ASSISTED REPRODUCTIVE TECHNOLOGY AND SURROGACY: A MEANS FOR COMMODOIFICATION OF WOMEN’S BODY AND CHOICES

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INTRODUCTION

In the last two decades the use of reproductive technologies (RTs) has become an inevitable and often indispensable part of women’s lives.

On the one hand, the increased knowledge and availability of a wide range of RT options has redefined ‘traditional’ notions of conception, contraception and procreation.

On the other, the introduction of each new device or technique has served to renew a growing flux in the way reproductive choice is understood.
Meaning of Reproduction

➢ To obstetrician:
Reproduction is an area of professional specialization, defined in terms of pregnancy and childbirth. Reproductive technology offers these physicians a means of entry into the high-pay, cutting-edge circle of high-technology medicine, therefore enhancing their professional prestige.

➢ To patients:
Reproduction means the ability to procreate – to create a new life in their bodies; they focus exclusively on the biological aspects of the reproductive process.

➢ To Feminists:
View reproduction as a potential source of women's power, since it is a uniquely female ability, and also as the historical justification for the limitation of women's power.
Thus, each group’s attitude toward the issue of reproductive technology is embedded in a world view which gives reproduction a distinct meaning, and in each case, the meaning attributed to the reproductive process is central to the group members’ self-definition.
Assisted Reproductive Technology

- Reproduction controlling technology
- Sterilization
- Abortion
- Artificial Insemination
- In-Vitro fertilization
- Surrogacy
Historical materialism is that view of the course of history which seeks the ultimate cause and great moving power of all historical events in the dialectic of sex: the division of society into two distinct biological classes for procreative reproduction, and the struggle of these classes with one another; in the changes in the modes of marriage, reproduction and child care created by these struggles; in the connected development of other physically differentiated classes [castes; and in the first division of labor based on sex which developed into the [economic- cultural] class system].”

Shulamith, Firestone, The dialectic of sex
Feminist Arguments in favor of ART

- Patriarchy - the systematic subordination of women - is rooted in the biological inequality of the sexes.

- Women’s liberation requires a biological revolution, like the way Marx wanted economic revolution to end economic oppressions. The way proletariat must seize the means of production in order to eliminate the economic class system; women must seize the control of the means of reproduction, to eliminate the sexual class system.

- What makes this biological revolution a real possibility is technology, Due to these technologies and subsequent legal arrangements a woman who begets a child need not bear it, and a woman who bears a child need not rear it.

- Firestone believed that when women and men stop playing substantially different roles in reproductive drama, it will be possible to eliminate all sexual roles. When technology is able to perfect artificial ways for people to reproduce, the need for the biological family will disappear, and need to impose heterosexuality as a means of ensuring human reproduction will be minimized. The categories of heterosexuality and homosexuality will be abandoned and institutional sexual differentiation will disappear.
If technology can eliminate the role of ‘women the reproducer’ it can also eliminate the role of ‘man-the producer’.

Firestone considered biological motherhood as the root of further evils, especially the vice of possessiveness that generates feelings of hostility and jealousy among human beings.

According to radical feminist Marge Piercy that the loss of biological reproduction was the price to pay for the elimination of the sexism as well as racism and classism. She eventually agrees that biological relationship is not essential for good parenting.
Feminist Arguments against ART

- Piercy and Firestone ideas were severely criticized by Marry O’Bien and Adrienne Rich. O’Bien analyzed reproduction through the lenses of male alienation in reproduction. Patriarchy; she insisted is men’s compensation for and attempt to counter act the alienation from reproduction.

- According to Rich, if patriarchy wishes to survive, let along thrive it must restrict the power of mother. Thus as soon as they were able to device the means, men took “birthing” over from women. Male obstetricians replaced female mid wives.

- Feminists like Dworkin, Margaret Atwood, Gena Corea and Robyn Rowland believed that reproductive technology posses enormous threat to whatever powers women still possess and that biological motherhood ought not to be forsaken in favor of artificial motherhood

- The replacement of women’s child baring capacity by men control technology would definitely remove women’s biological burden but it would also leave women without a product with which to bargain.
Scopes of ART

- In vitro fertilization  In vitro fertilization (IVF) is the technique of letting *fertilization* of the male and female *gametes* (sperm and egg) occur outside the female body. Techniques usually used in in-vitro fertilization include

- **Trans-vaginal Ovum Retrieval** (OCR) is the process whereby a small needle is inserted through the back of the vagina and guided via ultrasound into the ovarian follicles to collect the fluid that contains the eggs.

- **Embryo Transfer** is the step in the process whereby one or several embryos are placed into the uterus of the female with the intent to establish a pregnancy.

- **Egg donors** are resources for women with no eggs due to surgery, chemotherapy, or genetic causes; or with poor egg quality, previously unsuccessful IVF cycles or advanced maternal age. In the egg donor process, eggs are retrieved from a donor's ovaries, fertilized in the laboratory with the sperm from the recipient's partner, and the resulting healthy embryos are returned to the recipient's uterus.
- **Sperm donation** may provide the source for the sperm used in IVF procedures where the male partner produces no sperm or has an inheritable disease, or where the woman being treated has no male partner.

- **Surrogacy** via a *gestational carrier* is an option when a patient's medical condition prevents a safe pregnancy, when a patient has ovaries but no uterus due to congenital absence or previous surgical removal, and where a patient has no ovaries and is also unable to carry a pregnancy to full term.

- **Preimplantation Genetic Diagnosis (PGD)** involves the use of genetic screening mechanisms such as Fluorescent In Situ Hybridization (FISH) or Comparative Genomic Hybridization (CGH) to help identify genetically abnormal embryos and improve health outcomes.

- **Artificial Insemination** (AI) is when sperm is placed into a female's uterus (intrauterine) or cervix (intra-cervical) using artificial means rather than by natural copulation. N.B. This can be a very low-tech process, performed at home by the woman alone or with her partner.

- **Surrogacy**, where a woman agrees to become pregnant and deliver a child for a contracted party. It may be her own genetic child, or a child conceived through *in vitro fertilization* or *embryo transfer* using another woman's *ova*. 
Risks Associated with ART

- Genetic Disorders
- Low Birth Weight
- Preterm birth

Low birth weight and preterm birth are strongly associated with many health problems, such as visual Impairment and Cerebral Palsy and children born after IVF are roughly twice as likely to have cerebral palsy.

- Membrane Damage
Surrogacy

- Altruistic vs. Commercial
- Genetic vs. Gestational
The Laws Relating to Surrogacy in Different Countries

- In **UK**, no contract or agreement relating to surrogacy is legally binding. All expenses must be justified to the courts, which can intervene and ask for proof if the expenses incurred by the genetic parents are too high.

- In **most states of USA**, commercial surrogacy is either illegal or unenforceable.

- In **Australia**, arranging commercial surrogacy is a criminal offence and any surrogacy agreement giving custody to others is void. The surrogate mother is deemed to be the legal mother of the child.

- In **Canada and New Zealand**, commercial surrogacy has been illegal, but altruistic surrogacy is allowed.

- In **France, Germany and Italy**, surrogacy whether commercial or not, is unlawful.

- Renting an uterus for money is illegal in **South Africa**.
Either of the commissioning couple must be infertile and also, or, the commissioning mother must be incapable of carrying a baby to full term;

The commissioning couple should either be married heterosexual couples or in an unmarried heterosexual relationship. Individuals can also apply for surrogacy. However, homosexual couples living together and who are Indian citizens, are not recognized as commissioning couples when both apply together but individually they can.

The status of homosexual commissioning couples who are not citizens of India depends on their legal right to marry under the law of their country. The question whether they, as a couple, will be allowed to go for a surrogacy agreement in India is a matter of future legislative deliberations.
- A couple or an individual shall not have the service of more than one surrogate at any given time.

- A couple shall not have simultaneous transfer of embryos in the woman and in a surrogate.

- A woman in the age-group of 21-35 can become a surrogate mother. She will be allowed five live births, including her own children. She will not be allowed to undergo embryo transfer more than three times in her life to the same couple. If implemented properly this provision will check the malpractice which compromise with the health of both mother and the child.
In case of a single man or woman, the baby will be his/her legitimate child. If the surrogate mother is married, consent of her spouse is mandatory. The commissioning parents will have to accept the child’s custody irrespective of any congenital abnormality.

A child born to an unmarried couple using a surrogate mother and with the consent of both parties shall be the legitimate child of both of them.

During the gestation period, the couple will bear the surrogate’s expenses and give monetary help to her. The couple may enter into an agreement with the surrogate. Clinics will have to keep surrogates identity strictly confidential.
State boards will give accreditation to ART banks — private and government. The board will have a registration authority which, in turn, will maintain a list of all In-vitro Fertilization (IVF) centers and monitor their functioning.

The draft bill also entails provision for live in couples who can go for IVF only if the woman cannot biologically bear a child or if it is too risky for her. No ART clinic is allowed to carry a surrogacy for patients for whom it may normally be possible to conceive a baby. This provision also rules out the fear of use of commercial surrogacy by woman who opts for it due to their busy career life.

Introduction of “generational” clause in surrogacy which demands that in case of altruistic surrogacy where relative play the surrogate has to be from the same generation only and this discounts the role of ‘mothers’ to act as surrogate.

The Law Commission of India (2009) described ART industry as “Rs 25,000-crore pot of gold”. It recommended only altruistic surrogacy arrangements and not commercial ones. The report in its conclusion largely supports surrogacy but its commercialization is something that has been an issue in the mind of law commission. But the Draft Bill legalizes commercial surrogacy as well.
Foreign couples must submit two certificates — one on their country’s surrogacy policy and the other stating that the child born to the surrogate mother will get their country’s citizenship. This provision is formulated keeping in mind a recent case of two twins born to a German couple in January 2008 to a surrogate mother in India who were rendered stateless as they did not get the citizenship of either India or Germany. After a two year long legal battle, the Supreme Court got them exit permits in May 2010.

Foreign couples have to nominate a local guardian who will take care of the surrogate during gestation.

ART banks, accredited by the government, will maintain a database of prospective surrogates as well as storing semen and eggs and details of the donor. Any ART bank or clinic cannot send Indian citizens abroad for surrogacy.
Lacunas of ART(Draft) bill 2010:

- The Draft Bill does not adequately emphasize on adoption. Considering the fact that these technologies do not ‘treat’ or cure infertility, and keeping the potential risks for the mother and child in mind, a responsible legislation regarding infertility and ARTs must encourage adoption and present it as a course of action as significant as ARTs.

- Bill demands, “No woman shall donate oocytes more than six times in her life, with not less than a three-month interval between the oocyte pick-ups”. However, the maximum number of cycles (which may be 6 or more) has not been mentioned. Also the mechanism to record and monitor the number of times a woman is making donations has not been mentioned.

- The Draft Bill has left a substantial void in the regulation process by not specifying the maximum permissible age of women for undergoing ART procedures. There have been cases where women as old as 60 years or above have been made to conceive through ARTs with serious implications to their health.

- The Draft Bill prohibits the surrogate from being the egg donor. “Success rates of pregnancy are generally higher for artificial insemination than for IVF, and therefore by extension genetic surrogacy is generally more successful than gestational surrogacy.”
The Bill mentions that ‘No woman shall act as a surrogate for more than 5 successful live births’, including of the number of earlier pregnancies although the medical risks of frequent childbirths without adequate spacing are well known.

The Draft Bill must ensure that the intended parents understand and agree to the fact that the surrogate has a right to physical integrity and bodily autonomy, i.e. she cannot be forced to abort the foetus, go through foetal reduction or made to follow a certain diet.

The most unaddressed person in this bill is the surrogate child, who is nothing but a tailor made product of a successful business transaction mediated through technology.

The Draft Bill advises a studied recommendation of foetal reduction for multiple gestations, it does not mention the morbid risks of fetal reduction.
Ministry of Home Affairs’ special guidelines on Surrogacy, 2013

- Applicable only to the foreign, heterosexual couples legally married for last two years and with diagnosed with infertility problem.

- They must arrive with Medical Visa not tourist visa.

- Surrogacy has to be legal in their respective countries and they have bring documents from their respective countries.

- There should be no ambiguity regarding the status of the surrogate child and the couple has to sign a declaration towards this end.

- They have to appoint a local guardian for the well being of the both surrogate mother and the child.
Social and Ethical Issues Associated with ART and Surrogacy

Infertility and ART:

- The medical literature frames the problem of infertility in a narrow and clinical manner. The response to infertility is medical intervention with the goal of pregnancy. Physicians' response to infertility has become increasingly technological. Psychological factors are considered of minimal importance, and surgical intervention is emphasized.

- There is an interesting difference in men's and women's responses to the experience of infertility. Men tend to withdraw; women are far more likely to want to talk about their problems but often try to comply with their husbands' wishes to keep their infertility a secret.

- If it is the husband who is infertile, women often feel guilty and uncomfortable about this shift in the balance of power. They are likely to cover up for their husbands and tell others that they themselves are the cause of the problem. (Those who use donor insemination rarely reveal this even to the child or the grandparents. Professionals often encourage such secrecy.)

- Women are far more inclined than men to see adoption as a solution to their fertility problems. Where they resort to technological intervention instead, it is most often to satisfy a man's desire for a genetically related child.
Reproductive technologies not only increase the meaning of reproduction for physicians, but also increase the professional prestige of those medical specialties which control the new technologies.

There is expressed concern about the potential routinisation of in vitro fertilization, following the examples of Caesarean section, ultrasound and foetal monitoring, all of which started out as responses to particular conditions and has become routine procedures.

The possibility of using reproductive technologies for selection of the sex or other characteristics of a child also concerns many feminists.

While recognizing that the infertile do suffer emotionally; feminists deny that medical intervention is the appropriate response as it does not really cure infertility but provides alternative solution.

ART procedures are extremely expensive, it caters to the need of the women belonging to the affluent section only. Thus ARTs claim of reducing the sufferings of infertile women is self defeating due to its inherent class bias.
Unethical Surrogacy:

- The presumably dubious moral nature of the surrogate agreement has been considered as exploitative. Surrogacy is criticized for its commodification, moral ambiguity and objectification.

- Ethical practice must take its cue from the experiences of surrogate mothers, who – motivated primarily by a shortage of personal income – often endure the social stigma associated with surrogacy. They may leave their homes, lie about the parentage and claim the death of the baby after it has been handed over. The decision to become a surrogate is essentially not a free decision; it is a product of the (male-dominated) social construction of the will of women.

- There is also an in-built bias against the newborn baby as the surrogate mother is constrained to underplay her bond with the growing baby from the beginning. Early separation is at the cost of the baby’s immunological and psychological health. The baby is denied the right to breastfeeding even for three months.
Every child born through ART, whether disabled or one of a multiple pregnancy must have the same rights of survival and care as any other child. The proposed right of social parents to ask for “pregnancy reduction” goes against this.

The amount of compensation given to the surrogate mother is another particularly difficult aspect. It is telling that in the West up to 50 per cent of the total cost goes to the surrogate mother while in India most of the money is appropriated by sperm banks, ART clinics and lawyers and maximum part of the amount is paid only after the delivery of the product, “the child”.

Surrogacy and ART also predict unforeseen genetic, social and moral catastrophes. The ART (draft) Bill 2010 allows the sperm of a single donor for use up to seventy five times and any normal woman can donate oocytes not more than six times in her life. In all such cases, in general, confidentiality of donor’s identity is strictly maintained and thus children born out of ART and Surrogacy generally have no access to their biological parents. Thus a healthy sperm donor can sire many children (as depicted in the recent movie “Vicky donor”) who are being oblivious of their biological origin may end up marrying each other.
Promotion of Fertility Tourism in India

- The key drivers for its growth is the increasing number of infertility cases in the country due to myriad socio-cultural and environmental reasons like women’s education, employment and subsequent delay in marriage and conception, sedentary lifestyle, environmental pollution and so on.

- There is a growing number of people from abroad who flock to India seeking high-end treatments that come at a fraction of the price that they have to pay abroad. It is the economic practicality that drives surrogacy market in India.

- The other reason behind surrogacy boom in India can be first, is the ease of procedure. After the legalization of commercial surrogacy the whole issue has become a lot less hassle free, at least legally. Also, the draft bill recognizes surrogacy agreements under the Indian Contract Act, 1872 and also provides for single parents who wish to have kids.
Clip from the movie ‘Vicky Donor’
Since a single male parent cannot adopt a child in India, surrogacy seems to be a good option to such single parents.

The liberal guidelines of ICMR, allowing egg donation and surrogacy have facilitated this. The easy availability of egg donors and surrogates in India has also encouraged international patients to consider India as one of the suitable countries to pursue their treatment. Additionally, India is also equipped with some of the finest international IVF centers and highly qualified IVF doctors."

And finally it is the abject poverty and desperation for money that compels a poor Indian woman an easy target chosen to act as surrogates.
CONCLUSION

Thus to conclude, we can say ART and surrogacy as a concept has the potential to liberate as well as oppress women.

ART and surrogacy debate oscillates between the complex question of women’s bodily autonomy and exploitation mediated by male controlled technology and capitalism’s inherent penchant for commodification.

In spite of its limitations, a carefully drafted act can expand the horizon of feminine liberty and minimize the potentially exploitative aspect to protect those who choose it as reproductive option.
THANK YOU