

Transnational Surrogacy: Issues, Strategies and Laws in Meera Syal's *The House of Hidden Mothers*

Dr. Kumari Priti *



Abstract

While discussing the dominion of surrogacy, one could highlight upon the number of issues concerning the body and its agency, how do we understand the role of a 'surrogate' keeping the institution of law in mind, how do we comprehend surrogacy from the perspective of the child. Indian surrogacy has been a popular option for International intended parents for a long time. However, things have changed now. At present, there are a number of laws in place which attempt to put a stop to commercial surrogacy because of its complex and complicated nature. The term 'commercial surrogacy' refers to the phenomenon of surrogacy in which the surrogate mother is compensated beyond reimbursement of medical expenses. The alternative to commercial surrogacy is 'altruistic surrogacy' which refers to the agreement in which the surrogate does not receive any money beyond the compensation of medical expenses. Thus the present paper aims at contextualizing the contours of gender studies with reference to surrogacy.

Keywords: *Surrogacy, Motherhood, Commercial, Altruistic, Transnational.*

The research paper aims at discussing the discourse of surrogacy with reference to Meera Syal's *The House of Hidden Mothers* (2015) which deals with transnational surrogacy. The paper looks at 'surrogacy and law' keeping primarily India in mind and its role in transnational

surrogacy. Furthermore, some of the key theoretical tropes of gender studies will be argued upon to understand the question of agency concerning women and their body.

There is a need of addressing the conceptual framework of surrogacy and its wider implications. The word ‘surrogacy’ as a grammatical category noun may be defined as the practice of giving birth to a baby for another woman who is unable to have baby herself (from Oxford Advanced American Dictionary). Surrogacy may be broadly categorized into two types: traditional surrogacy and gestational surrogacy. How do we define traditional surrogacy? In ‘Traditional Surrogacy’, a surrogate gets impregnated through artificial insemination with the help of intended father sperm or a donor and her own egg. In that way, she becomes the biological mother of the child. Traditional surrogacy is also known as “partial surrogacy” or “genetic surrogacy” because of the biological link of the surrogate with child. Whereas Gestational surrogacy may be defined as the process where a woman agrees to become a surrogate for intended parents for monetary gain more than medical expenses with the help of egg and sperm of intended parents or donors. The embryo is created with the process of in vitro fertilization and then egg is transplanted into the surrogate. In it the surrogate does not have any biological claim to the child. This type of surrogacy is called ‘host surrogacy’ or ‘complete surrogacy. In most cases of gestational surrogacy, one intended parent is genetically related to the child. The surrogate is known as gestational carrier.

Gestational surrogacy can be conceptualized as an agreement where a woman’s conception capacity is cashed out. Surrogacy which other name is ‘third party reproduction’ because of the use of the donated gametes explicitly indicates that in order to complete the process a woman is needed by the intended parents / s who is biologically contributing by bearing the embryo without becoming a social parent. Third party reproduction incorporates sperm donation / egg donation and surrogate motherhood. The scenario is different in different contexts. In the case of donated sperm, it is detached from the male body. If egg is donated by a woman, her egg is accessed with laparoscopy under anesthesia. The synonym of surrogacy is “rented womb” in disparaging sense but womb is not operational outside of a woman’s body so a whole woman is needed to complete the procedure of pregnancy through surrogacy which is complicated, risky, painful and sometimes marked by unprecedented outcome in the form of the birth of mentally challenged baby.

“Surrogate motherhood” or “surrogacy”, “gestation for others” in French, “motherhood by legal substitution” or “by proxy” in Italian, “gestation by legal substitution” in Spanish, “motherhood by interposed person” in Greek, “innkeeper mother” in Hebrew, “borrow- motherhood” in German, “carry motherhood” in Dutch is the different nomenclature adopted by infertile couples or individuals to try to have a child with the aid of a woman. The willingness or compulsion of a woman depends upon the situation out of which she has come forward to rent her womb.

The surrogacy agreement has different ways in different contexts. It is an agreement between different subjects- singles, same-sex couples or

heterosexual couples. The basic premise of the agreement runs with the condition of no connection of surrogate mother with new-born. She has no claim on new- born baby. The intended parents/s become the primary caretaker(s) of the child and through confirmation to certain conditions become its legal parents.

Society may be regarded as one such amphitheater where social meaning of surrogacy gets manifested on account of different laws and different attitudes to it in different countries.

Surrogacy and its History

The practice of surrogacy may be traced back from Biblical times. The term surrogacy was for the first time mentioned in “The Book of Genesis” in the story of Sarah and Abraham. Sarah and Abraham, the married couple could not give birth to their own baby, so Sarah told her servant Hagar to get impregnated through Abraham. This may be termed as traditional surrogacy because here the surrogate uses her own egg in the conception. Sarah was not biologically related to the baby but Sarah and Abraham both claimed the child as their own. Traditional surrogacy for centuries remained a taboo because of the stigmas aligned with infertility and illegitimate children.

In year 1884, the first artificial insemination of a woman was successfully completed but it was disputed on account of ethical ground. In the year 1975, the first embryo transplantation got successful with IVF. In the year 1976, the first legal surrogacy agreement was framed. That was the traditional surrogacy where the surrogate did not receive any compensation in monetary terms. In the year 1978, the first baby through in vitro fertilization was born. In 1980, the first compensated surrogacy agreement came into reality between a surrogate (traditional surrogacy) and the intended parents. The surrogate mother faced the emotional challenges after handing over the baby to the intended parents and consequently regretted her decision of becoming the surrogate and expressed her experiences in the form of a book known as “Birth Mother”. From 1984 to 1986, the most remarkable case in the history of surrogacy is the “Baby M” case. It was the case of traditional surrogacy. In it the surrogate’s egg was used in the artificial insemination and thus she became the biological bother of the child. After the birth of the baby when the surrogate (Mary Beth Whitehead) had to sign over her parental rights, she refused to do so and wanted to take custody of the baby. Consequently, a long custody battle was started in 1986. The court in its ruling restored the surrogate parental rights and custody was given to Bill Stern (intended Parent) while the surrogate has to satisfy with visitation rights. It proved a decisive point in the field of surrogacy and those who wanted to opt it, they preferred gestational surrogacy to avoid legal hitch. In 1985, the first gestational surrogacy was completed without any complexities. From 1985 onwards gestational surrogacy is in fashion and thousands of children are born.

History of Surrogacy in India

The practice of Surrogacy can be traced back in Indian history. On 3rd October 1978, the world’s second and India’s first IVF (in Vitro Fertilization) baby Kanupriya alias Durga was born in Kolkatta. From that time onwards,

commercial surrogacy is promoted and soon India became one of the popular destinations among intended parents for surrogacy because of low cost and unregulated laws. Surrogacy began in a big way in a small town in India when an elderly lady became a surrogate for her daughter and son-in-law. This was the case of Altruistic Surrogacy at Anand, Gujarat, where a lady of Gujarati origin living in UK, experiencing infertility, impregnated her mother using her genetics.

The House of Hidden Mothers:

The fictional background of the novel “The House of Hidden Mothers” by Meera Syal is nothing but the alternative space of motherhood which is rendered by surrogacy. Shyama, the protagonist, who is settled in London is of 48 years and divorced and having a teenager daughter from her first marriage. She has fallen in love with a guy named Toby Shaw who is quite younger (34 years) to her. They have come through a six long years of courtship and living relationship but don’t want to be in nuptial arrangements. But in order to consummate their love, they want to create a child of their own. Keeping this in view, Shyama has undergone four cycles of IVF (ART Techniques) with consecutive failures. The doctor Mr. Lalani aptly remarks: “... very little point in pursuing IVF or any other kind of assisted reproduction. Even seeking donor eggs would not solve the issue of your inhospitable womb and the dangers of attempting to carry a child yourself” (10).

They don’t want to go for alternative choice of adoption. And at last, they opt for surrogacy as their last preference. They prefer New Delhi as the destination where they would like to go through the process of surrogacy. Their preference for India lies in the fact that surrogacy was unregulated in India and that’s why it’s cheap. There were guidelines rather than law so it varies from clinic to clinic.

The doctor, Renu Passi whose clinic they approach clarifies all the legal formalities as well as the complications. Shyama and Toby finally find for themselves a surrogate named Mala who has come forward to go for surrogacy for financial assistance which she will get in return of services rendered by her to the couple. Dr. Renu Passi has her own explanation regarding surrogacy: “this is a life-changing and life-enhancing experience for everyone involved: for the couples who long for a baby, and for the women who carry the child for them. The fees that our surrogate mothers receive enable them to transform their lives to buy their own homes, educate their children ...it gives them financial independence they could not get any other way. As for our couples, who visit us from all over the world, because India is now the world center for ART, they not only get the gift of a longed for child, but they also know that their money is going to help the woman who has given a new life to them” (92).

Basically each surrogate signs away all legal and parental rights after the birth. Even if the child decides at eighteen they want to trace their birth mother, all they will be given is a name. No address, no other contact details’ (p.96).

The doctor Renu Passi reflects at the advancement of reproductive technology. The women were incubating embryos that had been fertilized elsewhere, not even in India. These could be any combination of the man's sperm with his partner's egg, the man's sperm with a donated egg, the woman's egg with donated sperm, or even an embryo created with donated egg and sperm, so that the surrogate and the parents were equally unconnected genetically to the child they all thought of as theirs (121).

Shyama admits it to herself that it is ridiculous to shy away the bare fact that this was fundamentally a business transaction. It was the money which serves as incentive which is in core of any successful trade of supply and demand: India had fertile poor women; Britain and America and most places west of Poland had wealthy infertile women. It had begun with companies moving their call centers towards the rising sun, so what was wrong with outsourcing babies there too, when at the end of the process there was a new human being and a woman with financial independence? It was a win-win situation, wasn't it? (97-98).

Shyama and Mala developed a sense of familiarity which is beyond words. Mala successfully conceived accidentally with her own gamete and Toby's gamete. Now her husband Ram out of his ignorance blames her for being guilty of illicit relationship with Toby which resulted in her transnational mobility to London. She with her consistent efforts gets properly settled over there. Mala had produced her first batches of facial scrub and body lotion for Shyama's Surya Beauty Salon. Shyama quickly had to train up a couple of extra girls to handle the swell of clientele for the new Surya Spa range and suddenly they had a waiting list on a daily basis for Mala's cottage industry (307-312).

Toby and Mala gradually develops emotional space for each other. The sonographer beamed back at Toby. 'It's a boy.' Toby would never admit it, but this was the moment that he fell in love... Neither would he admit that the primal surge he felt flooding his veins had anything to do with the fact that he was going to be the father of a boy-child. But it was there, the thrill pulsing through him every time he said to himself, 'that's my son. My son (315). Mala was chosen for gestational surrogacy so she was only the carrier of the embryo created from the gametes of others not of her so initially she thought that she had no biological connection with the child but the doctor finally confirmed that "Toby and Mala both are the biological parents. One hundred percent" (397).

Mala finally gives birth to a healthy male child and Shyama detached herself from their lives without any complaint. She had realized that "Oh, she could get Toby back, she was sure of that – his own guilt and sense of duty would keep him with her for a while. But no matter where Mala ended up, no matter who claimed the child, they would be indivisible in thought and memory and longing for what might have been. Mala, Toby and their son" (401).

Surrogacy and Indian Surrogacy Law

Surrogacy in India is regulated through the Surrogacy (Regulation) Bill which is strictly against commercial surrogacy. India has banned "commercial surrogacy" through the Bill approved by Parliament keeping in mind the Indian

ethos. The commercial surrogacy had tarnished the image of the country by labeling it as 'rent a womb' haven for childless couples. Indian married couple who is unable to become parents naturally may opt for ethical altruistic surrogacy. 'Altruistic Surrogacy' may be defined as the surrogacy process in which the surrogate does not receive any monetary compensation. In most cases of altruistic surrogacy the surrogate is a close relation to the intended parents. The close relation stands for family members or friends. It was in 2106 in the Lower House of the Parliament, the Surrogacy (Regulation) Bill was introduced and got approved. And in 2019, the Surrogacy (Regulation) Bill was placed in Upper House by Union Health Minister on 15th July 2019 and later on, it was passed in Lower House in the Monsoon Session. It was stated in the Bill that the surrogate mother and the couple who would like to be privileged with parenthood must be close relatives. It is proposed that close relatives will be defined by the proposed bill. It lays out the guidelines for the constitution of State / National Surrogacy Board and appointment of appropriate authorities for the regulation of the practice of surrogacy. The eligibility certificate and a certificate of essentiality from the concerned authority are prerequisite for the surrogate mother and the intending couple. The Indian citizens come within the purview of this bill. Foreigners, NRIs & PoI (Persons of Indian Origin) don't be considered within the jurisdiction of this bill. Homosexuals, single parents and live-in couples are restricted by this bill to become parents with the support of surrogacy. Couples who are blessed with children can't go for surrogacy but through the exercise of adoption rule they may adopt children. The heterosexual Indian couples who are tied to nuptial knot for the last five years and not be blessed with parenthood may seek refuge in surrogacy.

The Surrogacy Bill 2019 defines surrogacy as a medical practice with which help a woman bears a child for an intending couple with the objective of handing over the new born baby to them without any financial gain except the medical expenses and insurance coverage during the pregnancy.

Objective of Surrogacy

Surrogacy is operational/ functional when the intending couple are proved infertile in terms of medicine; altruistic cause; not incorporate monetary gain; children should not be begotten for sale, prostitution or other forms of exploitation; and for any condition or disease which is mentioned in the Bill.

The competent authority will issue a Certificate of Essentiality after the attainment of certain conditions. The District Medical Board will issue a certificate of proven infertility of one or both members of the intending couple, the intending couple have to secure an order from a Magistrate's court regarding parentage and custody of the surrogate child; medical insurance of the surrogate for a period of 16 months which incorporates post-partum delivery complications of the surrogate.

The Indian Council of Medical Research (ICMR) took the initiative in 2005 with the aim of regulating surrogacy by drafting the National Guidelines for Accreditation, Supervision, & Regulation of ART (Assisted Reproductive Technology) clinics in India –the clinics that treat infertility like IVF &

surrogacy. It was consummated in the form of drafting of the ART Bill in 2008, 2010 & 2014 but was never passed by the parliament. The Law Commission of India realized that it's high time to regulate ART clinics and formulating guidelines for the persons and agency directly and indirectly associated with it. It gave its recommendation in favour of 'altruistic surrogacy' and a ban on 'commercial surrogacy'. The characteristic of a surrogate mother is well-defined by the Bill. The Bill states that the surrogate would be a married woman having a child of her own and in the age group of 25-35. She would be allowed to surrogate 'only once'. The termination of such a pregnancy can only be carried out with the written permission of surrogate mother and an authorization by appropriate authority.

The Bill explains that lack of legislation on surrogacy has led to its rampant commercialization, unethical practices, exploitation of surrogate mothers, abandonment of children born out of surrogacy & import of human embryos and gametes. In line with the recommendations of the Law Commission of India, it proposes to address these issues and protect the rights of surrogate mother and child.

Surrogacy and Stand of Country/ies

Commercial surrogacy is legal in some US States and countries like Russia and Ukraine. Countries like UK, Ireland, Belgium, and India supported the altruistic surrogacy but dead against the commercial surrogacy whereas Countries like France, Germany, Italy, Spain, Portugal and Bulgaria, Austria, Denmark, Hungary, Iceland, Italy, Norway, Poland, Spain, Switzerland, Lithuania prohibit all forms of surrogacy. It is observed that countries like the U.S.A., India, Thailand, Ukraine & Russia are popular destination for parents seeking surrogacy. Mexico, Nepal, Poland & Georgia are also comes within the category of countries which provide a platform for surrogacy practices. Nepal banned surrogacy for foreigners after the post-earthquake drama of evicting Israeli babies from disaster zone. A flourishing industry of surrogacy in Thailand came to be known worldwide only after a few controversial surrogacy cases. The ban on South Asian Countries (India, Nepal, and Thailand) for surrogacy practice left Surrogacy Industry with no option but to move to Cambodia but it also banned it in 2016. Australians were the largest in number who sought surrogacy service in Cambodia. Surrogates were transported in a large number from India to Nepal, and from Thailand to Cambodia as a consequence of shifting of the surrogacy market.

Thailand and U.K. render legal status to surrogates whereas Indian law offers legal authenticity to the intended parents. This framework reflects that a surrogate baby, who is born in India for the intended parents from different nationalities than India, is born without any nationality and has to go through the process of acquiring citizenship. Parents' legal status in their own country also plays a crucial role for surrogate baby. If the parents get divorced, the custody dispute is proved more problematic on account of privileged position of the father who will claim for parental rights. It is he who has contributed his sperm and the egg is borrowed from the third party donor so the mother has no legal claim for the child and may not be regarded as the parent of the child.

International Agency advocated for the implementation of strict regulations for the maintenance of ART clinics, rational compensation for surrogate mothers, a standard framework for healthcare and adherence to it and first and foremost priority should be given to the woman's consent who has come forward to go through surrogacy. It is a matter of serious concern that if a surrogate child is born with congenital defect, the child is forsaken by the intended parents.

Causes and Consequences of Surrogacy

The prominent causes of surrogacy are the absence of the uterus, repetitive pregnancy loss, successive IVF failure, poor obstetric history, contraindication of pregnancy; excessive maternal risk etc. Surrogacy aims at fair chances of pregnancy and live birth rate in comparison to other ART Cycles without surrogacy. The best results are observed in surrogate mother due to uterine factor infertility. Most of the studies reported better prenatal outcomes in surrogacy including hypertension, pre-eclampsia, gestational diabetes, placenta praevia, preterm labour and lower birth weight in IVF cycles of their own uterus. The surrogacy needs IVF facilities without considering infertility etiology, so gestational carriers undergo through embryo transfer, pregnancy, successful ongoing pregnancy and delivery. That's why precise medical, psychological and social assessments are necessary to succeed in gestation and delivery. Health status of carriers (surrogates) during gestation could affect future health and well-being of the child. The history profile of surrogate should contain at least one uncomplicated pregnancy, although not more than five deliveries or three caesarean sections.

There have been reported several cases of death of surrogates as well as egg donors, rampant trafficking of adolescent girls, exploitation of single mothers, abandonment of disabled children that came to limelight through media and research.

Need of Surrogacy (Regulation) Bill

India has become the most booming surrogacy market on the global scale because of liberal surrogacy laws, high quality medical facilities, qualified and competent medical practitioners with advanced technology regulated ART clinics and an overabundance of women who willingly give their consent to rent their womb for financial advantage. The class who directly gets advantage of the surrogacy market is medical practitioners, agents, hotels, and community services providers, landowners who rent their house for accommodation, food suppliers for surrogates and many other small entrepreneurs. But the owners of the ART clinics have always an upper hand among these. They have turned into hard core professionals who with various strategies try to woo maximum number of intended parents who are prospective customers for them. There is steep competition among ART clinics which try to render precise services preferred by the intended parents. There are choices available to intended parents so far as preference of donors is concerned in terms of their look, height, educational qualification, but the most often weightage is given to race and ethnicity. Surrogacy is mainly money-making business for the medical sector

and the agents, who exploit not only surrogate mothers but also the intended parents. Surrogacy is a bazaar where everything about women's reproductive capacity and the children born is priced.

Surrogate mother no doubt knows that the baby who she bears does not belong to her but it is unfair to say that she does not develop an emotional bond with the baby during her pregnancy and after delivery. As per the contract, surrogate mothers have to stay in the accommodation provided by ART clinics from the moment embryo gets transferred until the surrogate baby is surrendered to the intended parents which covers the span of almost a year.

ART clinics in India are successfully catering the needs and requirements of both the Western (whites and NRIs) and the elite class within the country who preferred this readymade service. In Indian society, where most women are still illiterate and relegated to man in patriarchal setup find no other option of employment are bound to use their body as a source of livelihood and rent their womb in return of monetary gain. There is the commodification of children as well. They were paid per child. One child has a standard price and in case of twins/ triplets each child was charged double by the clinic. But the scenario is not so fair. In the incident of miscarriage surrogates do not get any financial compensation. The birth of disabled or children of undesired sex are left at the mercy of orphanages, sold or left on the streets. The payment to surrogate depends on the shape, size, colour and features of newly born baby.

Eminent feminist scholars like Marie Mies and Vandana Shiva in "Ecofeminism" (1993), Gena Corea in "The Mother Machine" and Barbara Ehrenreich in "The Worst Years of Our Lives: Irreverent Notes from a Decade of Greed" (1990), have articulated their fears that the work of outsourcing of pregnancy through poor women in third world countries have now taken a concrete shape. Indian ART clinics have achieved a huge success in embryo-transfer technology and turned it into a fast blooming business. Nowadays it is also a growing trend that rich women would prefer not to go through pregnancy themselves. Much earlier in 1984 in the novel "A Handmaid's Tale" a dystopian novel by Margaret Atwood, she made a forecast for a near future where a despised class of breeders is assigned to reproduction. The preoccupation of women with their professional career discouraged maternity consequently leading to the postponement of childbearing which becomes a medical challenge where a woman biologically could not contain an embryo.

The flow of people reveals a pattern mainly from the global North to the global South with some intended parents from within India. It is estimated that 60-90% of the intended parents who opted for surrogacy in India were from abroad. It is not just the intended parents who move to access surrogacy, but surrogate mothers, gametes and embryos as well. Even the surrogate mothers are on wheel to move to different places in Asia after the prohibition of surrogacy in some countries.

Surrogacy is necessitated by classifying infertility as a form of disability, a social burden that demands a solution at any cost. Infertility is regarded as a social stigma that reinforces Pro- natalism and genetic parenthood. Surrogacy is

naturalized through giving priority to genetic links and undermining the importance of gestational role. Frozen gametes and embryos also move from Europe to Asia and vice-versa to serve the needs of the intended parents.

Surrogate mothers are mostly unaware of the procedure of surrogacy. The intended parents prefer India because of less expense and the most important factor for their preference is that surrogate mothers have lesser legal rights over the surrogacy process and over the child. There are several women who are bio-available as surrogate mothers due to poverty.

From postcolonial perspective with reference to power dynamics, the use of individuals' conception capacity to gratify the desires of the elite couples cannot be regarded as reproductive right or liberty. The women who opted for surrogacy arrangements have to face social stigma, psychological problems, and physical stress of infertility treatment and violation of bodily integrity. The surrogate mothers also witness same set of problems; social stigma, psychological challenges, violation of her bodily integrity, put their health, freedom, liberty and even life at stake. The practice of surrogacy motivated by financial advantage cannot be defined as willingness or freedom on the part of women. The economically deprived people across the globe whether they are married, single, infertile, homosexuals, eunuchs cannot be privileged with parenthood through surrogacy.

The movement from the global North to the global South is visible in some African and South American countries. Mexico is at the top most position to offer surrogacy arrangements to the intended parents from USA. It is because of crude commercialization of surrogacy in Mexico it is banned here now. That's why Nigeria, Ghana, Argentina, Laos, Dubai, Iran and Lebanon have developed as "surrogacy centers". Single mothers in Malaysia are recruited as surrogates for infertile couples from Singapore. It is for this very reason surrogacy may be defined as secret world of assisted reproduction. The activity incorporates law evasion, stigma, secrecy and anonymity. The legal and human rights framework through which surrogacy should be practiced do not exist in many of these countries.

Europeanization of Surrogacy Markets

Europe has explored the new avenues of surrogacy markets on account of challenges raised by recent socio-political transformations which are also known by other name "Europeanization". Eastern Europe provides Western standard of IVF services at lower cost. That's why there is the availability of new regional hubs of ARTs in Europe. The mobility of Germans to the Czech Republic for egg donation, the Dutch and French to Belgium for sperm donation, the Italians' movement to Spain, and the Swedish and Norwegians movement to Denmark. Spain, Belgium, and the Czech Republic are viewed as destination countries for pre-implantation genetic diagnosis (PGD). Germans prefer gamete donors from Eastern Europe (Poland, Czech Republic). Ukraine and Russia are known as the hubs for commercial surrogacy.

Surrogacy and Gender Studies

Anton Van Niekerk and Liezl van Zyl in the article “The Ethics of Surrogacy: Women’s Reproductive Labour” write: “The word ‘surrogate’ literally means ‘substitute’ or ‘replacement’. A ‘surrogate mother’ is therefore a ‘substitute mother’: she is a woman who, for financial and/or compassionate reasons, agrees to bear a child for another woman who is incapable, or, less often, unwilling to do so herself. In other words, she is a substitute or ‘tentative’ mother in that she conceives, gestates and delivers a baby on behalf of another woman who is subsequently recognized in society as the legal mother of the child” (345).

Chinki Sinha in her article “Is the Surrogacy Bill Regressive” writes about the new Surrogacy (regulation) Bill, that states that only legally married heterosexual couples can opt for surrogacy. This excludes gay couples, single persons, live-in couples, divorcees, widows and widowers among others. Sinha writes; “Back in 2012, Justice K. S. Puttaswamy, in a landmark judgment, had recognized the constitutional right of women to make reproductive choices, citing personal liberty under Article 21 of the Indian Constitution. In fact, this was as inalienable as other fundamental rights...It’s about freedom of choice and expression...as women we must be able to own our bodies. The law shouldn’t encroach on that freedom” ().

Sharyn Roach Anleu in “Surrogacy: For Love but Not for Money?” talks about the general conception which people normally associate with the idea of motherhood. There are narratives of glorification regarding the woman who gives birth to a child. Anleu writes; “...norms encourage motherhood as appropriate and normal or natural for women, who are assumed to want children for selfless and loving reasons. If a woman deviates from these norms by entering a contract to relinquish her child at birth for financial remuneration, then the norms consider that her maternal rights are abrogated. If the woman wants to keep the child, she becomes “doubly deviant”: first, for entering contractual relations and, second, for renegeing on those obligations. As a result, the woman may be labeled “unfit” and her claims to her child undermined” (32).

Surrogacy metamorphizes a natural biological function of a woman’s body into a commercial contract. Surrogate services are advertised. Surrogates are recruited and concerning agencies make bountiful profits. The commercialization of surrogacy raises propensity for black marketing of selling of babies, illegal running of breeding farms, turning impoverished women into baby producers and the possibility of selective breeding at a price. Surrogacy degrades divine gift of pregnancy to a service and a baby to a product. Experience shows that like any other commercial transaction the ‘customer’ lays down his/her conditions before purchasing the goods (baby).

Media portrayals of surrogacy feature beaming parents and adorable babies, hiding the bare fact of blatant class exploitation and profiteering, the commodification of women and children, and the serious, even life-threatening health risks to women who sell their eggs or rent their bodies as surrogates. The *New York Times*, for example, published [a marketing article](#) on surrogacy

and placed it in the Fashion & Style section of the paper, as if children were must-have accessories for narcissistic elites. Drawing on patriarchal stereotypes, surrogates are presented as selfless, giving women who exist only to render service to others.

Feminists have long sought to understand the reasons for women's subordination in the family as a unit of society. Feminist literature suggests that women's subordination does not exist independently but is inextricably linked to the institutional backing of the family and the social construction of gender. Feminists believe that women's sexuality has been controlled by men; historically, women have always been economically dependent on men, leaving them vulnerable to physical, sexual, or psychological abuse by their husbands or other male members of family or society. According to some radical feminists, patriarchy enables men to control women both economically and politically. In a patriarchal society, marriage and family are the two institutions that help the patriarchy to maintain men's control over women, their body, their reproduction, and also their mobility and other choices.

Patriarchy is a sexualized system of power that uses biology as a tool to justify its existence; women are reduced to their reproductive role in society. One such theory states that women's capacity for reproductive labour—the act of bearing and nurturing a child—is the root cause of their subordination. The long period of gestation, and the care that children require, are cited as reasons for the exclusion of women from positions of power and authority; the justification is that women are busy nurturing the child in the womb, and then, after giving birth, they are occupied with their moral duties towards the child, leaving little room for few other activities. This process restricts women from accessing positions of power, keeping them dull and submissive to men (De Beauvoir: 1953).

Gender and feminist studies on surrogacy are multifaceted in terms of perspective and analysis (Roman 2012; Gupta 2006). Some works discuss the ethics and the morality of this practice (Ragoné 1994); others analyze it as a capitalist and patriarchal form of exploitation of women, perceiving women as living tools, as a bread oven, a compensated incubator, and drawing parallels with prostitution and slavery; some more recent studies focus on the impact of surrogacy on the cultural meanings of motherhood and kinship. These different works postulate different perspectives. Some study reject the practice of surrogacy on the ground of social vulnerability of some women and that too during her pregnancy while others support the cause of surrogacy with the argument that it is a phenomenon of mutual help between infertile women and voluntary women.

Keeping aside the debate of whether surrogacy should be practiced or not, it seems logical to come out with an alternative and rational view, the view of reproductive rights. It is argued that surrogacy may influence the ways in which society views reproductive rights and enables them to be exercised. From this view, surrogacy may be a form of (patriarchal) alienation of women's bodies and reproductive potential and performance, but also of a woman's right to self-determination over her own (reproductive) body.

We should adopt a reproductive justice approach to argue that surrogacy as practiced in the contemporary neoliberal biomarkets crosses the humanitarian thresholds of feminism. It is necessary to address the dark connections between poverty, gender, human rights violations and indignity in the surrogacy market. The advancement of bio-technologies has transmuted in the developing countries like India some female bodies into reproductive objects while creating an image of reproductive liberation for others. India may be cited as a classic example of the exploitation executed by biomarkets in the name of reproductive liberty only to gratify some individuals' desires or aspirations. In this respect 'Humanitarian Feminism' is an alternative concept to bridge feminist factions divided on contextual and ideological grounds. It recognizes the histories of race, class, gender, sexuality, ability, age, and immigration oppression in all communities.

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***Assistant Professor (English)**
Arya Mahila P.G. College (B.H.U.)
Chetganj, Varanasi