

Surrogates are workers, not wombs

By Amrita Pande

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“Surrogates should be facilitating dialogues, not just being discussed by an anxious patriarchal state.” Surrogate mothers at a peaceful protest against the ban on commercial surrogacy, in Anand, Gujarat.

Banning commercial surrogacy does not fit with the logic applied to other kinds of informal labour markets, where concerns about exploitation push us to demand protection for workers. On August 24, 2016, the Union Cabinet approved the Surrogacy (Regulation) Bill, 2016, banning commercial surrogacy in India. In essence, the Bill limits the practice of surrogacy to heterosexual Indian couples who have been married for five years, have no children, and are able to persuade a relative to become a surrogate altruistically for them.

Let me start by giving credit where it is due: there are glimpses of sanity in this Bill, especially the plan to have a national regulator to oversee clinics that offer surrogate services, and provisions for providing legal aid to surrogate mothers. But before we start celebrating its alleged ability to protect the “rights of women”, let’s delve a bit deeper into not just its assumptions about surrogacy but also the underlying conviction about women, reproduction, and parenting.

Changing frames

Commercial surrogacy is not new and has been inducing anxiety for decades now. The commodification aspect repulses some, while others are troubled by its potential to be utterly exploitative of women. In recent years this anxiety reached panic levels after the technology and the related industry spread to the so-called developing world and the wombs started belonging to women in India, Thailand, Nepal, Cambodia and Mexico. A predictable policy

solution is to thus prohibit it. My decade-long research on this industry, however, suggests that there is an urgent need to revisit the frames for understanding the practice, so as to avoid misplaced policy outcomes. Instead of the immorality or commodification frame that views surrogacy as an unnatural vice and the surrogate mothers as ultimate victims, the current empirical reality demands an updated analytical frame. Once the industry is systematically studied, we realise that surrogacy in a country like India has characteristics not unlike other gendered and informal labour markets in India.

Unarguably, the limited range of women's alternative economic opportunities makes us question the voluntary nature of this labour. But unless we want to argue that the existence of inequality makes all economic choices moot, denying Indian women this particular choice seems misplaced. It also does not fit with the logic applied to other kinds of labour markets, where our concerns about inequality and exploitation push us to demand changes and protections for workers, not a ban on the activity involved. Instead of dismissing this industry as inherently oppressive and the women involved as mere subjects of this oppressive structure, it makes sense to recognise that while some are coerced into surrogacy by their families and brokers, others weigh out their options and negotiate with their families in order to participate in this industry. Only once we comprehensively and sensitively evaluate these multiple realities can we effectively move towards a discussion of appropriate policies. Most critically, for any policy to actually address the exploitative conditions, what is critical is for us to view the surrogates as workers, and not as wombs, national resources or voiceless victims, so that they are the ones facilitating and participating in dialogues, and not just being discussed or being saved by an anxious patriarchal state.

Whatever be our stance on surrogacy, I have previously cautioned against an outright ban on surrogacy as it would be to push this industry underground, or shift it to another country, increasing the vulnerability of women even more. We need not go that far for proof but just peer over the Indian borders into Nepal. In 2013, the previous government's stipulations banning "gay surrogacy" pushed all such cases to Nepal. The earthquake in Nepal brought media attention to the "scandal" of gay Israeli men allegedly abandoning the Indian surrogates and evacuating only their children. What was not discussed was how the ban on gay surrogacy had pushed the Indian surrogates to shift to Kathmandu.

Notion of parenting

The government, however, remains in the naïve belief that all dilemmas will be resolved and the vulnerable will get back their rights as soon as we keep the unmarried, gays, and foreigners out of the industry, and, of course, do away with payment. By defining as legitimate the needs and rights of only heterosexual married couples, this Bill is a clear indication of the current government's understanding of families and parenting. External Affairs Minister Sushma Swaraj also said that in the absence of close relatives, couple are "free to adopt". Why this selective imposition of the morality of adoption on only those who do not fit the heteronormative ethics of the state?

Finally, as per the Bill, commissioning parents will only be allowed to meet medical expenses of their "altruistic" surrogate mothers; no other payments can be made. Take a pause here to examine the altruistic ethic and what it means for women in the sphere of reproduction. Endorsing altruistic surrogacy over its commercial avatar is a formal declaration that women are obliged to be (reproductive) gift-givers, and need no compensation for loss of livelihood and the immense emotional and bodily labour of

gestation involved in surrogacy. And what if a close female relative, a sister or a sister-in-law does not want to be selfless? Will there be no shaming or penalty for that? Can we really convince ourselves that the coercion of a contract or the inducement of money is greater than the coercion of (patriarchal) family ties, especially in a country like ours?

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