
Commodification of the Womb: Problematising Issues of Surrogacy in India

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Abstract:

The World celebrated when in 2002 surrogacy became legalised in India and the country became a commercial hub for the attainment of motherhood at a comparatively lower cost. Surrogacy in India, therefore, attracted critical attention due to the over commodification of the trade as numerous commercial surrogacy agencies were exploiting the vulnerability of poor women in India. However, the ordeals of surrogacy endowed many women with a silver-lining, as surrogacy became the only source of economic sustainability in empowering their lives. There was also an urgent need expressed by feminist activists to guarantee ethics, morality, and medical intervention for the surrogates. Therefore, the Government of India introduced Altruistic surrogacy through Surrogacy (Regulation) Act in 2021. However, the introduction of Altruistic surrogacy lessened the scope of empowerment for the surrogate workers whose only mode of survival depended on this industry. This paper seeks to explore the existing legal provisions, the concepts of social accountability and the epistemological premises of the surrogacy industry in India by reconceptualizing a future for both the surrogates and the commissioning parents, with increased awareness and activism sustaining the ethics and morality of the practice.

Keywords: Surrogacy, Motherhood, Ethicality, Empathy and Awareness.

Introduction

Women have been at the core of every culture's primary fixation. As women's reproductive capacity constitutes one of the most profound mysteries of the phallogocentric civilization, patriarchy's obsession with mothers and motherhood denies a complete closure. The term 'Motherhood' has undergone multifarious changes since its conceptual emergence. As Ann Daly succinctly remarks in *Inventing Motherhood: The Consequences of an Ideal* that although the word 'mother' is the oldest in the language, the concept of 'motherhood' is relatively new (Daly 17). The twentieth century witnessed a heap of metamorphic events during the unfolding of various decades. One such transmuting event at the turn of the century was the introduction of a new reproductive technology, termed as surrogacy.

This paper aims at interrogating various ethical and moral dimensions of surrogacy as a practice and opens the debate for exploring further possibilities in the specified area. Approaching surrogacy and surrogate motherhood from the feminist perspective, therefore, would enable us to envision a parallel universe where the

maternal function constructs the social order but is always presented as a passive social function. This, however, necessitates the need for the emergence of possibilities of a brave new world where the radical transformation in the legal, behavioural, and emotional aspect of practice of surrogacy will create a powerfully subversive tale with regard to family and relationships.

Commodification of the Womb: Indian Context

This paper would investigate the productive and sustainable paradigms of surrogate motherhood by A) providing a general account of the surrogacy industry in India; B) providing a general account of the opposing feminist ideologies regarding surrogate motherhood; C) by narrating real-life empowering experiences of the surrogate mothers in India; and concluding that the empowering perspective of surrogate mothers nullifies the impermissibility of surrogate motherhood.

A. The Practice of Surrogacy in Modern India

While the beginnings of surrogacy can be traced back to ancient history, the recently developed and scientifically codified version of surrogacy as ART (Artificial Reproductive Technology) in India starts with the birth of Baby Kanupriya alias Durga on Oct. 8, 1978. Since then, the field of Assisted Reproduction in India hasn't looked back and its flourishing business during the 1990s catered to jostling of positivity and hope not only in the heart of Indian childless couples but also proved as a bliss for the childless couples worldwide. But the

laws regulating surrogacy practice in India have remained at nascent stage and it continues to bring focus to the utter dismay and exploitation of the concerned surrogates. With the commercialisation of surrogacy in 2002, India became a hub for international commissioning parents who wanted a baby of their own genetic makeup and what could be a better destination than India where the flexibility of the laws regarding surrogacy had been prone to the violation of ethics and morality concerning the entire arrangement of surrogacy.

Although the commercial surrogacy market in India formed only a fraction of worldwide surrogacy, the situation in India was grimmer and bleaker as surrogacy in India was prone to caste and colour-based discrimination. According to a recent study, during the heydays of commercial surrogacy in India, traditional surrogacy preferences were given to surrogate donors based on their class, creed, religion, and complexion. To address such issues and to regulate surrogacy arrangements, the Government of India had taken certain steps including the introduction and implementation of National Guidelines for Accreditation, Supervision, and Regulation of Assisted Reproductive Technology (ART) Clinics in 2006, and guidelines have been issued by the Indian Council of Medical Research (ICMR) under the Ministry of Health and Family Welfare, Government of India.

But it is only in July 2019 that the new surrogacy regulation bill, introduced by the government of India has made necessary modifications along with the constitution of state and national surrogacy

boards. With the provision to allow “ethical altruistic surrogacy” for the Indian infertile couples only, the bill promises to bring about change in the Indian scenario.

B. The Feminist Debate on Surrogacy

Since its initiation, surrogacy has been caught in the web of feminist discussion, which is often contradictory in nature. Some feminists do agree upon the fact that it has taken them centuries of representation, reflection, reading or speaking through literature to emerge out of the pre-historical/ historical identity of themselves as a passive ‘body.’ But some feminist critics view surrogacy as the oppression and violation of the surrogate’s basic rights and it results in unhappiness, guilt, and paralyzed mental condition of the surrogate as the choice for a woman to become a surrogate is no choice at all (Wikler 53).

Lori B. Andrews in *Surrogate Motherhood: The Challenge for Feminists* argues in favour of the utilisation of the reproductive capacity of the surrogate mothers. Andrews in her treatise, repudiates the feminist idea of symbolic harm exerted to the society by the potential surrogate mothers. Andrews, in fact, goes to the extent of depicting Margaret Atwood’s *The Handmaid’s Tale* as a narrative of “policy changes—criminalisation of abortion and banning of women from paid labour force—that created the preconditions for a dehumanizing and harmful version of surrogacy” (Andrews 72).

Katherine B. Leiber in *Selling the Womb: Can the Feminist Critique of*

Surrogacy Be Answered? opines that the choice become pregnant, biologically, or otherwise is the jurisdiction of one’s own private sentiments. She writes in her essay with absolute conviction that “The choice to become a surrogate or to hire a surrogate is a natural evolution of the right of reproductive choice. Limiting women’s choices regarding surrogacy may lead to limiting choices which have already been legally guaranteed to women (Lieber 227).

However, on the flip side of this positive reproductive campaign, looms the danger of over-commodification of the female sexuality/womb—aggressively bringing them down to mere ‘breeding machines’ of the capitalist regime. Sociologist Jalna Hanmer points out that the exploitation of women’s bodies initiated by various scientific/reproductive technologies gradually broadens the pathway for rapid and unavoidable male control over female sexuality. Originally started and justified for “exceptional circumstances only,” (Hanmer 350) the reproductive regime soon became androgynous. As Hanmer writes,

Women found they could directly use some very low-tech interventions, such as self-insemination, or pregnancy-testing kits, but as the technology became more developed, control passed increasingly into the hands of professionals (as, for example, with IVF, or the genetic testing of embryos) (Hanmer 350).

Hanmer’s anxiety about the overuse of reproductive technologies, is, further

aggravated by Gene Corea in *The Mother Machine*. Terming the process of surrogacy as a “reproductive brothel,” (Corea 278) she maintains that surrogate motherhood is the new version of female prostitution. She asserts, “such a practice cannot be logically defended as a health measure, suggesting it is exactly what one commentator has described as a ‘war against the womb’ (Corea 308).

The paucity of unification on one vantage point, therefore, results in the emergence of diverse pontifical feminist explanations, each complicated by the diverse ideological shifts of their own. And as different countries have multitude of rules and regulations regarding surrogacy industry (some countries banning surrogacy altogether, too), it is worthwhile to observe how the different law-making agencies consider diverse feminist perspectives before implementing the regulatory guidelines of surrogacy industry.

B. Surrogate Mothers in India and the stories of empowerment and liberation

One of the frontline assets of medical tourism in India is/was surrogacy which was commercialised in India in 2002. With the rampant and recent commercialisation of the surrogacy industry in that decade and afterwards, what was worth noticing is the violation of the rights of the economically backward women offering themselves as surrogates. With the commissioning parents mostly belonging to the overseas, the surrogates rarely experienced the touch of humanity and empathy from them. And the surrogates were exposed to exploitation not only at the

cruel hands of economic vulnerability, but also by the pitiable condition of the surrogacy centres which sheltered them in their nine-month long journey. While patriarchy embellishes the period of pregnancy with pre-natal care and adoration, the same ideology denied the promised benevolence to the gestational mothers, reducing them to mere bodies or machines of reproduction. Motherhood, even if gestational, becomes a mockery to the expectant surrogate mothers.

After the commercialisation of surrogacy in India, India witnessed a spike in the inbound flow of international commissioning parents for hiring surrogates, with the obvious motives of spending less for the procedure, laws being flexible and the most important being the availability of surrogates. While economic vulnerability played a major role in being a surrogate and the surrogates often became a victim to the treacherous agents of the surrogacy industry, many women plummeted themselves into the business out of sheer choice. A self-made choice for empowerment, therefore, got buried under Eurocentric projection of poverty and exhaustion.

Western media's conjectures regarding the initiation of Indian surrogates to the global business depending only on their downtrodden poverty was, however, far from reality. Many other major factors came into play in the conditionalities of surrogacy industry. Alison Bailey in her extensive research on Indian surrogacy industry refers to companionship of other contributing aspects apart from the economic one. She argues, “This is how

global press presents surrogacy worker's stories. The rhetorical focus is on opportunity, choice, and fair exchange. A complete picture of Indian surrogacy must also be attentive to the ways gender, race, ethnicity, caste and class mediate expectations and assumptions about pregnancy, mothering, and access to reproductive technologies" (Bailey 65).

In *Beyond "Wombs for Rent": Indian Surrogates and the Need for Evidence Based Policy* Daisy Doemampo recounts stories of surrogate mothers she interviewed in a surrogacy house 40 kms outside the city of Mumbai. One such surrogate, Meena, unfolds her reasons for opting surrogacy as a profession. The surrogate reveals in the interview,

We know that if we take some trouble with our body, it will take care of the education of our children; or we will be able to have a house, so we will be able to live well; or we will be able to satisfy the expectations of our children. This is what every woman thinks. So, if she cuts her body, and gives a part of her body, then she should get her rights. It is for her children. – Meena, 42-year-old former egg donor (Doemampo 2015).

Doemampo again refers to another surrogate named Malaika, who was furiously bothered about her family's well-being and found surrogacy to be a blessing to cater to the needs of her three teenage children. She additionally associates the

concept of surrogacy with a sort of divine work. '*Punyache Kaam*,' she utters in her interview and goes on completing her surrogacy pregnancy before marrying her second husband. Doemampo being inquisitive about such resilience, digs the grave a bit more and follows her life after marriage. She was astonished to find the feat of success that Malaika earned with her money. Doemampo further adds about Malaika, "In our interview, Malaika appeared proud of the work she had done; she explained, 'After doing surrogacy, I feel I have not only done something for my kids, I have also come to know about *duniyadari*'" (Doemampo 2015).

In this context, Amrita Pande's research on the Indian surrogates is exemplary of the initiatives necessitating rapid implementation in the surrogacy industry, especially of the surrogates of the third-world countries. Pande opines that the moral dilemma encompassing the surrogates should be negated by enforcing practicality into the whole system of commercial surrogacy. She suggests that the entrapment of their biological bodies is not a question of viciousness and virtuosity rather it is a means of earning a regulated income like those employed in baby-sitting industries. Pande argues in her essay,

These (Eurocentric) portrayals of surrogacy cannot incorporate the reality of a developing-country setting—where commercial surrogacy has become a survival strategy and a temporary occupation for some poor rural

women.... In such a setting, surrogacy cannot merely be seen through the lens of ethics or morality but is a structural reality, with real actors and real consequences.... If we are able to understand how surrogates experience and define their act in this new form of labor, it will be possible to move beyond a universalistic moralizing position and to develop some knowledge of the complex realities of women's experience of commercial surrogacy (Pande 145).

Conclusion

As Adrienne Rich mentions emphatically in *Of Women born* that "Throughout history women have helped birth and nurture each other's' children, most women have been mothers in the sense of tenders and carers for the young, whether as sisters, aunts, nurses, teachers, foster mothers, stepmothers..." (Rich 12), I believe, that promoting the industry of surrogacy under supervised rules and regulations, in fact, can bring enormous positive changes in the lives of women.

The desire for motherhood has been thrust into our universal psyche by the phallogocentric society, and many women still presume that the road to 'Edenic womanhood' passes through maternity. As desires do not meet fulfilment every time, we can perceive the pangs of remorse and guilt amongst many women for not filling this maternal destiny. Adoption, obviously,

lies as a viable alternative for attaining motherhood. But the desire for the genetic offspring, sometimes, echoes louder in the maternal heart.

As already discussed earlier, various narratives regarding the surrogate workers in India exemplify their sheer grit and determination in uplifting their economic destiny by working as surrogates, I believe, their tales of perseverance and fortitude should be supported whole-heartedly by the law-making agencies. In the wake of altruistic surrogacy coming to force with legal provisions, many such surrogate workers are experiencing unease and concern regarding their fate. Their nightmarish fate can be averted, only if, our active recognition of their service is supplemented by plausibility and lawful integrity.

Helene Cixous remarks in *The Laugh of the Medusa*, "Men have committed the greatest crime against women. Insidiously, violently, they have led them to hate women, to be their own enemies, to mobilize their immense strength against themselves" (Cixous 878). The choice to become surrogates/or to opt for surrogates, therefore, is crucial enough for denying this logocentric reality, so that the mothers—be it surrogate or biological—can sculpt a maternal utopia, where their tales of empowerment and fulfilment will immortalise their rendezvous with womanhood.

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