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THE EXPERIENCE OF SURROGATE MOTHERS IN THE COMMERCIAL MARKET OF SURROGACY IN INDIA

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Abstract: This paper intends to deal with the concept of surrogacy in India, with an emphasis on what is faced by the surrogate mother, detailed data about the emotional and statistical impact of surrogacy on women in India and how surrogacy has turned into a market, with commercialisation turning it into a business.

In India prior to globalization, marriage and the consequential family system were held as sacred and surrogacy used to be a taboo. However, globalization and inflation led to increased unemployment, which caused more women to seek jobs in public sectors. Unfortunately, their illiteracy and lack of vocational skills forced them to resort to lending wombs for pregnancy. The gestation period allows them to exert power in the male-dominated world where women are marginalized for their gender.

The paper also analyses the relationship between the surrogate mother and her client, the expecting parents and how its nuances have transformed due to the socio-cultural changes in the society. Since the child is taken away from the rearing mother to the legal one after the lactation period is over, the question arises as to whether she gets the necessary nurturance required to develop her personality in the formative years. Ultimately, the onus shifts to the mindset of the parties involved: are they willing to bring up a surrogate child and make up for the lack of prenatal and post-natal care with love and affection or will they remain detached from a child who is not fully the couple's flesh and blood?

Index terms: women, surrogacy, commercialisation, law, feminism, breastfeeding, workers and socio-cultural change

I. Introduction

Surrogacy is a noble effort to help out infertile heterosexual couples to have children of their own. In short, it is a procedure to have a willing woman loan out her womb to the couple for the gestational period. However, it has turned into a black market trade in India; in other words, a commercial exchange that screams wombs on hire.

This commercialisation is why India, informally known as the commercial surrogacy capital of the world, has tried to ban the commercialisation of surrogacy entirely under The Surrogacy (Regulation) Bill of 2019. The bill is generally expected to be passed around the year 2020. It would put a US\$2.3 billion-a-year industry in mortal peril. This bill intends to cap down on the black market running under surrogacy hubs and move forward to a far more altruistic and benevolent model.

Commercial surrogacy consists of payments in money or in-kind towards the agencies that provide the surrogate mother, but usually are exploitative towards the women they employ. Altruistic surrogacy legally bans any monetary reward to the surrogate mother beyond the required medical expenses, and there are stringent rules that detail out where and when these expenses need to be fulfilled. However, experts still believe that regulations are the need of the hour with even altruistic surrogacy turning into exploitative means to buy wombs in lieu of high payments.

This pressing problem in India brings to notice the disparities in global health policy that attempts to serve the rich, including the sometimes misdirected slides on women and the rulebooks of ethics, the international medical markets, and the so-called liberal gender policymaking. For India, the question has turned into something else: what does the banning of commercial surrogacy mean for the women who use it to put forward their agency in using their womb for capital, even with the risks involved? The answer provides knowledge into the rules behind women's bodies and their agency globally, labour laws, and global 'health tourism,' which has turned into a nasty black market trade hotspot of organised crime syndicates.

Commercialised surrogacy in India started in 2002, and the country soon topped the chart of the destinations to get surrogate mothers for foreign couples. This move was in place with many countries like Canada, banning commercial surrogacy entirely and moving towards just the altruistic ones to control the ramifications of marketing the womb.

Since India has a large number of skilled medical practitioners and a vast population of young women ready to loan out their wombs to make some money which they were otherwise denied, "India had the perfect opportunity to make an amazing surrogacy system," says Sally Rhoads-Heinrich, a surrogacy consultant and owner of **Surrogacy Canada Online**. However, she points out succinctly that the meddling of exploitative mediators in between removed any possibility for healthy interactions and relationships between the surrogates and the parents. Thus, India missed an opportunity to bring forth and build a benevolent business space in such an intimate procedure.

Bronwyn Parry, a professor of social science, health, and medicine and head of the School of Global Affairs at King's College London in professor, has conducted extensive research on India's surrogacy practices. She says clinics that call for volunteers for commercial surrogates get a massive number of applicants, which points out to several factors. The poverty that sweeps all over the country with women trying to be financially independent has led to several of them, usually, the uneducated ones, to try to earn money the only way they can by loaning their wombs. She tells that "there are so many applicants that they only choose about one in every ten young women."

The demand for surrogates is also increasing at a tremendous rate globally, thereby putting up the price in the first world countries. In the United States, having a baby by surrogacy can cost more than US\$100,000, an exorbitant price. However, the cost of an Indian commercial surrogacy procedure is just a part of the price, as low as US\$10,000.

It is why an approximate 12,000 foreigners come to India every year to hire a commercial surrogate and get a baby at a fraction of the cost in their own countries.

Surrogacy services in India are usually handled by middlemen and third-party clinics and consultants who select proper surrogate mothers for the prospective parents who are willing to pay for all the medical appointments and the assorted costs along with the hospital bills. Now, herein lies the exploitation. The payment might have been for a private hospital. Still, some agencies force the surrogate mother to live in cramped conditions in dingy fertility clinics while taking up the lion's share of the money that belongs to them.

Arijit Dey, a senior resident in forensic medicine and toxicology at the All India Institute of Medical Sciences, New Delhi, says, "most of the money siphoned out of a couple is being spent by the business." This practice leaves the surrogate mother with not just a fleeced monetary loss, but can also adversely affect her health, which goes against the medical ethics put forward globally.

The exploitation of surrogate mothers goes far beyond just less pay. The middlemen do not abide by any medical ethics, and forcible C-sections, abortions, medical negligence, complications, and death are very common. An oft-reported trend of malpractice is to plant embryos in two or more surrogate women. If multiple women get pregnant, the clinic will abort the fetuses, blame the women for their "carelessness" in not being able to carry the pregnancy and deny them their proper payment.

I. 1. History of surrogacy

The common conception is that surrogacy is a new technology and that it has gained sanction only recently. However, it has been around for years, even though with gross ethical and medical violations. The idea has been given leeway only recently.

1.1. The western context

The developed world has had a unique tryst with surrogacy, and this study lists out exactly how with emphasis on the surrogate mother and her rights.

- **The Biblical Times:** In the book of Genesis, Sarah and Abraham were the first to think about surrogacy, albeit in a very different and grossly unethical way. Sarah and Abraham were a married couple, but they could not conceive a child of their own, so Sarah turned to her servant Hagar to convince her to bear Abraham's child. This instance is an excellent example of traditional surrogacy, wherein the surrogate uses her own egg in the child she's carrying for the expecting parents. Although Sarah was not biologically related to the child, she and Abraham both took the child as their own. For years this was the only way surrogacy could function. Traditional surrogacy remained a grossly exploitative procedure until the twentieth century due to the stigmas associated with infertility and "illegitimate" children. The conceiving of the child was by ordinary sexual intercourse, and this led to scandals. The surrogate mother was often driven off into exile or to the extreme, which was suicide because of little or no protection from the vicious society and the stereotypes associated with intercourse outside marriage and adultery.
- **1884:** The first successful artificial insemination of a woman was performed, albeit in an ethically and morally questionable manner. The incident showed the way for future artificial insemination procedures used in the surrogacy process.
- **1975:** The first ethically done IVF embryo transfer was completely successful.
- **1976:** Lawyer Noel Keane fixed the first completely legal surrogacy agreement. The agreement was a traditional surrogacy deal, and the surrogate did not receive any compensation for the pregnancy. Keane used this agreement to start the Infertility Center, which would be the future of surrogacy in the US and help several infertile couples get babies.

- **1978:** The first baby made through IVF transfer was born.
- **1980:** The first paid surrogacy agreement of \$10,000 was brokered between a traditional surrogate and the paying parents.
- **1984–1986:** An infamous case in surrogacy history was the case of Baby M, involving her traditional surrogate mother. The mother was paid for the procedure, and the intended parents paid for her medical costs in advance. The surrogate's eggs were used in the artificial insemination process, turning her into the child's biological mother. When the child was born, instead of handing her over to the intended parents, the surrogate mother decided to keep her and filed for parental rights. The custody case dragged on in court, and finally, the hearing ruled in favour of the intended parents with them receiving full custody and the surrogate mother getting visitation rights. This incident forced many surrogates to opt for gestational surrogacy, which refers to carrying a fertilised egg in the womb for the gestation period without any artificial insemination or use of one's own eggs, to avoid legal hassles.
- **1985:** The first successful gestational surrogacy was done, putting forward the way for future gestational surrogacies to be the new normal. In the next 30 years, states would continue to place restrictions on traditional surrogacies and surrogacy in all. Lawyers and legislators tried to get bills passed to prevent legal hassles, given parentage rights to intended parents, and gather resources to not turn surrogacy illegal.
- **2004–2008:** Surrogacy took a new high, with 5000 children being born through it approximately in the US.

From the Western historical background, three things can be concluded-

1. Traditional surrogacy was considered a taboo, thus leading to the shunning of the surrogate mother, thereby grossly exploiting her and ultimately not providing any compensation for her efforts, in fact treating a woman as a reproductive tool.
2. The surrogate mother's reproductive ability is loaned, and compensation is sometimes made for it, but her physical and psychological complications like postpartum depression are brushed under the carpet and completely ignored.
3. The rights of the intended parents are safeguarded well by the state, but the same cannot be said about the surrogate mothers' rights.

1.2. The Indian context

The stirrings of Indian surrogacy have their origins in the city of Kolkata, via scientific procedures. The idea became a successful project to be fulfilled in India with the birth of the world's second and India's first IVF baby Kanupriya or Durga, born in Kolkata on the 3rd of October, 1978. From then, the field of assisted reproductive technology called ART, in short, has shown increasing developments.

To date, only gestational surrogacy has been practised that is also in the early stages. Also, the laws related to surrogacy are still very archaic. The agreement making force between the surrogate and the intended parents is just the ART guidelines without any structured or codified laws. They are yet to be put forward and implemented. With the recent rise in the number of intended parents opting for surrogacy in India, the nation has become a major hotspot.

However, here the exploitation is based not just on rights but also on monetary fraud, trafficking, shoddy treatment of the mother, cruelty, and even killings.

1.3. The perspective of global surrogate mothers:

For the gestational mother, the biological relationship with the newborn gets sidelined by the economic angle. Since she does not have any legal and economic rights over the child due to the agreement, she often detaches herself emotionally from the process. However, the detachment might not be as smooth as described, especially if it's genetic surrogacy. In the 1980 paid surrogacy case mentioned above, the childbearing mother later wrote a book called *Birth Mother* that talked about her emotions pre and post giving birth, and how she had been unprepared to deal with the complications, both physical and psychological, that would arise out of her time as a surrogate mother. Her book talks about her regret over ever agreeing to be one.

II. The need for a change in policy

The stories are horrific and high in number. Parry says that this infamous media attention internationally drove the Indian government to think about the ban on commercial surrogacy.

The ban is going to be used to put a stop on these inhumane practices, to take the women out of their controlling and exploitative relationships with the surrogate clinics, and take care of the health and dignity of surrogate mothers. While India's minister of health says the ban may also encourage more adoption, which is critically low in India, Parry disagrees: "The compulsion to have a biologically related child will not go away."

Many experts are putting forward warnings that making commercial surrogacy illegal would be a dangerous idea. "I don't want surrogacy banned," says Dey. "It has to be regulated." The reason behind this claim is that there is plenty of evidence to show that when practices

with high market demand, like sex work or abusive drugs, are made illegal, they tend to run from the underground. It will lead to areas of operation that will be outside regulations, and hence, there will be further exploitation and in worse ways.

In such conditions, surrogate mothers would be at a higher level of life risk with no reach to proper medical care. They will be unable to provide the legality of the surrogate contracts, which would inevitably result in limited legal justice in cases of abuse in an illegal system.

III. Female workers and feminism

With the advent of the 1920s, women entered the arena of feminism in India, leading to the formation of several women's organisations that worked with women and dealt with the problems they faced under India's guise of nationalism and class dynamics. The INC got under its wings national associations like the All India Women's Conference. Later, in the early 1970s, the anti price rise movement under a militant Marxist Leninist lens struck a chord in the hearts and minds of the working and middle-class population of women in India. Feminism led several of these women to defy their 'natural' roles as daughter, wife, and mother by railing against traditional practices, questioning arranged marriages, and the sexual division of labour within the family. However, these protests based on gender reformative politics were limited to upper-class women and educated women. For the uneducated or semi-educated working-class women (like the surrogate mothers we are concerned with), the mobilisation of these women as protestors was only in the capacity of wives and mothers and not as citizens of a country going against an unjust law. The leaders of the workers' movements rejected what they thought of as separatist feminist politics. It is explicitly stated here-

“We have to struggle by the side of the exploited people with our menfolk to build common actions that could change society into an egalitarian one. No doubt, women's organisations...Will stress on the problem from the women's angle...But the efforts should be to support all general issues that advance the welfare of the nation and therefore, of half the population- the women”(Gandhi 115)

The *leaders did not give the latni* movement that started as a demonstration of the power of homemakers and maids much importance over other political issues. Therefore, at the time of a national crisis, it was withdrawn to fight other battles. The Indian woman's case was sidelined entirely because of the other issues that plagued the country over its long history. This has led to women not being able to get their rights and their identity resolved in a country that has kept on treating them as second class citizens. Women workers and the issues around women's rights were perceived as less important than the prevailing wages and working conditions. The trade unions consistently thought that emphasising women's issues divided the working class. Moreover, since women workers were far lesser than the male workers, their issues and problems for those of a minority and were not the basis for a class struggle that would fight against structural inequality in the country. This practice led to discrimination against women in the workplace, including different wages for male and female workers, and the horrid conditions are women in the surrogacy industry. For women involved in both the surrogacy industry as volunteer surrogate mothers for compensation and the worker's fraternity as say, factory workers for the rest of the year, lack of maternity renders them incapable of getting back their job after their work as a surrogate mother is over. This practice leaves them vulnerable because the union always tries to protect male workers as a conscious or an unconscious anti-feminist stance. It is also often the claim that these women have been soiled (tainted morally) and that demon of shame cannot be taken back into the homes after their episode as a surrogate mother is over. This leads to most of these women being abandoned by their families and having to trust mediators, which often leads to their sex trafficking.

Feminist activists also put forward the claim that the ban would be a paternalistic and patriarchal idea put forward by the overwhelming majority of male Indian legislators. It would take away the agency of choice from women, whose employment options are already nil in a developing country with unemployment at all-time highs. “Many women work and expend labour in all sorts of industries that are equally as poorly regulated and work under equally as distressing terms and conditions,” says Parry.

Jobs for women are few and far between and usually in sweatshops, for recovering toxic waste and domestic services — industries that are also, in fact, unregulated and exploitative, but in which women are paid even less. So some women move to surrogacy as a better source of income to finance themselves and their families, usually with abusive husbands pulling the reins. The money they receive can be their only means to save themselves during periods of economic tension, such as the husband's death or when trying to leave behind an abusive relationship.

When the ban was first put forward in 2016, many women tried to become surrogates before they could not do so legally. Parry says many women are already acting as surrogates protested against the ban, claiming that it would be a legal violation of their agency and their right to choose their employment forms.

In the stead of commercial surrogacy, altruistic surrogacy is being put out there with a strict set of rules. Only heterosexual Indian couples with proven infertility within a particular age range, who have been married for at least five years and have no children, are eligible. This criterion does not allow foreign, homosexual, unmarried couples, and single contenders to use surrogacy services.

Meanwhile, an altruistic surrogate has to be within 25 to 35 years old, a close relative of the intending parents, be married, have a child of her own, and obtain a medical and psychological fitness certificate. She can be a surrogate only once in her life. She cannot get paid for anything other than the medical expenses. It takes away all of the employment opportunities that surrogacy could provide to poor women who wanted financial independence.

IV. The global connection

Then does the altruistic system work? Surrogacy consultant Rhoads-Heinrich calmly points out that she finds altruistic surrogacy “exploitative.”

Rhoads-Heinrich says Canada provides valuable lessons for India on the ban and the next step that is intended. If out of every 100 women who apply for this procedure, 50 are cleared for the practice, almost 40 drops out after learning about what is involved. That leaves just 5 to 10 women who are willing to go forward.

However, many couples experience infertility, and many are looking to have their own biological children. Infertility has been rising for the last 30 years, mainly due to women deciding to have children later on in life. “A lot of these intended parents are suffering because they can’t find surrogates,” says Rhoads-Heinrich.

With the ban proposed in India, foreign citizens will now travel to other cheap commercial surrogacy hotspots that are now immensely popular such as Cambodia, Kenya, Ukraine, and Mexico. The illegal trade can efficiently be conducted between countries, putting forward the question as to how effective any ban will even be.

The rise in surrogacy has been put in place by an increasing curve in global 'health tourism,' where people travel to countries where specific health procedures and practices are unregulated and cheap but legal. The ease of travel and communication across countries because of globalisation makes 'health tourism' a more viable option than ever before. Another reason is that adoptions are lengthy procedures with legal hassles.

The lack of altruistic surrogates shows that it asks a significant sacrifice on these women and is a financially dangerous move. "There's just so many restrictions on their life, and they aren't being paid for it," Rhoads-Heinrich says. For this, many could even go into debt or lose their jobs, unable to carry on strenuous physical labour.

A similar situation could take place in India under an altruistic surrogacy system. "I think that it is likely that people will be pressured by their family members to perform a mentally, cognitively, and physically demanding labour. Moreover, for no compensation whatsoever," says Parry.

Parry shares the idea that regulations would work for India. "I think it's a practice that should be centrally organised." She proposes a limited number of state-run clinics or highly regulated and duly inspected private clinics.

V. 1. Indian case studies

Riddled with gender, class, caste, and many other issues, Indian case studies in surrogacy are a world apart. With surrogate mothers' identities not being told to covert organisations working under the wraps to get high caste women to deliver babies for high caste intended parents who pay more to discriminate, the surrogate mother is the one that suffers. Simultaneously, the necessary compensation does not reach her, leaving her exploited and out of a job, as maternity leave is not considered essential in low-wage unskilled payment avenues.

Amrita Pande conducted a field survey between 2006 to 2008 in the state of Gujarat in the western part of India. She interviewed 42 surrogate mothers and their husbands or intimate partners, eight intended parents, two doctors, and two surrogacy intermediaries. She also carried out observations over nine months. Most of the intended parents who had hired these 42 surrogates were foreigners (27) having no connection whatsoever to India. Sheela Saravanan's survey dealt with two clinics, in Anand, and Ahmedabad in Gujarat in 2009. It gathers its observations from the staff ideas and personal perceptions of 13 surrogates, six husbands, five intended parents, and five doctors. From March 2011 to January 2012, Sharmila Rudrappa took interviews of 70 surrogates and 31 egg donors in the southern city of Bangalore and intended parents from the United States of America and Australia.

“For a complete picture of this area of research, we must also take account of other studies by women's organisations. The Centre of social research (CSR) conducted a study with 100 surrogates and 50 intended parents and their families in three cities in Gujarat: Anand, Surat, and Jamnagar. Sama, an Indian women's health organisation, led an investigation at two sites (Delhi, where there is profusion of ART clinics; and Punjab, for its links with the diaspora) between December 2011 and April 2012, interviewing 12 surrogates. Sama also made a documentary in Mumbai, entitled "Can we see the baby bump please ?", presenting interviews with physicians, lawyers, and surrogates”(Sharma, 2013).

2. Perspective of the Indian Surrogate Mother:

The reports give us ideas on how the world of surrogacy works in India from the surrogate women's perspective, the intended parents, and the brokers. It boils down to two simple questions-

1. How much autonomy do these women have over their bodies before they sign up for surrogacy?
2. How much free will these women have after pregnant with the baby for the intended parents?

These two questions lead to the third one: How much does the free will of a woman depend upon the money that she is bringing into the family?

In India, surrogates are usually called to organisations by their friends and family members who have been surrogates previously. These women are termed as desperate and in dire need of financial assistance, even though in the majority of the country, men are considered to be the breadwinners. However, with the capitalist society and inflation on the rise, men find it extremely difficult to maintain a family on their own, thus leaving women to get to means to earn enough money to keep the family afloat or buy a house. Surrogacy also sweetens the deal because it reinforces patriarchal ideals on the female body and the notion of how women are born to be mothers and that it is not a choice but a compulsion. It also reinforces the notion that women are becoming financially independent. The case in India is not so. The money that surrogate mothers earn is generally taken by the man in the family or by the elders immediately after it is handed to the woman. This money is used for the improvement of the household, or to buy a new house, to invest in the family business run by the men, or for the education of the children of the home or kept for the daughters' marriage. The money never reaches the woman and is never used for her wellbeing. Some women go for surrogacy even though they have a stable job because the working conditions of surrogacy agencies are much better than factories where they get sexually harassed and are paid meagre wages. There have been two contending views regarding surrogacy in third world countries. The first view subscribes to surrogacy as being the exploitation of women akin to slavery in which women are used as bread ovens, or incubators ask things to give babies to people who can pay for them. It also intends to show that the body has become a commodity in capitalist societies under globalisation and the free world economy. The second view talks about how surrogacy gives women a choice to earn money and take possession of their bodies to assert that their body is their own. What is important is that both views are not wrong. However, in third world countries, exploitation leading to surrogate mothers being trafficked into prostitution circles has emerged, placing doubt on the second view.

Amrita Pande talks about four strategies that are tantamount to protecting surrogate women:

1. There have to be moral boundaries between surrogacy and sex work and child abandonment and handing over the baby to the intended parents.
2. The choice to become a surrogate rests on the woman and that it is a financial boost to the same women who are doing a favour to a childless couple.
3. There must be good communication between the surrogate mother and the intended parents, with a special bond showing how this practice is not just commercial.
4. The surrogate is not just an incubator but also the child's mother, who is giving away as a favour to the betrothed couple.

V.2. Statistical Data

Case study: Surrogacy agencies operating in Gujarat and Mumbai in India.

How factors lead to women becoming surrogate mothers:

1. Illiteracy: 51.7% (Anand)
2. Poverty: 86.7% (Anand)
3. Unemployment: 91.4% (Surat)
4. Unaware of contract details: 76% (Mumbai)

VI. Conclusion:

Is it work? Is it charity?" asks Amit Karkhanis, a top-notch surrogacy lawyer whose clients are Mumbai's largest surrogacy providers. He offers his own opinion after that. "Surrogacy is a type of employment, plain and simple. Foreigners are not coming here for their love of India. They are coming here to save money."

Now, with most women having to undergo a C section even though it is riskier for both the mother and the child, it guarantees that the child will be delivered. In this scenario, the mother does not receive proper care after the Csection, which also ultimately leads sometimes to infections and even death. Several top newspapers all over India have recorded cases of women who are surrogate mothers dying due to the usage of dirty needles and no care post the delivery, often leading to septicemia.

Even though the Indian government has banned commercial surrogacy and medical tourism, letting foreigners bring surrogates in India under the pretence of employment, it has led to several illegal operatives running rampant all over the country who deal with surrogacy and human trafficking, without any regulations. The statistics show that the police have put the finger on a colossal number of surrogacy rackets running rampant all over Gujarat, Delhi, and Mumbai.

The commercialisation of women's bodies under capitalism in the market has led to a paternalistic view of women being carried forward in third world countries with women being forcibly turned away from their families and forced to have more and more babies for the intended parents, without proper care and attention.

The 2016 bill discussed how completely restricting commercial surrogacy based on altruistic surrogacy will take away autonomy, and why minimum compensation was necessary, and the ban would not work. Banning commercial surrogacy would also lead to illegal operations and unregulated surrogacy agencies that would prove fatal for surrogate mothers.

"The Surrogacy (Regulation) Bill, 2019 is a regressive piece of legislation that includes alarmingly intrusive provisions reminiscent of Margaret Atwood's "The Handmaid's Tale." If enacted as the law of the land, it could be the first step toward a Gileadean dystopian future devoid of fundamental civil rights and freedoms. The Rajya Sabha should vote it down, though it's unlikely that they will. If they don't, we can only hope that the law will be put before the judiciary and declared unconstitutional." (Kumar)

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