

A NOTE ON SURROGATE MOTHERHOOD

The last two decades have witnessed a rapid development of technologies that assist reproduction, increasing the chances of conception and of carrying out a pregnancy to term. They encompass various procedures from intra-uterine insemination to variants of in vitro fertilization. Surrogacy is one method used in such Assisted Reproductive technologies. A surrogate mother is a woman who agrees to have an embryo generated from the sperm of a man who is not her husband/sexual partner and the oocyte of another woman implanted in her womb to carry the pregnancy to its full term and deliver the child to the biological parents.

The development of Assisted Reproductive Technologies has taken place largely within the private sector and there is no law regulating them. The existing ICMR guidelines have been found by large sections of health activists and women's organizations working in the field to be grossly inadequate so far as the rights of the woman undergoing such treatment, particularly a surrogate mother, are concerned. Commercialization of the reproductive capabilities of a woman has started on a large scale in a country like India where poverty is still rampant and where a woman is still subject to patriarchal pressures from society and from her family. There are laws to prevent sale of human organs and the sale of blood, but none to regulate 'renting a womb'. Very recently ICMR has prepared a bill on the use of such technologies and handed it over to the Government of India. It is also available on their website. But after going through the bill it becomes very clear it is more concerned with the legal protection of the medical practitioners and technologists involved in such procedures than in protecting the woman going through such procedures.

This is particularly applicable in the case of surrogacy on the commercial use of which there are certain restrictions in some European countries, in the U.S.A. and in Canada. What is more is that the treatment is available at a much cheaper rate in India. In the post-globalization era, the known technological skill of Indian doctors and the lower costs at which medical services are available here has made India a favourite destination of 'medical tourism' and according to some sources, surrogacy is already a 445 million dollar business in this country. It is mostly women from an economically depressed background in dire need of money who are used as surrogate mothers and these are the ones for whose protection regulation of surrogacy is needed. Therefore it is essential that there should be nationwide informed debate on the bill before it is tabled in Parliament.

There are crucial ethical, medical and legal concerns which need to be sorted out in addressing this issue. This is all the more important because there are differences within the women's movement in our country on the issue of surrogacy. Apart from the argument that the progress of technology cannot be and should not be prevented, there is also the feeling in some quarters that the entry of the woman in the 'market' of baby production is a question of her own choice and involves the exercise of her right over her own body. The use of technological progress which enables childless couple to have children who are genetically theirs is undeniable, although it is likely that the already-declining incidence of adoptions will go down further in our country as a result of this.

But as in the case of pre-conception and pre-natal diagnostic techniques, we know that basically beneficial medical technologies can be grossly abused purely for purposes of monetary profits. Therefore we have to look into the larger social implications of the commercialization of ART technologies in a market where the buyers and intermediaries constitute a powerful lobby while the sellers of services are patently disempowered. This also puts a question mark on the easy assumption that the surrogate mother is 'freely' exercising her right over her own reproductive capacity in order to earn/supplement her livelihood. The economic and familial pressures operating silently behind such 'free' choice cannot be ignored. If livelihood choices were available to her would she still go in for it? This is the big question. Further, we can hardly talk of freedom of choice unless we are quite sure that the subject was fully informed of the hazards that the application of such technologies on her body might then or subsequently entail. In how many cases of surrogacy can we be sure of this? Since the ICMR bill takes no stand regarding the basic question of commercialization of surrogacy it is all the more important that we should discuss whether such commercialization is acceptable in our country in the first place.

The other question which the ICMR bill largely fails to address is the medical one. The surrogate mother has to go through intensive hormonal treatment which might lead to multiple pregnancy. The foetus might also inherit genetic defects which might necessitate termination of the pregnancy or lead to the birth of a child with disabilities. Apart from the legal question of whether the genetic parents would still be obliged to accept the child, there is also the question of the medical risk that a surrogate mother would have to undergo in case of an induced or spontaneous abortion. In such case, she would have to go through the pregnancy all over again to get her payment. The ICMR bill proposes tests for the surrogate mother, but none for the sperm donor; the bill also has an ambivalent stand in relation to the maximum and the minimum age prescribed for a surrogate mother. Again, it prescribes a maximum of 3 live births by surrogacy, but does not specify how many genetic children the surrogate mother may already have had. Thus it not only flouts the much-bruited two-child norm in the case of a surrogate mother, but seems to altogether exclude a surrogate mother from the national policy of safe motherhood. Further, future medical risks that the surrogate mother may incur as a result of the intensive hormonal treatment that she has to go through are not given any consideration. Then, although the bill prohibits sale of human embryos, it hardly has any clauses to ensure that commercial transactions in embryonic stem cells produced in the case of unsuccessful surrogate pregnancy is effectively prevented. The bill also has no provisions to ensure prevention of sex selection.

Apart from this, the question of the legal rights of the surrogate mother and of the child/children born of surrogate motherhood has also to be pondered upon. For instance, in the birth registration, only the names of the genetic parents are to be included thus erasing all rights of the surrogate mother. Another question, raised by a recent case, is that of the genetic parents refusing to accept the baby once it is born, in which case, the basic human rights of the child are not protected. We call upon all concerned people to seek information on and to raise their voices on these and related issues which are fast assuming serious proportions for women in our country.

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