

‘Rent a Womb Tourism’: Narratives of Unheard Surrogate Mothers in Delhi, India

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‘RENT A WOMB TOURISM’: NARRATIVES OF UNHEARD SURROGATE MOTHERS IN DELHI, INDIA

Abstract: Commercial Surrogacy is typically understood simplistically, in that a woman carries someone else’s baby in exchange for monetary compensation, a myriad of complexities exists among the intended parents, doctors and the surrogate mothers who invest in the process; emotionally, mentally and financially. Potentially, surrogacy offers one of the most promising opportunities not only for couples to become parents but also for surrogate mothers to earn a living. However, a woman bearing someone else’s child for money is at odds with the patriarchal conception of motherhood that is often viewed emotionally. Surrogacy involves marketisation of the reproductive capacity of women. There is an emotional outburst when it comes to commodifying reproductive labour while other forms of labour (productive) have been historically commodified. This ulterior outburst has often been expressed through vocal debates rooted in women’s reproductive labour being exploited through commercial surrogacy, which eventually led the Government of India to pass the Surrogacy (Regulation) Bill, 2019. With this context, the paper brings out the lived experiences of surrogate mothers through a phenomenological method of interviewing. The paper identifies that women should have the right over their reproductive labour and the ban on commercial surrogacy takes away women’s autonomy over their bodies.

Keywords: Autonomy, commercial surrogacy, patriarchy, reproduction

Introduction

“I came from Bihar to Delhi with my husband for work but he left me and the kids. I could not afford the education of my three kids. I worked in the Tech City near Delhi but it was very unsafe for women”, said Neha (name changed), a 29-year-old surrogate mother. Neha’s life has been a struggle between managing children’s education, switching jobs and houses and financial instability. She chose to become a surrogate mother because she felt safe and respected. She believed that being a surrogate mother empowered her to become independent and care for her children with the compensation offered to her for her reproductive labour.

While Commercial Surrogacy is typically understood simplistically, in that a woman carries someone else’s baby in exchange for monetary compensation, a myriad of complexities exists among the intended parents, doctors and the surrogate mothers who invest in the process; emotionally, mentally and financially. Potentially, surrogacy offers one of the most promising opportunities not only for couples to become parents but also for surrogate mothers to earn a living. However, a woman bearing someone else’s child for money is at odds with the patriarchal conception of motherhood that is often viewed emotionally. Surrogacy involves marketisation of the reproductive capacity of women. There is an emotional outburst when it comes to commodifying reproductive labour while other forms of labour (productive) have been historically commodified. This ulterior outburst has often been expressed through vocal debates rooted in women’s reproductive labour being exploited through commercial surrogacy, which eventually led the Government of India to pass the Surrogacy (Regulation) Bill, 2019¹. The bill puts a complete ban on commercial surrogacy while only allowing altruistic surrogacy to take place i.e. no monetary compensation or remuneration except medical expenses. This has left no scope for women to be actors who can choose to be surrogates and who have gained certain agency over their reproductive capacity (Bhattacharjee, 2016). The scope of the Surrogacy Bill 2019 is limited as it only allows altruistic surrogacy where only a ‘close

relative' can be a surrogate. The bill assumes that banning commercial surrogacy will rule out its potential exploitative nature while overlooking that altruistic surrogacy can be equally exploitative, albeit in different ways. It is not easy for a woman to undergo surrogacy voluntarily for someone in the family and potentially bear the burden of immense familial pressure especially if the surrogate is a daughter in-law of the family. This constitutes an error in judgment to assume that exploitation occurs only when there is monetary value involved and that familial ties are devoid of exploitation.

While surrogate mothers themselves seem to be satisfied with the arrangement of commercial surrogacy, the presumption by the state that commercial surrogacy is exploitative and its subsequent ban reinforces patriarchal gender norms. It reinforces the idea that pregnancy should be nurtured within the household sphere and overlooks the opportunity of livelihood for a certain section of women, takes away the autonomy of women who willingly participate in surrogacy and promotes the ancient idea of motherhood. Some of these traditional ideas are so ingrained in society that one of the surrogate mothers provided an interesting cultural/religious reasoning for justifying surrogacy - "*Surrogacy is pious. This happened with Lord Krishna, his biological mother was Devaki and Yashodha was his foster mother, it's the same, it is someone else's womb but someone else brings up the child*". In light of these intricacies, I have attempted to examine women's reproductive labour as their right, analyse the discourse that exists around it and scrutinize how government policies are potentially socially conditioned by the dominant patriarchal system.

Is reproductive labour productive?

Labour can be categorized into productive and reproductive labour based on the types of work done by people. Production is the process of converting inputs or raw materials into finished goods or outputs. Historically, the market has valued productive labour by attaching a monetary value to it, as it ends in producing commodities that can be sold in the market. Productive labour is valued in the labour market by paying wage to those who engage in such activities. However, not all who do productive work are rewarded in the same way – there are significant wage disparities on the basis of gender.

Reproductive labour refers primarily to the process and activities which help maintain the productivity of the existing lives as well as the reproduction of the next generation (Fraser, 2012). Simplistically speaking, it consists of activities of child bearing, child rearing, cooking, cleaning, taking care of the elderly, nurturing the child etc. It also is referred to as 'care work' due to the above-mentioned nature of work and usually refers to the work done by women (Brenner, 1989). Reproductive work has been unaccounted, hidden, unacknowledged and has not been valued by the market economy. One should not separate the surplus productive labour extracted by the market system, from the reproductive labour of child care, running a home and even providing emotional care (in most cases done by women) as both forms of labour are interconnected in contributing to keep the capitalist market order together (Lakshmi, 2020)². In this context, commercial surrogacy straddles paid productive and unpaid reproductive labour, thereby making its categorization between the two ambiguous. It challenges the market places where the labour of child bearing can be deployed – this has been limited to the unaccounted and unacknowledged domestic marriage and family sphere (Sama, 2009). This deliberate invisibilisation of reproductive work in national income statistics has been critiqued by feminist economists.

Commercial Surrogacy needs to gain equal worth of being an economically and socially productive activity for women who willingly choose this. To a very simple question of why commercial surrogacy is a viable choice for surrogate mothers, most participants answered that it provides for their family, children and other needs. The purpose of entering into commercial surrogacy for most was large monetary compensation received in a short span of time. One of the surrogate mothers, Kavita (name changed) who was 25 years old said, *"my husband had contracted jaundice which led to serious financial crisis for the family, he was extremely weak and was unable to work. I took this up to help my family and someone who needs a child"*. One of the surrogate mothers, Anita (name changed) who was 26 years old had clearly said that, *"there is nothing wrong or exploitative about this work, it is good"*. Women who are willing to be surrogate mothers believe that this is a professional arrangement, a complete ban takes away this opportunity from them.

Women's Rights, Rationality and Recognition

The right of a surrogate mother over her body and the right of procreation of the intended couple fall under the rights framework (Gostin, 1988). A surrogate mother is an individual who can enter the surrogacy contract as an autonomous agent and can exercise the right over her body (Shalev, 1989). It is the free will of the surrogate to enter into a surrogacy contract. As McLachlan and Swales (2009) argue, surrogacy arrangements are mere extensions of the individual's right to personal autonomy. Right to Procreate is a basic fundamental right as well as human right and surrogacy is seen as a process which protects this right (Gostin, 1989). The surrogate mother's right to decide the use of her reproductive capacity and her associated freedom to choose her work are fundamental to a woman's autonomy. The arrangement of commercial surrogacy is a commercial transaction where two parties exercise their free will and it is the extension of autonomy of any individual. In the present liberal framework, if state or law intervene with the personal autonomy of the surrogate mother, it can potentially be treated as a violation of the basic rights of the surrogate. Surrogate mothers should be seen as rational beings who have the capability to decide what they want to do with their bodies. Andrew (1989) denies the surrogacy contract to be revocable and asserts that surrogacy should not be interwoven with emotions, hormones, feelings because that would strengthen the idea of women being incapable of making any decisions. As Shalev (1989, pp 96) states, *"the refusal to acknowledge the legal validity of surrogacy agreements implies that women are not competent, by virtue of their biological sex, to act as a rational, moral agent regarding their reproductive activity."* As mentioned earlier, surrogacy brought the reproductive activity to market domain where women can choose to do whatever they want to with their bodies. With commercial surrogacy banned, it will be against all the progress that has been made so far with respect to reproductive labour (Leiber, 1992). In support of the argument that women are rational beings and capable of making decisions, one of the surrogate mothers who was 29 years old said, *"I am earning out of my own body's labour where I am not considered a machine"*.

In a surrogacy arrangement, a surrogate sells her reproductive labour for which she is financially compensated by the intended parents (Shalev, 1989). Lori Andrews in her book 'Between Strangers: Surrogate Mothers, Expectant Fathers and Brave New Babies' (1989) argues that reproductive labour has gone through an evolution of marketisation, in that care works like baby-sitting, care of the baby etc. have faced both – a social acceptance and a commercial recognition. Surrogacy can accordingly be extended the same recognition. It can be considered exploitative when a woman who is a surrogate mother receives no payment. However, the payment that is made to the surrogate mother is an acknowledgment of the silent, hidden reproductive labour that women have always engaged in. In a surrogacy contract, a woman has the

legal authority over her reproductive labour and can also make decisions with regard to use of her reproductive labour (Shalev, 1989). In any surrogacy arrangement, women can control their body and not be prisoners of their biological capacity. Thus, surrogacy and the new reproductive technology become tools for women to overcome the biology of a woman (Firestone, 1971). Surrogacy, within this framework has been praised to provide recognition to women's reproductive labour and also breaks the traditional family norms. It empowers the woman as an autonomous, rational being capable of deciding for herself.

Reinforcing Gender Norms

The concept of motherhood is considered central to the adult feminine identity as women are defined generally in relation to their actual or potential maternity (Gupta, 1996). This idea of motherhood, the pious nature of being a mother, is challenged with commercial surrogacy (Tamalapakula, 2019). With the ban on commercial surrogacy, the state supports the regressive idea of 'motherhood' which is just limited to bearing and rearing children, invisibilizes the reproductive labour of women and promotes the ideology of family purity and marital reproduction (Tamalapakula, 2019). Motherhood cannot be commodified because it has always been glorified within patriarchy to restrict women's mobility and establish men's control over women's reproductive labor.

The Surrogacy bill has only allowed for altruistic surrogacy, however, there is a need to view this from the lens of the would-be surrogate mother (Nair and Kalarivayil, 2018). The state by putting forth altruistic surrogacy is trying to build an image of 'a good woman' who will gift a child to intended parents (Nair and Kalarivayali, 2018). The thrust towards altruism in surrogacy is "rooted in a discourse that seeks to demarcate motherhood from the desires of commerce" (Majumdar, 2018, pp 211). One of the surrogate mothers interviewed said, "*The act of surrogacy is clean and scientific. I have two daughters and I want to keep money for their education because that's most important.*".

In addition, the bill continues to overlook those who do not wish to go through pregnancy. Many women with promising careers do not wish to take a break at an age that might coincide with child bearing age but do not seem to have an alternative. This reiterates the notion that a woman is complete only when she is a mother and she has to make compromises while fulfilling this ideal. Accordingly, reproduction cannot be a form of labour in the market – the ban on commercial surrogacy promulgates dated social structures in its inherent patriarchy. Patriarchy is not static but changes its form and attributes "by overlap and reformulation, and their various constitutive elements may have different durations and tempos of change" (Sangari, 2015, pp, 46). "*In this context, the overlap can be defined as that interstitial space where an older practice has not yet lost its rhetorical power but is being outmoded by a changing economy and polity where its memorized shell is being vacated yet can be refilled with emergent rationales to service new needs*" (Sangari, 2015, pp, 46). Sangari in her book *Solid: Liquid* defines this as **retraditionalization** where an old tradition is redesigned to co-produce tradition and modernity.

In a similar way, Motherhood which was challenged with commercial surrogacy is being reformulated and reconstructed to adapt to the modern conditions. Altruistic surrogacy is this reformulation where women who are gifted to be mothers voluntarily become surrogate mothers i.e. within the family without challenging the institution of motherhood and family. Women in many cases have been coerced into heterosexual marriages and forced to produce children after marriage. Altruistic surrogacy thus can be expected to increase familial pressure on women to act as surrogate mothers for their close relatives. With

this new ban on surrogacy, coercion will take another direction where women who are already within an oppressive structure will be forced to act as surrogates without any compensation. Retraditionalization can also be understood as reinforcing patriarchy, in that a woman who is an epitome of love, care and sacrifice is being regenerated. Surrogacy has not achieved the status of plain economic opportunity for women because selling motherhood is stigmatized. The deconstruction of notions of motherhood, family and patriarchy seems doubtful and unlikely; however, an immediate change can be promoting commercial surrogacy as an economic opportunity rather than banning it completely. Any woman or a couple should be allowed to avail surrogacy as a right. The notion that parenthood joys can be experienced only through one's own child and not through surrogacy reinforces traditional customs. To this one of the surrogate mothers said, "*Surrogacy gives people the joy of having their own genetic baby*". Instead of romanticising the idea of altruistic surrogacy as a noble act, the bill should not ignore the potential loss of income. Instead, a compensated model of surrogacy should be adopted.

Conclusion

The bill negates years of progressive growth made in understanding 'equality'; it moves away from the feminist ethos towards the traditional patriarchal norms. Women should not be seen as altricial, selfless and their labour in 'care and household should not be viewed as a gift or donation that cannot be vulgarized by market consideration' (Rao, 2012). Commercial Surrogacy has been deemed unlawful in many countries because it is said to commodify women's bodies. Ideas of motherhood and family are seen as gift giving which maintains the ideal notion of '*what should be*' (Majumdar, 2018). The question of choice to use reproductive capacity freely has been challenged with the ban on commercial surrogacy as it takes away women's autonomy over their body and economic opportunities to earn livelihood. The idea of 'what should be' i.e. as a mother and care giver has been put forth with the bill. The Surrogacy Regulation Bill through its mandate to altruise surrogacy, potentially limits a woman's choice within an inherent patriarchal family structure rather than address possible coercion - a woman may not have the power to resist and might be forced into the surrogacy arrangement. Therefore, it becomes essential that women's labour is accounted for and commercial surrogacy and other forms of unpaid care work become an economic opportunity for women.

References

- Bhattacharjee, D. (2016). Commercial Surrogacy in India Bans, Altruism and the Women Involved. *Economic and Political Weekly*, vol LI No 14, pp 27-29.
- Bhatia, S and Sonak, E. (2021). *India's new Surrogacy Regulation Bill falls short of protecting bodily autonomy and guaranteeing reproductive liberty*. London School of Economics.
- Brenner, B.L. (1989). *Gender and Social Reproduction: Historical Perspectives*. Annual Review of Sociology.
- Firestone, S. (1971). *The Dialectics of Sex*. New York: Bantam Books.
- Fraser, N. (2012). *Can Society be commodities all the way down?* Polanyian reflections on capitalist crisis.
- Gostin, L. O. (1988). *A Civil Liberties Analysis of Surrogacy Arrangements*. Law Medicine and Healthcare, vol 16, issue (1-2), pp 7-17.
- Gupta, A.J. (1996). *New Freedoms, New Dependencies, New Reproductive Technologies, Women's Health and Autonomy*. Leiden University, Leiden.
- Leiber, K. B. (1992). *Selling the Womb: Can the Feminist Critique of Surrogacy Be Answered*. Indiana Law Journal.
- Lori, A. (1990). *Between Strangers: Surrogate Mothers, Expectant Fathers and Brave New Babies*. Harper Collins (1st ed).
- Majumdar, A. (2018). *Conceptualizing Surrogacy as Work-Labour: Domestic Labour in Commercial Gestational Surrogacy in India*. Journal of South Asian Development, vol 13, issue 2, pp 210-227.
- Malhotra, R. (n.d.). *Highlights and Brief analysis of the Surrogacy (Regulation) Bill, 2020 and suggested potential safeguards*. International Bar Association. Available at <https://www.ibanet.org/article/B5C65969-4901-49A9-82CF-8DC4C8BEB1E2>
- Mclachlan, V.H and Swales, Kim. J, (2009). *Commercial Surrogate Motherhood and the Alleged Commodification of Children: A Defense of Legally Enforceable Contracts*. Duke University School of Law, vol 72, issue 3, pp 91-107.
- Nair, S.S and Kalarivayil, R. (2018). *Has India's Surrogacy Bill Failed Women Who Become Surrogates?* Indian Journal of Women and Social Change, vol 3, issue 1, pp 1-11.
- Pande, A. (2020). *Revisiting Surrogacy in India: Domino Effects of the Ban*. Journal of Gender Studies, vol 30, issue 4, pp 395-405.
- PRS Legislative Research, (2020). *Report of the Select Committee on the Surrogacy (Regulation) Bill, 2019*. Available at https://www.prsindia.org/sites/default/files/bill_files/Select Comm Report- Surrogacy Bill.pdf
- Roa, M. (2012). Why All Non-Altruistic Surrogacy Should be Banned. *Economic and Political Weekly*, vol 47, issue 21, pp 15-17.
- Sama. (2009). Assisted Reproductive Technologies: For Whose Benefit? *Economic and Political Weekly*, vol 54, issue 18, pp 25-31.

Sangari, K. (2015). *Solid: Liquid A (Trans)National Reproductive Formation*. New Delhi. Tulika Books.

Shalev, C. (1989). *Birth Power: The Case of Surrogacy*. Connecticut. Yale University Press.

Shanley, L.M. (1993). *Surrogate Mothering and Women's Freedom: A critique of Contracts for Human Reproduction*. The University Chicago Press Journal, vol 18, issue 3, pp 618-639.

Tamalapakula, S. (2019). *Caste, Patriarchy and Surrogacy Market in India*. The News Minute. Available at <https://www.thenewsminute.com/article/caste-patriarchy-and-surrogacy-market-india-95006>.