

Limits on women's autonomy in controlling their reproductive rights: an analysis of paid ova donation and commercial surrogacy

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Abstract: This essay focuses on why women's right to control their bodies has been restricted from an ethical perspective in the international trade in ova and surrogacy. Commercial surrogacy and the international trade in ova mean that women are being commodified. This reflects the exploitative nature of capital over women who are surrogates or ova donors. The exploitation is mainly manifested in the enormous risks faced by women, and the contracts are not very comprehensive in terms of upholding the rights of surrogate mothers and women who donate their ova for payment. On the contrary, many surrogacy contracts with women in poor areas minimise the rights of the surrogate mother. Many women in poorer areas do not volunteer to become surrogates but are forced to do so by family pressure. Surrogate mothers are also emotionally exploited, i.e. they are constantly reminded not to become too emotionally attached to the embryo.

1. Introduction

Human beings have a finite lifespan, and reproduction is a basic human need. The continuation of life depends on reproduction, and fertility is an essential part of human life. Surrogacy' and 'ova donation' have helped many families or groups who cannot have children but want to have them. The advent of surrogacy and ova donation has meant that technology has advanced. However, as surrogacy and ova donation technology have become more sophisticated, it has also become commercialised. As a result, the international trade in ova and paid surrogacy began to emerge worldwide. This is a tendency to instrumentalise the female reproductive function. In this context, whether women still have the right to control their bodies is a question that deserves deeper consideration. This essay focuses on why women's right to control their bodies has been restricted from an ethical perspective in the international trade in ova and surrogacy. Commercial surrogacy and the international trade in ova mean that women are being commodified. This reflects the exploitative nature of capital over women who are surrogates or ova donors. The exploitation is mainly manifested in the enormous risks faced by women, and the contracts are not very comprehensive in terms of upholding the rights of surrogate mothers and women who donate their ova for payment. On the contrary, many surrogacy contracts with women in poor areas minimise the rights of the surrogate mother. Many women in poorer areas do not volunteer to become surrogates

but are forced to do so by family pressure. Surrogate mothers are also emotionally exploited, i.e. they are constantly reminded not to become too emotionally attached to the embryo.

2. Two aspects of international trade: ova and surrogacy

There are two sides to something like international trade in ova and surrogacy. On the one hand, it can help more people who need help. In countries where paid surrogacy is illegal, women who cannot have children are violated. This is because they are denied access to reproductive offspring-related opportunities (Panitch, 2013)^[11]. On the other hand, if a woman voluntarily donates her ova or is a surrogate because of 'love', all acts are spontaneous and not forced. Then, in this case, this woman's right to control her own body is not restricted. This is because they are well aware of the risks they are about to face and are voluntarily taking them. This is a form of altruism where one's interests are sacrificed for the benefit of others. The surrogate uses her body to help her client escape the pain of not being able to have children. Suppose the surrogate volunteers to help another person with a surrogacy without asking for payment. This act of selflessness is a virtue in morality. At the same time, surrogacy is ethical when analysed from the perspective of the outcome. The act of the surrogate mother promotes the interests and well-being of others. This perspective of analysis of surrogacy is consistent with utilitarianism. In this altruistic surrogacy, the advantages are demonstrated to a greater extent.

On the other hand, not everyone is voluntary. Some women may have signed an agreement to become surrogates or donate their ova for a fee. However, this does not mean they are willing to donate their ova or become surrogates. In some developing countries, women are forced to choose surrogacy and pay ova donation to make a basic living. Alternatively, they are trafficked into surrogacy or to places that specialise in ova trading. Women in poor areas may agree to sign a contract for surrogacy not of their own volition but of their families. Women in India may be carrying out the will of others by agreeing to surrogacy (Khader, 2013)^[9]. This implies that these women's choice of surrogacy is coercive. Indian surrogacy laws disturbingly make the husband of the surrogate the other party to the surrogacy contract (Smerdon, 2008)^[8]. It follows that women who choose surrogacy in India are more likely to be exploited by the surrogacy industry because of their lack of autonomy. Personal speaking, in the context of international trade in surrogacy or ova, women's rights to control their bodies are restricted. This is an indirect restriction for women trying to make ends meet. For women who are trafficked, it is a direct restriction.

3. The commodification of the female body

Firstly, the right to reproduction is the right of a human being to decide, of his or her own free will, whether or not to have children. Global ova supply and surrogacy represent an invasion of the market into a new field of behaviour, primarily that of female labour. That is the labour of giving birth to a child during pregnancy. When women's labour is seen as a commodity, the status of the women doing this work is devalued. Commercial surrogacy and paid ova donation are generally the results of the need for a financially disadvantaged party to earn a higher income through surrogacy or paid ova donation. Money is the primary driver of surrogacy and paid ova donations. Commercial surrogacy and paid ova donation are also predominantly found in economically deprived countries and regions. Those perceived to be in financial need make up a significant proportion of ova providers (Deveaux, 2016)^[7]. Selling one's ova and surrogacy in these impoverished areas becomes necessary for most women to maintain essential subsistence basics and change their social status. On the face of it, surrogacy and unpaid ova donation are understood to be dependent on a woman's free choice and personal will. However, many women in developing countries are forced to rent their wombs to earn money to support themselves. This is an act that essentially devalues the dignity of women and the

sanctity of life itself. To some extent, it shocks the moral perception and ethical order. These middlemen or clients take advantage of the impoverished plight of surrogate mothers or women donating their ova. Donating ova and becoming a surrogate mother is a choice these poor women make based on monetary considerations rather than voluntarily. Few women willingly donate their ova without compensation or payment (Deveaux, 2016)^[7]. If these women's financial situation improved, they would be less likely to donate ova or become surrogate mothers. Surrogacy agencies use vulnerable and economically disadvantaged women, often in developing countries and regions, to take the risks of drug-induced artificial pregnancies. Although proponents of such an industry would describe these women as primarily wanting to help others. However, when surrogates are not paid large sums of money, they will be reluctant to continue this challenging work.

Krolokke and Pant point out that their interviews with surrogate mothers found that the strategic desire for upward mobility was the main reason explaining poor women's choice to become surrogate mothers (Krolokke and Pant, 2012)^[3]. Surrogacy in the United States is considered a gift and commodity exchange. The compensation for the labour effort is obscured by the cultural clash of the gift narrative (Sietana, Rudrappa and Weis, 2021)^[6]. Anderson argues that the gift exchange narrative is deceptive and violates the autonomy of the surrogate woman. The two main ways this is manifested are that it is not customary to feel love for the child they have conceived. Surrogacy is not labour (Khader, 2013)^[9]. Surrogacy services in India are legal and not as costly as surrogacy in the United States. India has the added legal advantage of guaranteeing that a surrogate mother cannot make a legitimate claim about the baby she is carrying (Peet, 2016)^[5]. This shows that the surrogacy industry exploits women in poorer areas more. Whether it is surrogacy in the United States or India, they differ in how they are described in discourse. Surrogacy in India is more straightforward, although they also attempt to describe greed as a gift from God. American couples offer a house rather than cash and describe the transaction as purely emotional (Khader, 2013)^[9]. However, they are also exchanging in kind, only changing the narrative in terms of discourse.

The essence of surrogacy is that the surrogate mother sells the use of her womb in exchange for money. It is a way of obtaining money by degrading her own body. That is, surrogacy, in this case, is based on money over the human body. This means treating the surrogate mother's womb as a fertility machine. The womb of the surrogate mother is instrumentalised. The same is true of ova donation. Ova donation involves the body producing numerous Ova at once through hormonal drugs that promote ovulation. The whole ova donation process is physically demanding and time-consuming, with hormone injections over 10-14 days for follicle stimulation and the procedure to extract mature ova (Deveaux, 2016)^[7]. In addition, donors receive no therapeutic benefit from the donation process and can suffer unpleasant side effects. Ova donation in women is different situation to sperm donation in men. The Ova retrieval process for female donor ova can be very damaging to health and may even affect the ovulation process of the ovaries. The challenge against commercial surrogacy is that it involves the sale of something that should not be valued in monetary terms. The commodification argument suggests that certain items should be exempt from market valuation because their sale distorts their intrinsic value or undermines the dignity of the seller (Panitch, 2013)^[11]. They are renting and selling any part of the human body as a commodity is unethical. In-depth, children in surrogacy are traded as 'things' rather than treated as human beings. In line with Kantian ethics, something can be either a person or property, not both (Dickenson and Beers, 2020)^[4]. This indicates a lack of respect for the human person. Once the legal status of a future child is determined to a large extent through contractual agreements, including the terms of its creation, conception, delivery, transfer and legal family relations, the child arguably becomes the subject of contractual negotiations (Dickenson and Beers, 2020)^[4]. Babies are human beings who should not be considered property. In addition to objectifying the surrogate mother's womb as an instrument, the child is indirectly commodified as an object of trade.

4. Exploitation under commodification

Paid ova donation and commercial surrogacy have made surrogate or donor women tradable labour. Ova banks and brokers have found it lucrative to freeze ova and embryos worldwide. ; ranging from places where women provide ova for little or no pay to countries where paying for ova is illegal (Deveaux, 2016)^[7]. Capital may brutally exploit and squeeze these women in order to make a profit. The exploitative nature is mainly seen in neglecting the needs of the disadvantaged in favour of the exploiters getting the lion's share of the benefits. (Deveaux, 2016)^[7] Surrogacy is not an easy occupation that pays well without labour but an act fraught with unknown risks. In commercial surrogacy, the woman becomes the key agent, and commercial surrogacy becomes labour as vulnerable to exploitation as other forms of labour (Pande, 2010)^[2]. Ordinary labour is primarily remunerated through the regular exertion of mental and physical effort to create value. However, surrogacy ignores the competitive relationship between the surrogate mother's mother and the embryo during pregnancy. It is well known that pregnant women are exposed to many risks throughout pregnancy and birth, such as uterine rupture and haemorrhage. The struggle between the foetus and the surrogate mother's body can cause the surrogate mother's body to suffer great damage. In addition to the various risks and reactions her body may encounter, the surrogate mother must endure damage from medication and ovarian hyperstimulation. Surrogacy, like ordinary labour, is about being paid monetarily for the value of self-creation. However, surrogacy is different from ordinary labour in that it comes at the cost of causing significant damage to the body.

Moreover, the time commitment of a surrogate is not the same as that of other jobs. This is because surrogacy means that a woman's time commitment is 24 hours a day, seven days a week and lasts for 9 to 10 months. This is why surrogate mothers require a contract prior to surrogacy. The surrogacy contract is in English and sets out the rights of the surrogate. However, no surrogate mother can read this surrogacy contract (Pande, 2010)^[2]. The risks arising from the surrogate's pregnancy are often borne by the surrogate mother alone. Surrogacy agents and those who commission surrogates are often not liable for the risks. Women who undergo ova collection in hostile environments are not strictly coerced but are vulnerable to exploitation by the terms and treatment of their contracts. (Deveaux, 2016)^[7] It follows that surrogacy contracts and paid ova donation contracts can be exploitative.

Most American surrogate mothers choose to become surrogate mothers because this type of work allows them to help others. They also enjoy a postpartum grace period, prenatal opt-out clauses, reimbursement of expenses, and quality medical and legal representation. (Panitch, 2013)^[10] The rights enjoyed by surrogate mothers in the United States do not exhibit too much exploitation or injustice. However, almost all surrogate mothers in India live below the poverty line as defined by the Indian government. And they have no legal representation or contractual rights (Panitch, 2013)^{[10][11]}. This means that they are not entitled to a change in their postnatal grace period and no compensation if they are unable to have a child. Comparing surrogacy in the US with surrogacy in India demonstrates the deeper elements of surrogacy exploitation, namely inadequate remuneration and the unfairness of benefit sharing. The contracts of American surrogate mothers and those of Indian surrogates amply illustrate that the share of benefits for Indian surrogates does not meet the conditions of justice. The lack of economic resources and the level of education of the socially deprived women in India leads to their marginalisation from the market (Panitch, 2013)^[11]. So their possibilities to express their rights and needs in order to develop are limited. This is related to the structural injustice of the society.

Throughout the process of surrogacy, the surrogate mother alone bears the risks and suffering that she will face as well as occur. In-depth, human beings are emotional creatures and the surrogate mother, after ten months of pregnancy, becomes attached to her newborn baby. Krolokke and pant

note that surrogate mothers must emotionally distance themselves from their developing child. However, some surrogate mothers see no difference between the emotional bond they have formed with this child and the emotional bond they formed earlier with their genetic child (Krolokke and Pant, 2012)^[3]. This situation is not a deprivation of the surrogate mother's humanity. The contract mainly declares the transient role and controllability of the surrogate woman. Surrogate mothers are regularly told that their role is only as vessels, that they have no genetic connection to the baby and that they will be taken away from them immediately after delivery (Pande, 2010)^[2]. Surrogate mothers can feel that they are just machines that give birth to a child rather than human beings. This can create an identity dilemma for the surrogate mother. This is a negative effect. The industry message of the surrogacy industry encourages women to suppress their dependence on the foetus. So, in the best-case scenario, it can lead to cognitive impairment for these surrogate women. In the worst-case scenario, being asked to be dependent and separated can create new trauma (Khader, 2013)^[9]. Surrogate mothers can feel that they are just tools to have a child and that others do not see them as human beings. These surrogate mothers may question their identity or see themselves as birthing machines.

Furthermore, the commissioners will choose a surrogate according to their preference. In ova donation, it is common to check the woman's age, intelligence, appearance, education and family background. For surrogates, this is also the womb characteristic of interest. (Pande, 2010)^[2] Often the client prefers to choose a female surrogate from a developing country because the behaviour of the surrogate is more easily controlled. Surrogacy contracts require a change in diet, a specific sleep schedule, and control of recreational and lifestyle activities (Khader, 2013)^[9]. The lack of autonomy of the surrogate woman is further reduced by the client or surrogate agent taking advantage of her lack of autonomy. Surrogates are subject to absolute control over their activities wherever they are (Elizabeth, 1993)^[1]. Surrogate mothers' private time is regulated in detail, and their husbands can visit them. However, their husbands stay overnight, much less have sex during the pregnancy. They are also required to learn English and computers in order to be able to talk to international clients. (Pande, 2010)^[2] mainly to report to clients on their daily health and activities. From this perspective, the surrogate mother is primarily deprived of the right to control her own life. The surrogate mother's task during pregnancy is to give birth to the child, and most of their time revolves around this commissioning parent. The metaphors of the dormitory as home and training as leisure not only dilute the labour aspect of surrogacy but are used to justify the surveillance of the surrogate (Pande, 2010)^[2]. When surrogate mothers are also controlled in their surrogate lives, they have little control over their bodies. For example, when to get up and take medication or injections are all dictated. Instead, they have to follow the original plan.

5. Conclusion

In conclusion, the vulnerability of women in poor areas is at the root of exploitation. Disrespectfully exploiting others exploits what they need for profit. This is because of the structural social problem that the labour market does not offer a living wage to uneducated women. Low wages make it impossible for them to pay basic living expenses such as rent. So most women living in poor areas or countries choose to donate their ova or become surrogates to receive a higher wage. This is where the exploitative nature comes into play in the terms and conditions of the partnership. For example, it is easy to receive substandard medical services. This situation means that the voluntary nature of women's choices is compromised. The lure of money makes them ignore or downplay the risks they may soon face. The commodification of women's wombs for hire and profit is the exploitation and oppression of women by capital. However, women in developing countries abandon their health and dignity for the money that keeps them alive. The woman's daily living arrangements

are controlled during the surrogacy process. These surrogate women can only carry out their arrangements according to a plan. These women have no choice but to rent out their wombs or sell their ova. However, this is not a form of reproductive freedom.

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