Reproductive Justice and Transnational Feminism: Surrogacy in Germany and India.

Dr. Sheela Saravanan
Research Associate, South Asia Institute, Heidelberg University.
## Global Situation of Commercial Surrogacy

<table>
<thead>
<tr>
<th>Countries</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>India, Thailand, Nepal, Mexico</td>
<td>Recently banned surrogacy for foreigners.</td>
</tr>
<tr>
<td>Iran, Cambodia and Dubai</td>
<td>Emerging destinations for commercial surrogacy.</td>
</tr>
<tr>
<td>Russia, Ukraine, USA</td>
<td>Continue to be hubs for commercial surrogacy.</td>
</tr>
<tr>
<td>(Most European Countries)</td>
<td>Prohibited (both altruistic and commercial):</td>
</tr>
<tr>
<td>Austria, Germany, France</td>
<td>Restrictive countries.</td>
</tr>
<tr>
<td>Norway, Switzerland, Slovenia,</td>
<td></td>
</tr>
<tr>
<td>Turkey, Italy, Portugal, Spain,</td>
<td></td>
</tr>
<tr>
<td>Iceland, Sweden, Finland, Hungary,</td>
<td></td>
</tr>
<tr>
<td>Croatia, Bulgaria, China</td>
<td></td>
</tr>
</tbody>
</table>
Background in India

- **POVERTY** (High)
- 22-56%.
- **UNEMPLOYMENT** (High),
- **EDUCATIONAL Level** (Low),
- **MATERNAL HEALTH** (poor),
- **Implications**

- Surrogate mothers easily available.
- Higher possibility of maternal morbidity and mortality.

“This process (surrogacy) is so distressing that, If I had money, I wouldn't do it even if someone paid me 10 times the remuneration, but I am so desperate (for money) that I would do it even if I was paid just one third the amount.”
Motivation of the intended parents

- Lower pay & rights for surrogacy mothers.
- Surrogacy is cheaper, (200,000 USD in USA - 50,000 USD in India).
Women Detained in the Surrogate Homes

- Detained compulsorily in these homes for 10 months.
- They are also expected to breastfeed, care for the baby after birth.
- They are over-fed (to increase the weight of the baby),
- restricted in
  - Food, lifestyle, movements & meeting with their family.
- Suddenly separated from the children thereafterwards.

Human Rights Violation
- Inability to participate in public life and meet non-reproductive aspirations.
- Commodification of women and children.

Similar surrogate homes were also found in Nepal, Mexico, Thailand & Cambodia.
Violation of Medical Ethics & Commodification of children

Medical Practices

• Upto 5 embryos transferred & in-utero selective abortions.

Compulsory cesarean sections on all SMs to save the child from going through the struggle of birth.

• All this without appropriate consent from the surrogate mothers.

Children

• Pre-term births & resultant mortality rate.

• Payment on the basis of the weight of the child.

• No additional payment for miscarriage.

• Disabled children (like defective products) are left in orphanages or even on the street.

• Young girls are trafficked for surrogacy also reported in India.
“Is a woman a child-producing factory?” asks Anupriya Patel, Minister of State, Health and Family Welfare.

“We have allowed only altruistic surrogacy because we believe that few women come forward to offer surrogacy to their family members. There should not be any monetary transaction.”

Recently a woman died during childbirth after being coerced by family members into altruistic surrogacy for her sister-in-law.
Case 1: A gay couple, German citizens,

They had a child born via surrogacy to an unmarried surrogate mother in California in 2010.

In December 2014
• Germany’s Supreme Court Judgment: for children born through surrogacy abroad;
• the German public policy was not violated.
• Surrogacy *per se* not a violation of human dignity.
• draws comparison to adoption (if the surrogate mother has no genetic ties to the child).
• In the best interest of the child: the couple as the legal parents (if one intended parent was also the child’s biological father).

• If it is forbidden in Germany, it should be forbidden everywhere.
• Ethical Concern:
• Double standards of safeguarding German citizens while other citizens may be exploited.
Case 3: German couple Jan Balaz and Susan

• The twins, born to an Indian surrogate mother in January 2008.
• He was provided with illegal passport in India, was questioned at an airport in Eastern Europe by immigration and was called back to India.
• According to the Indian law the German mother was the legal mother
• According to the German law the Indian mother was the legal mother.
• In 2010 the German authorities agreed to provide visa to the children on the condition that there would be an adoption.
• Recently, I hear that the surrogate mother had refused to give the children in adoption to the Balaz couple.
Public opinion on Surrogacy in Germany

A study on general population (Yve Stobel-Richter et al, 2009)
- 44% approval rate for surrogate mothering in Germany.
- 51% approval rate for egg donation in Germany.

(Schröder AK et al, 2004)
- medical students, and infertile persons were very critical towards oocyte donation and surrogate motherhood.
- Couples opting for PGD were more open towards surrogacy.

(Jadva V et al 2012)
- Surrogacy families maintained good relationships with the surrogate mother over time. Children felt positive about their surrogate mother and their surrogacy birth.
<table>
<thead>
<tr>
<th>Liberals, Liberal Feminism</th>
<th>Radical-Socialist Feminism/Human Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>• <strong>Liberates women</strong> by separating the role of reproduction from rearing.</td>
<td>• What is the liberation in surrogacy when women have to participate exactly in the same roles (reproduction).</td>
</tr>
</tbody>
</table>
The Liberty Argument (Contd.)

<table>
<thead>
<tr>
<th>Liberals, Liberal Feminism</th>
<th>Radical-Socialist Feminism/ Human Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Procreative <em>liberty</em>.</td>
<td>• Choice between ‘poverty’ or <em>surrogacy</em> cannot be a choice.</td>
</tr>
<tr>
<td>• Individual <em>choice</em>.</td>
<td>• more attention should be paid to provide basic needs for these women.</td>
</tr>
<tr>
<td>• The State should not interfere with women’s choice.</td>
<td>• Violation of a person’s dignity, <em>integrity</em>,</td>
</tr>
<tr>
<td></td>
<td>• economic exploitation cannot be a constitutional right.</td>
</tr>
</tbody>
</table>
My Approach

I oppose the

• Largely ‘liberal Feminist’ position supporting surrogacy, sex
  selective abortion, prostitution.

With a

• Context sensitive, power-reflexive also

• Postcolonial feminism.

• Reproductive justice framework.
My argument on Surrogacy as a Violation of human Rights.

Reproductive right defined as, right of couples & individuals to decide freely and responsibly the number/spacing/timing of children & the information/means to do so” (ICPD Programme of Action Paragraph 7.3).

My Question: CEDAW limits state interference with individual reproductive rights, but if the same rights impede social justice and other people’s human rights can it be allowed?

Rights of individuals vs rights of other human beings.

<table>
<thead>
<tr>
<th>Those without children face</th>
<th>This process is likely to put another woman (the surrogate mother) through the same set of problems;</th>
</tr>
</thead>
<tbody>
<tr>
<td>• social stigma,</td>
<td>• social stigma,</td>
</tr>
<tr>
<td>• psychological problems,</td>
<td>• psychological challenges,</td>
</tr>
<tr>
<td>• physical stress of infertility treatment &amp;</td>
<td>• violation of her bodily integrity &amp; also, put the surrogate mother’s</td>
</tr>
<tr>
<td>• violation of bodily integrity.</td>
<td>• health (already unequal),</td>
</tr>
<tr>
<td></td>
<td>• freedom,</td>
</tr>
<tr>
<td></td>
<td>• liberty and</td>
</tr>
<tr>
<td></td>
<td>• even life at stake.</td>
</tr>
</tbody>
</table>
Transnational Feminism & Reproductive Justice

to build a global feminist solidarity
Drawing on a ‘Reproductive Justice’ framework that includes;
• recognizing the histories of reproductive oppression in all communities.
• change structural power inequalities.
• Identify and address multiple oppressions of race, class, gender, sexuality, ability, age and immigration status.

(ACRJ - Asian Communities for Reproductive Justice 2005 along with the SisterSong Collective).

• Reproductive Justice’ aims to reduce inequalities and not to use someone’s vulnerability as a solution for infertility.
Thank You