the medical profession. The same way every other profession of human endeavors are geared towards solving different aspects of the problems faced by humans and its environs, so also is the health profession putting in all efforts within its reach to solve the health challenges facing humans. One of these health challenges that cannot be dismissed with a wave of the finger is infertility. Noted as a global challenge, the World Health Organization (WHO) based on its available data estimates that about 48 million couples and 186 million individuals are battling with infertility globally. (<https://www.who.int/...>Detail>). What qualifies an individual or couple to count as having infertility problem according to WHO is a consistent exposure to sexual intercourse without contraceptives and failure to achieve pregnancy or carry it to term within one year and above period of time, amongst women of child bearing age (15-49yrs). Currently WHO sees infertility as a form of disability and access to health care falls under the convention of rights of persons with disabilities. Almost every country of the world is battling with policy issues concerning the regulation of surrogate motherhood.

Having in mind that there are philosophical and religious thoughts informing the different stands on the issue of gestational surrogacy, our intention here is to examine this concept in light of individual autonomy propounded by J.S. Mill. The following sections will xray the concept of autonomy in J.S. Mill and also some arguments for, and against surrogacy.

PART ONE: INDIVIDUAL AUTONOMY IN J.S MILL'S THOUGHT
MILL'S NOTION OF INDIVIDUAL AUTONOMY

Autonomy as a term was traditionally used to denote independence of city states or countries as the case may be. As time progressed with civilization sweeping across countries and continents, the use of the term migrated from governance to individual ways of doing things or living. Different authors had their specific application of the term but this work will look at J.S Mill's usage of this term in individual codes of conduct. The notion of individual autonomy featured in J.S Mill's work 'On Liberty' elicits the extent to which an individual in a society is allowed to act freely without restrictions from other members of the society or government. The liberty Mill examined is civil or social liberty. This question of civil liberty as he said is scarcely ever discussed in general but the controversies it raises is ever present in every age. The struggle between liberty and authority is the most visible in every age tracing back to the Greek city states, Rome and even England. The difference between the struggle in the past history and now is that formally it was subjects or some classes of subjects and government. During this period, liberty has a different meaning, "By liberty was meant protection against the tyranny of the political rulers" (2001, P.6).

Today the fight or struggle for liberty or autonomy has moved into different spheres of relationships, the issue has crept into the medical institutions and the struggle or debate for autonomy is between the patient and the physician. Mill noted that the patriots in different dispensations sought to outline what liberty is in two ways, first they set limits to power or authority which the ruler is supposed to exercise over members of the community, and the community is justified to resist the ruler if he infringes on those liberties. Secondly, they set some checks or standards to represent their consent or interest on how the government should carry out its activities, this gradually evolved to what is seen as democracy today.

Mill observed that what was seen as democracy gradually evolved into the ruling of those who succeed in making themselves the majority and they were bent on imposing their opinions and feelings as rules of conduct in the society as a whole. It became a matter of urgency to draw a line showing the limits of authority of the government & society over an individual. The problem now lies in where this limit between this individual independence or autonomy and social control will be placed. Mill says that the value of human existence depends in the restriction enforced towards the action of the other persons to others. He said that the laws should impose some rules of conduct and also stipulate rules that should not be meddled with by law. As Mill says "what these rules should be is the principal question in human affairs....No two ages, and scarcely any two countries, have decided it alike" (1973, p.225). So, we have two kinds of rules, those imposed by law and those imposed by opinion.

Mill explained that there is a tendency in man to have the feeling that everybody should act like him or dislike what they dislike without considering that what they like or how they act is their personal preference. He also said that cultural belief and affiliations to gods has also influenced what mankind has chosen to see as good acts and those to be abhorred. Mill is of the view that the likings and disliking of society has translated into what is laid down as rules of conduct. Most philosophical enquires according to him has centered on finding out what the society ought to like or dislike without investigating if these likings should be made a law for individuals. In all Mill says that the opinion of the majority always tends to determine how individuals should pattern their lives in the society. Since people's opinion are directed by their sentiment leading to conflicting views of the government's authority over the individual, he sort to lay down a principle by which the limit of government and society's interference into personal autonomy would be tested. This principle as Mill states it is

That the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant (Mill, 1973 p.228).

This became the foundation on which Mill's principle of individual autonomy is rooted. To grasp properly what this principle implies, we will look at what Mill meant by "harm" to others. This notion is generally known as Mill's "harm principle". In applying this principle, Mill says that it is only humans who have come of age, according to how each society prescribes who is of age that

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this principle of individual autonomy applies to. The other group of persons he says, the society has the power to guide them in their actions to themselves and to others. From this principle of personal autonomy laid by Mill, he derived his three divisions of liberty which we will treat as a sub-heading for the purpose of clarification.

MILL'S THREE DIVISIONS OF LIBERTY: Still on the issue of individual autonomy, Mill sought to examine those aspects of human actions or life styles that affect the government. So, each should be accorded what chiefly concerns it. For the individual, Mill highlighted three aspects of liberty that is indispensable if we are to say that we are truly free.

THEY ARE AS FOLLOWS

- i. Liberty of conscience
- ii. Liberty of taste and pursuit
- iii. Liberty of combination amongst individuals.

LIBERTY OF CONSCIENCE: This has to do with the inward region of consciousness. Mill says that this aspect of freedom is in its totality. The liberty of thought and feeling, our opinion on issues whether practical or speculative in issues such as religion, morality, scientific inclinations including expression of opinion, all belong to the domain of liberty that cannot or should not be alienated from the individual. So much controversy trails this aspect of Mill's thought on liberty. Almost everyone feels or thinks it right that we have the liberty to hold different opinions when it is applied only in the realm of thought. But when it comes to expressing such opinions, debates begin to show up interpreting it to have some limitations.

Mill stated that the liberty of expressing and publishing one's opinions may seem not to be part of the individual's liberty since it has to do with one's interaction with others in the society. But for the fact that it is as important as the liberty of thought, liberty of expressing one's opinion cannot be separated from the liberty of thought. Mill is against any kind of suppression to an opinion even if that opinion is held by only one man. Therefore, he stated that

If all mankind minus one were of one opinion, and only one person were of contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind (2001, p.18).

One of the reasons given by Mill that suppressing an opinion does is that it will rob the human race the opportunity of exchanging the truth for error, and if the opinion were to be false, it will also deprive humans a benefit which is "the clearer perception and livelier impression of truth, produced by its collision with error" (2001, p.19). Mill highlighted the fact that man in general knows or admits the fact that he is fallible, but fails to admit that this fallibility can apply to opinion which they hold to be so certain.

Issues of political differences as in political parties were also discussed, seeing the opinions of the different parties and how it can be harnessed as a way of moving the society forward. Mill wrapped up the whole discussion on expression of opinion on four premises.

- i. If any opinion is forced to silence, such opinion could be by that time, denying the truth of such opinion as an assumption of man's infallibility.

- ii. Even though a silenced opinion is an error, it may, and always does contain a partial truth. Since the prevailing or general opinion has never proved to be the complete truth, a collection of divergent opinion presents the remaining truth the opportunity of being supplied.
- iii. Even though the generally held opinion is the whole truth, without being forcefully and earnestly contested, those who hold on it will not be able to comprehend the rational ground of such opinion.
- iv. Such opinion without being contested will be in danger of losing the meaning of the doctrine backing it. It will also have a weak effect on people's character and conduct, preventing the growth of a heartfelt conviction from personal experience or reason.

He concluded by acknowledging that there have been arguments about placing some conditions or manner in which opinion can be expressed even if those opinions are true which he did not dispute, but the problem he says is in how these limitations can be placed. Whatever means this restriction tries to present itself. He is against the attack unleashed by prevailing opinion especially "When they are employed against the comparatively defenseless" (2001, P.51).

LIBERTY OF TASTE AND PURSUIT

In this aspect of liberty, Mill says an individual is free to frame his lifestyle to suit his character, behave how he likes and bear the consequences that follow from it as long as his lifestyle does not cause harm to others even though their actions appear foolish or perverse to others. Mill believes that it is not enough to hold an opinion without acting it out especially where it concerns the individual holding such opinion. The liberty of an individual can be restricted when such a person begins to constitute a nuisance to others. Mill noted that for now, mankind does not have the ability to know the 'whole' truth, they are not infallible, and so, diversity is not an evil.

The same liberty that permits one to hold an opinion equally should allow one act it out or practice it at his/her own cost. Mill says that in as much as mankind is imperfect, with different opinions, it is necessary to experiment on different ways of living "that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when anyone thinks fit to try them" (2001, p.53). This liberty of taste and pursuit has a lot to do with acts such as homosexuality, lesbianism, cross dressing, surrogacy etc. which appears to be abominable to people who detest such or whose religious believe abhors such. For Mill, individuals should be allowed to "carry these out in their lives, without hindrance, either physical or moral, from their fellow-men, so long as it is at their own risk and peril" (2001, p.52).

According to him, in whatever that does not primarily concern other people, individuality should be exercised. Whenever it is the customs and traditions of other persons that control individual rule of conduct, Mill says the principal substance for individual and social progress is lacking. The failure to realize that free development of the individual is a leading essential of the individual; be it education, instruction, civilization etc. has made it difficult to adjust the boundary between individual liberty and social control. Much of the evil he says is the fact "that individual spontaneity is hardly recognized by the common modes of thinking as having any "intrinsic worth" deserving any regard on its own account" (2001, p.53). He says majority of those who see themselves as moral and social reformers are satisfied in their judgment with the ways of mankind presently, and see no reason why those ways will not be good for everyone.

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Mill said that no one has as his definition of excellent conduct as that people should in every manner possible copy others. Everybody believes that people should endeavor in their lives to have a specific way or pattern of doing things in their own unique way. This is not to say that people should live their lives as if nothing has ever happened in the world before their arrival. Experience he said must have shown that some particular way of living or conducting one's life is better than the other. That is why it is necessary to teach the younger ones of these benefits gained through experience, an adult who has come of age should have the opportunity to scrutinize these records of human experience and interpret it in his/her own way to ascertain the areas that suits his/her own character and circumstance. The reason being that what people hold as their customs and traditions, are to some extent evidences of what their experiences has taught them. There are three possible errors or wrongs Mill identified in this experience turned custom.

1. The experience of these people might have been too narrow or maybe they were unable to interpret it correctly.
2. The interpretation given to these experiences might be correct but not suitable to the present individual. This is because customs are made for customary characters and circumstances, while the individual's character and circumstance might be uncustomary.
3. Even when the customs are good and suitable for the individual, conforming to it as mere custom will not educate or develop any of the qualities that make humans a distinctive being.

All the rational faculties of human beings are exercised in the process of making a choice, doing anything because it is the custom amounts to making no choice. To buttress this point, he writes;

He who lets the world, or his own portion of it choose his plan of life for him, has no need of any other faculty than the ape-like one of imitation. He who chooses his plan for himself, employs all his faculties (2001, p.55).

He said that the nature of man is not like that of machines or robots designed to do a particular act. The Calvinistic theory he said see one great offense of man to be self-will, they see the only good humans are capable of, is to be embedded in obedience. Anything outside what is seen as a duty becomes a sin, so even in terms of what should be regarded as pleasure has a mode stipulated for it. Mill believes that by cultivating and calling forth everything that makes an individual distinct from others within the rights and limits of the interest of others "human beings become a noble and beautiful object of contemplation" (2001, p.59).

Mill noted that various activities in the society today are all geared towards promoting uniformity. Politics, education, communication and the worst of all is public opinion. He concluded by saying that

If resistance waits till life is reduced nearly to one uniform type, all deviation from that type will come to be considered impious, immoral, even monstrous and contrary to nature. Mankind speedily becomes unable to conceive diversity, when they have been for some time unaccustomed to see it (2001, p.69).

LIBERTY OF COMBINATION AMONGST INDIVIDUAL

According to Mill since the individual has the liberty to fashion his lifestyle to his taste, adults are to combine with each other for any purpose as far as they are not forced or deceived into such union and their purpose of coming together will not cause harm to other people. This liberty of combination amongst individuals of ripe age could be seen to go beyond marriage and other forms of combination listed above. Different associations or unions can be said to fall under this category. This is to say that people are free to come together as confraternities, be it religious or circular with whatever interest they share in common provided their intention will not be harmful to others. This is portrayed by Mill's word that "individual spontaneity is entitled to free exercise" (2001, p.71). An adult who has chosen a particular life style or to join any group could be advised or shown the possible outcome of what those choices could be to help him or her make a better decision "but he himself is the final judge". All errors which he is likely to commit against advice and warning are far outweighed by the evil of allowing others constrain him to what they deem his good" (2001, p.71).

Mill explained that a person of ripe age is the one most interested in his life and well-being, except in cases where there is strong personal attachment, every interest of others and the society at large is of little importance and indirect to the individual. He noted that "the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by anyone else" (2001, p.70). He asserted that in the interaction of humans within themselves, it is important that rules should be put in place so that everyone will know what to expect from the other. Mill gave several instances of how the society always infringes on individual liberty especially in religious matters. In all the various ways that religious persecution has showcased itself in history Mill stated that there is something fundamentally the same in the minds of the persecutors which "is a determination not to tolerate others in doing what is permitted by their religion, because it is not permitted by the persecutor's religion. It is a belief that God not only abominates the act of the misbeliever, but will not hold us guiltless if we leave him unmolested" (2001, p.84). To summarize these three divisions of liberty with Mill's Statement. "Each is the proper guardian of his own health, whether bodily, or mental and spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest" (1973, p.230).

Looking at these three aspects of individual liberty, Mill says that the absolute existence of these liberties without qualification is the true freedom. He said that freedom deserves the name only when individuals are allowed to pursue their own good in their own way provided, they don't stop or hinder other people's effort in achieving their own good. Having navigated through Mill's notion of individual autonomy, we will move on to some of the different arguments regarding the concept of surrogacy.

PART TWO: SURROGACY

Surrogate Motherhood: This is an act of conceiving of pregnancy, carrying it to term, birthing the child and handing it over to another woman who will be considered as the mother of the child. Historically, within the context of Western religion, the first form of documented surrogate motherhood was recorded in the bible (Gen:16). This took place between Abraham and their Egyptian maid Hagar, as suggested by Sarah Abraham's wife. In the traditional African setting,

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exemplified by the Ikwerre ethnic group, women were the ones who made the decision regarding surrogacy. A woman who is unable to bear children for her husband goes ahead with her money to marry another woman for the husband who will bear children and all the children from that arrangement is traditionally recognized as the children of the barren woman. Presently, this kind of arrangement has been overthrown by Christianity which frowns at polygamy. This has resulted to the business of baby factory found mostly within the eastern and southern parts of our country Nigeria, where Christianity has its stronghold. As long as the problem of infertility has been with mankind, humans have not relented in looking for means to proffer solution to this menace. Thanks to advancement in biotechnology which has given another dimension to surrogacy that does not necessarily require sexual intercourse between the surrogate and the commissioning parent. For this reason, two classes or types of surrogacy exist which are;

1. Traditional surrogacy and
2. Gestational surrogacy

In the case of traditional surrogacy, sexual intercourse may or may not occur depending on the choice of the parties involved, but the key thing in it is that the surrogate mother also owns the egg or ovum used in the fertilization procedure. This is entirely different from what transpires in gestational surrogacy. The surrogate mother in this case only receives the implantation of the fertilized embryo and nurtures the fetus until the day of delivery. The common denominator in the two instances is that both surrogate mothers' consent to handing over the baby to the commissioning Parents after the delivery of the baby. As cool and promising as this option of assisted reproduction technique appears to be, the controversies it has raised is not showing any sign of resolution in the nearest future. On what ground should the morality of surrogate motherhood be determined? In womb leasing? (Commercial surrogacy), or womb lending? (Altruistic surrogacy).

It seems evident to us that the demand placed on a particular product depends on the value they place on such a product. The demand or rather increasing demand for surrogate mothers as an option for those battling with infertility despite the challenges posed by this option points to some underlying believes of our conceptions of who should count as a family member. Despite the definitions from researchers about what family is and how different societies have structured what it counts as a family for the sake of census and other resource allocations, one thing still remains, in all of these definitions as noted by Kristy Jackson, "A traditional nuclear family consists of a married couple and their biological child or children" (www.csus.edu. ND). As we can see, and attest to in our own society (Nigeria) where we are, blood ties or blood relationship is our number one priority of who counts as a family member. This we could infer is the underlying motive for the choice of surrogacy for bringing children into the families where they are needed.

Let us move on to some arguments about surrogacy within both religious and circular context. It is not uncommon with humans to abuse opportunities wherever the possibility presents itself. John PASCOE expressed the fear that "surrogacy has also created a baby making "wild west", where the rights and interest of children and surrogate mothers are being trampled by those desperate to start a family, and those hoping to profit from that desire" (2018, p.455). Looking at surrogacy arrangements, both traditional surrogacy and gestational surrogacy has two sides to

each, which are altruistic and commercial in nature. In the altruistic arrangement of surrogacy, the surrogate mother is reimbursed just what it cost to take care of the pregnancy and the delivery fee. While in the commercial arrangement, the surrogate mother is paid beyond what it cost to take care of the pregnancy and its delivery. The situation of this commercial arrangement can be mirrored from what is happening in Nigeria in the form of baby factory. Women and under aged girls are being paid to carry pregnancies and the children delivered and given to those in need of them, without them having any contact with families that go with their babies. Looking at both forms of surrogacy arrangements, one is tempted to ascribe morality to altruistic surrogacy arrangement. But this is not the case with William J. Wagner's view. He drew his argument from the natural law reasoning grounded in the Catholic tradition which does not support this kind of procreation. From the Vatican instruction, he drew our attention to reasons why "hired maternity" as he calls it can never be morally sanctioned, these include violation of "(1) certain basic goods, (2) certain essential personal duties, and (3) certain essential rights of others" (1990, p.190). He went further to highlight that the goods violated are the 'unity of marriage' and 'dignity of human procreation'. The duties at stake include the mother's duty to her child which is maternal love, fidelity to her spouse and responsible motherhood. The essential right violated has to do with the right of the child to be conceived, carried to term, come into the world and be raised by his/her biological parents. Upon a broader elaboration of the different violations associated with hired maternity, Wagner insisted that "The ethical implications of hired maternity should be considered unremittingly negative. There is no reason to suppose the practice anything other than a regression in societal moral consciousness" (p.199).

Moving on to the legal aspect of surrogacy, Wagner outlined four different legislative responses to the issue and identified with the New Jersey Supreme Court ruling on the case of *IN RE BABY M.* for him, this represents an authoritative and reasoned response on how the issue of hired maternity should be handled. This law he says sees the termination of natural parental right unenforceable if it was determined prior to the time a woman actually gives birth and abandons the child or is declared unfit to take care of the child (p.205). This law according to him, when placed side by side with surrogacy contract implies that surrogate mothers should not be compelled to sign an agreement of giving up the baby when the baby is yet unborn. Wagner sees this New Jersey state law as a satisfactory response to the objectives proposed in the natural law reasoning of catholic tradition, even though the opinion of the New Jersey law itself gives room for such law to be altered by the legislature. Wagner concludes that his perspective on hired maternity ethically can be seen as slavery which will remain morally objectionable whenever it is raised. His views which are expressly Roman Catholic has its basic tenets linked to Vatican instruction on respect for human life in its origin and on the dignity of procreation. His perspective, he says is also grounded on human reason and calls on all the political communities to join together all its different moral reasoning to adopt a legal response to surrogacy which will prevent the value of the human family from depreciating following the fact that surrogacy deals directly with the human body and reproduction.

Another interesting view of the subject of surrogacy from a religious perspective is found in an article published by 'Focus on The Family'. In this article, a Christian woman wrote to this organization asking if her idea of becoming a surrogate mother to a couple she knows has been

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battling with infertility is the right thing to do as a Christian. She was wondering if there are theological and ethical implications of what she is about to do. In responding to the woman's question, the organization acknowledged the fact that there are no written down instructions in the bible as to the approval or disapproval of surrogacy arrangement. Be that as it may, they believe that surrogacy raise some moral and spiritual questions like, are those involved in such arrangement implicated to have committed adultery or breaching the marriage covenant? After thoroughly considering the question, they are tempted to

Feel that modern science maybe overstepping its bounds in creating such artificial divisions between sex, conception and child birth, which God has created to function as components of a single natural continuum. As a result, we lean towards the view that the questionable nature of these procedures should raise some red flags in the minds of those who genuinely desire to remain, within the parameters of the Lord's design for procreation. (http://family.cursthelp.com/app/answers/detail/a_id/25874/~/what-are...pi).

According to them, looking at surrogacy from the spiritual, moral and emotional angle, it is difficult to ascertain who the child really belongs to, and also the notion of 'renting a womb' is ethically questionable. Therefore, they conclude that surrogacy is morally wrong.

Still on the religious stand point, Olga Najera, says that gestational surrogacy will not be accepted from a deontological stand point as a solution to infertility. But looking at it from a utilitarian view point, commercial arrangements of surrogacy that will benefit both the surrogate and commissioning parents will not face any rejection. However, when looking at it from the lens of the Catholic Church reasoning, be it altruistic or commercial arrangements of surrogacy, none will receive approval. The reason being that surrogacy puts an injustice against the intended parents and society at large (2015-2016, pp.4-5). The injustice that will be done on the intending parents is that the child is not a product of their "mutual self-giving" in the act of sex within marriage. The injustice the society will suffer is the potential fraud that may take place in the surrogacy market which will lead to the downfall of the overall morality in the society. The Catholic Church is also uncertain if the reproductive technology will not avail an opportunity in the society where the rich will opt for enhanced babies thereby increasing the disadvantages of the poor in the society.

Moving on to some survey on the surrogacy market, Deonandan, Green, and Beinum said that the reproduction tourism curve is moving from countries of high income towards those of low income; this they say presents some ethical challenges which are unexamined during the process of recruitment of women from these low and middle income countries into surrogate motherhood which calls for ethical concern. They identified eight of such challenges which according to them, calls for discussion and possible inclusion in policy development towards surrogacy. These areas include;

- 1) **ROBUSTNESS OF INFORMED CONSENT:** Deonandan et al expressed the fear that informed consent which has to do with effective communication of medical risk and benefit of a

procedure might be inadequately grasped by the surrogate mothers. The reason being that, it is the illiterate and poor women that are mainly recruited for this purpose. They are also of the view that informed consent puts into consideration the biological aspect of risk of the procedure only and “fails to consider that downstream social risks and impacts must also be communicated” (2012, p.742). They proposed that for informed consent to be what it should be, a new model that is inclusive of social and emotional risk of surrogacy process should be well articulated. They also called for a bridge of the gap in the arrangement which is between highly educated and illiterate class to rule out consent that is obtained by potential coercion. They even suggested a new form of consent in the reproductive tourism that has to include all the stake holders in the woman’s life which are; her husband, children and community. This last suggestion here appears to portray that the children, husband and community of a woman can decide for her to take up a surrogacy contract against her will, seeing that her own consent is not enough without that of all the stake holders involved. This appears to be against the principle of individual autonomy that an adult ought to exercise.

- 2) **CUSTODY RIGHTS:** As a result of the differences in laws of custody of a child birthed through surrogacy, commissioning parents or reproductive tourism (RT) Clients find it more convenient to go to countries where the custody rights favour the commissioning parents. Deonandan et al says this calls for countries involved to be at alert against the influence of commercial interest in the adoption laws of the country; since how a country defines parenthood and familial rights has a way of reflecting the actual values of the society involved.
- 3) **QUALITY OF SURROGATE CARE:** Deonandan et al expressed the view that the quality of care given to surrogate mothers should go beyond foods that ensure the delivery of a healthy baby, rather care should be given to cover for the mental and emotional health which arises as a by-product of pregnancy.
- 4) **LIMITS OF SURROGATE CARE:** Deonandan et al argued that ethical consideration be given to the time frame a surrogate mother should be cared for. Their reason being that most health challenges that women face after delivery is a direct result of pregnancy itself. Challenges like post-partum depression should be prevented or taken care of if it occurs.
- 5) **REMUNERATION:** Deonandan et al acknowledged that there is the tendency of RT Clients to move to low and medium income countries (LMIC) where it is possible for them to cut cost, even though the money paid to the poor surrogates appear high to them. They opined that the concept of “fair trade international surrogacy” be adopted in other to have a global standard price for engaging in such contracts. This they believe will add a little variable to the equation even though it “does not necessarily abrogate all ethical concern about exploitation” (2012, PP.743-744).
- 6) **MULTIPLE EMBRYO TRANSFERS AND ABORTION:** Deonandan et al says that in an attempt to cut cost accruing from several attempt to achieve implantation and pregnancy, there is the likelihood to embark on multiple implantations of embryo to ensure implantation and also do selective reduction abortion. Considering the danger associated with multiple pregnancies, the surrogate may not be properly enlightened about it, while the process will serve to cut cost for

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the client. This is because, the illiterate women from these LMIC may not be aware of the dangers associated with multiple pregnancy. So even when they succeed in giving birth to multiple babies, they end up being paid the same money as someone who birthed a singleton.

- 7) **MEDICAL ADVOCACY**; Here the issue of medical advocacy was raised seeing that the same clinic that receives money from the client is the same that takes care of the surrogate mother, Deonandan et al are of the view that money might influence some of the clinic's decision to the detriment of the surrogate. They suggest that the same way an arbitrator is involved in business ethics negotiations, the surrogate should have a medical advocate that will represent her interest from the beginning to the end of the contract.
- 8) **EXPLOITATION OF THE POOR**: In this scenario, Deonandan et al noted that seeing the RT inflow from high income countries to LMIC, the issue of exploitation cannot be totally ruled out. They examined the libertarian view of freedom of choice and highlighted the philosophical problem associated with choice, when one has only two options to choose from and one of the options is unbearable. An example is the option to choose between carrying a baby for another couple for nine months and get paid, or remain in a situation of lack of money. Having seen that the primary motivator for participation in surrogacy is economical, one is tempted to ask if it is ethical to use this need as a reason to participate in surrogacy. On the other hand, it may also appear unethical to prevent a woman who has seen this as an opportunity to alleviate her family from poverty from participating. Seeing that exploitation cannot be totally ruled out, they agreed with Humbryd's view that this kind of exploitation is a mutually beneficial exploitation and seeks for international surrogacy market regulation to ensure that the exploitation remains mutually advantageous (2012, p.144). Their conclusion is that the ethical questions surrounding reproductive tourism, falls between autonomy and exploitation. Can freedom of choice justify one's exposure to risk? What else can the government do beyond legal restriction of the surrogacy market? They identified the limit of informed consent and the uncertainty of medical advocacy as the most pressing need in the surrogacy market. Their submission is that the government and civil society should be in readiness to respond to the challenges that emerge from the reproductive tourism market.

Still navigating the challenges posed by surrogacy, Marcus J. Agnafors, revisited the harm argument against surrogacy and took side with the opinion that harm cannot be ruled out in the practice of surrogacy. As he says, maternal fetal attachment (MFA) is a very important aspect of the life and health of both mother and child. This attachment as he says is made impossible by the separation that takes place after the child is born due to surrogacy arrangement. He said the interruption of this attachment begins while the woman is pregnant due to the orientation given to her to begin to prepare her mind to relinquish the child after delivery. This according to him constitutes harm to the child and the mother. This MFA he says, "is consistently ignored or downplayed in all literature on surrogacy, as the child is implicitly assumed to be a tabula rasa; whatever happens to them in the process of surrogacy will have no long-term effect" (2014, p.8). The harm he pointed out, he says is not conclusive as a moral issue in the practice of surrogacy; rather it shows that surrogacy should not be treated as a harmless practice.

According to a report presented at the council of Europe in 2012, surrogacy in any form it may be practiced, altruistic or commercial was viewed as a violation of human right, therefore it should not be permitted. The practice was seen as exploitative because it reduces mothers and babies to commodities. The harm identified by this report on surrogacy cuts across medical, psychological and social including the surrogate, the child and the commissioning parents. Cases of dispute could result to as many as five persons claiming ownership of a child if the egg and sperm donors are different from the surrogate mother and commissioning parents. This situation is seen not to represent the best interest of the child. The anxiety and fear that commissioning parents go through during the nine months period could lead to other dangerous health conditions, due to the fact that the father and the woman carrying his biological child has no relationship. The commissioning parents disappear from the life of the surrogate mother without any plan for long term care. Also there could be the conspiracy of selling babies in surrogacy arrangement. These are some of the issues presented by this report, coupled with the controversies surrounding this form of assisted reproductive technology and the legislations on the issue by other countries, the report proposed that

To maintain consistency with the principles embodied in international and European law, especially the convention on the rights of the child and its second protocol, the convention on the adoption of children (Revised), and the decisions of the European court of human rights, it is essential that the council of Europe ban surrogacy in its entirety (ECLJ. 2012, p.28).

Let us take a look at John Harris' view on surrogacy, in the seventh chapter of his book "*THE VALUE OF LIFE: An introduction to medical ethics*", he looked at the issues surrounding surrogacy and some reasons given for its rejection as a form of assisted reproductive technique. In order to make a clearer view of his stand on surrogacy, Harris showed two forms of reproduction made possible through the advancement in In Vitro Fertilization, which are egg or embryo donation and womb leasing or lending. These two forms of activities fall under surrogacy according to him, but legislations or opinion of most decision makers in the society tend to favour the former while abhorring the later. In the case of egg or embryo donation, a woman who desires to have a child but cannot produce egg needed for fertilization receives the egg of another woman which will be fertilized externally and implanted into her own womb for her to carry the pregnancy and give birth to a child which is legally accepted as her child. In the second scenario, a woman who is unable to achieve pregnancy or carry it to term but is able to produce eggs gets her egg fertilized and implanted into the womb of another woman who helps to carry and nurture the pregnancy and births the child for the other. This procedure has generated much unresolved problems and continues to be an issue of ethical debate. The issue of who qualifies to be seen as the 'real mother' of the resultant child cannot be easily determined in any of the two scenarios listed above because they both have equally strong argument of ownership. Seeing that in both forms of arrangement there must be a contract reached whether it be formal or informal contracts, Harris says the question of who is the 'real mother' is not necessary, the concerns should be who qualifies to keep the child having the best interest of the child at heart.

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Harris set forth to show that no reason is good enough to object the practice of surrogacy especially the womb leasing that is seen as the extreme form of surrogacy. Harris identified two reasons why the objection to womb leasing or lending is deeply rooted. The first he says is the commonly held view about the morality of prostitution, women who sell their body for sex are seen to have “fallen below the threshold of moral consideration” (1985, p.138). For this reason, women who would ‘sell’ their bodies for child nurture are looked down on. But Harris says there is nothing wrong in receiving financial or material reward for participating in sexual activity. What is wrong is when one is forced into it against the person’s will due to economic, social or personal pressure. The second deep rooted objection to womb leasing or lending he says is more of the British way of thinking about character. They believe that there are people who love to do certain things just for the joy they derive from it without being paid or hoping to be rewarded, this group of people Harris calls the amateurs. The other groups are the professionals who should be paid for their services. Harris says to the British society, the amateurs are superior to the professionals in character. This being the case, Harris says there is nothing wrong in wanting to do certain things that is so much a personal matter without being paid but that is not a reason to object to such personal matters if other people decide to do it differently.

In the attempt to find out what is wrong with surrogacy, Harris looked at the Warnock committee report and its label on surrogacy as a criminal offence. He said that the Warnock committee approve of egg or embryo donation on the basis that the woman that received the embryo implantation and birth the baby is the mother of the child. The reason for this decision by the committee he says is not adequate, Harris highlighted some of the objections raised by the committee which include the inconsistency of surrogacy with human dignity by the use of the terms for financial profit, the distortion of the relationship between mother and child which is not a proper approach to pregnancy, degrading of the resultant child as viewed to be bought by money and the inadequacy of undergoing the risk of pregnancy for another woman. Harris quoted the justification given by the Warnock committee for its proposal which in summary include its unacceptability of surrogacy for convenience, even when it is for medical reasons still amounts to using another human being as a means to an end no matter how desirable the consequences will be remains objectionable, moreover when financial interest is involved, the arrangement becomes positively exploitative (1985, p.142).

On analyzing the justification given by Warnock committee, Harris says that his opinion on surrogacy for convenience seems to imply that “no woman should receive the benefits of motherhood without also suffering the pains, risks and inconvenience of pregnancy and birth” (1985, P.143). Harris also reacted to the assumption that using people as a means to an end is exploitative when it comes to surrogacy, while blood donation, egg or embryo donation, artificial insemination bone marrow transplant are all permitted by the Warnock committee and is not seen as using persons as a means to an end or a kind of exploitation that requires to outlaw such practices. He said that we can also guard against exploitation in surrogacy practice.

Harris also said that the view that using the uterus for profit is inconsistent with human dignity is lopsided. This is because we use different parts of our body like the hand, brain, hair, tissues, and blood to make profit. Why then is the uterus so special? Harris believes that in the

absence of a universal principle on the use of the body as a whole or its parts, and in the presence of discriminating ideologies of what constitutes violation of human dignity, he is “entitled to see this claim as a rationalization and not a reason and dismiss it out of hand” (1985, P.144). In all, his argument is that nothing is necessarily wrong with the practice of commercial surrogacy (womb leasing) as opposed to altruistic surrogacy (womb lending). That money is involved does not necessarily mean that it is exploitative. He said that nothing is wrong with preferring a society that operated with the ethic of altruism. It is true that people may be willing to donate their blood for the joy of helping someone without wanting anything in return. The process involved is less risky compared to pregnancy and birthing a baby. Permitting surrogacy purely on altruistic bases is not very clear how many women will be willing to do it on those terms. Exploitation is not a good enough reason to ban surrogacy, he said that

We should bear in mind that there is no reason to suppose that disputes in this area will be the norm, nor indeed that they would be any more numerous or intractable than other disputes in family law, none of which have ever been sufficiently grave as to provide reasons for outlawing marriage or childbearing for fear of other difficulty of the disputes that permitting such practices might engender (1985, p.141).

CONCLUSION

Reproductive autonomy remains an aspect of individual autonomy that presents itself in divers’ ways in ethical debates. It is not disputed that this aspect of individual autonomy calls for proper attention in formulating policies geared towards its regulation. It is pertinent to note that there are different facets of reproductive autonomy of which surrogacy is one of them. Having looked at individual autonomy from the perspective of Mill, which established ‘harm’ to others as a prerequisite to interfere with the autonomy of an individual. There is no valid justification for outlawing gestational surrogacy since it is an agreement entered into by two or more consenting adults. Individuals should be allowed to “carry these out in their lives, without hindrance, either physical or moral, from their fellow-men, so long as it is at their own risk and peril” (2001, p.52). Seeing that there is no moral law stipulating how different parts of the body should be used to make earnings, putting up a condition that will be met for gestational surrogacy to count as a moral act (altruistic purposes) amounts to ethical despotism.

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