Surrogacy, Motherhood and ARTs— Some Fundamental Issues

The phenomenon of surrogate motherhood in India has acquired disturbing dimensions and has caused concern and disillusionment in the medical fraternity and also among the general public. It has also been fighting to safeguard women’s health as part of women’s rights to an equitable life.

Today, the practice of surrogacy being pushed out for a profit has become a thriving and transformed everything, including body parts into marketable commodities.

At a time when multinationals corporations find it profitable to outsource their production to developing countries, and as some industrial nations place a profit motive over their women and their health, the more selective markets like countries like ours. Reproductive body parts such as sperms, eggs, embryos, etc. are being turned into commodities that are being donated and traded in a totally unregulated manner. The consequences are growing poverty and distress, where large sections of women have no means or options of livelihood except being pushed into selling or renting out their body parts.

The first and most serious concern that women’s organizations have is with regard to the growing commercialization of ARTs and the lack of regulation or monitoring by the medical profession and the Government to ensure the interests of women. In fact government policy and the private medical sector is promoting medical tourism which in turn has led to a huge expansion of, and a thriving business in ‘fertility tourism’ of which ARTs are a component. The extent to which this business is thriving can be fathomed from the fact that ICIRM estimates that reproductive tourism could earn 6 billion dollars in a few years.

The market for surrogacy in India is no longer a hidden or disguised one. Clinics have been advertising their services openly. Though the sale of kidneys as a source of income has already come under the spotlight, the ‘rent a womb’ enterprise has not been subject to the same degree of scrutiny and debate. Doctors/dentists in Gujarat have openly celebrated the income earning opportunities for surrogate mothers.
The message being sent seems to be that such avenues for income generation come as golden opportunities, especially for the poorer and marginalized sections of women. This leaves women open to a much greater degree of exploitation, both economically, and socially, especially if the private sector is allowed to remain in complete charge with no regulatory mechanisms. The appalling mindset that since the women are making gains, the terms on which transactions are taking place do not matter drives underground some of the major problems that should have been addressed by policy making bodies.

Many countries have developed legislation and guidelines to check unethical commercial practices and unsafe techniques. However, the ICMR guidelines of 1992, Ethical Guidelines for Biomedical Research on Human Subjects, barely address all the relevant issues. Some attempts have been made to look at the issue of monitoring and supervision, but these are not without limitations.

Some of the issues that need to be considered to develop comprehensive guidelines are:

- **Health and Safety of Women providing surrogate services**: The health and safety of women in our country is already highly compromised. The health issues in the phenomenon has been largely ignored. It is not very clear who is supposed to contribute to women’s health and monitor it during the process.

- **Opting for surrogacy**: Various factors are supposed to be taken under consideration. What should be the role of a responsible professional doctor? Have attempts been made to understand the women and men involved in this phenomenon? Are there any safeguards put in place for women’s bodies in order to achieve a high ‘success rate’ with regard to surrogacy and ART?

- **Sex selection**: Technological advances in pre-conception sex selection procedures and the possibility of choosing the sex while opting for IVF increases the chances of further gender imbalance in a society with an already skewed sex ratio. What safeguards have been put in place on this count?

- **Legal Issues**: Apart from health issues there are a number of legal issues involved. What are the rights of (a) patients in these processes and procedures, (b) rights of genetic/adoptive parents, and (c) the children involved?

- **Ethical Issues**: Further, the emotional trauma that the mother may undergo has come in for very little attention. Child bearing is not a ‘job’; where, once the child is born the mother can be left alone. The emotional trauma that a mother goes through during the course of IVF cannot be quantified. In some countries like UK, there have been instances where giving away the child proved so difficult that custodial battles were generated. These aspects have hardly figured in discussions on the official plane.
There is a need for a much more widespread and in-depth discussion around the multidimensional factors that would impact on surrogate mothers. Unfortunately, government has so far displayed a tendency to look the other way and allow venture and profit-driven agencies to enter the regulated area. For discussions will not only serve the purpose of ensuring that the Government responds to this issue with the seriousness and understanding it deserves to keep the business interests in check.

We, from women’s organizations, and the AIDWA in particular, demand that:

- There should be a regulation of surrogacy, ARTs and those involved in the provision of these services;
- Data and information on the state of the industry and services provided including regulation of surrogates be made available;
- The Draft Bill of Parliament, that is an urgent need, which should be formulated on the basis of discussions with the women’s organizations and groups that have been working on these issues for a long time.

( The preliminary draft of this note was submitted to the Ministry of DWCD at the consultation organized on 25.7.08.)

Sd/-
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