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The Erasing of Women in Surrogacy

Many articles and books can be found describing the horrors of surrogacy – exploitation, abuse, slave like conditions for women, forced abortions and Cesareans, abandonment and abuse of children, trafficking and sale of women and children, illicit adoptions, violations of medical confidentiality and ethics, health issues for both mother and child, immediate and future psychological impact on the mother and her family and the child, desire to keep or refusal to take (much more common) the child, statelessness and nationality issues, family disruption – and the list goes on.

Some of the worst abuses have occurred to Indian women. They were “hired” to produce a baby who was then taken from them at birth. Mostly they were from the poorest segments of Indian society and the money they received while a pittance to the rich Americans or Australians purchasing the babies, was a windfall for them. So they endured separation from their families for many months in prison-like conditions with forced medical treatments as the “procurers” ensured they would deliver a healthy baby.

The women had signed contracts, often with no legal counsel and unable to read the language, and their attempt to cancel or enforce those contracts was ignored. If the woman gave birth to a disabled or less-than-perfect child, or more than one child, often the “buyers” would refuse the disabled child or a child that was darker than another or a sex they did not want. The mother who had in fact done the work, then did not get paid. The child, who had no biological connection to the birth mother ended up stateless as the mother could not afford to take the child back to her village, and the child had no biological connection to anyone in the country. Because of these and many other problems, India banned the practice. So Indian women went to Nepal. Then when the practice became too abusive in Nepal, they too banned it.

Most countries have chosen to prohibit surrogacy because of the inherent problems both in concept and operation. Only four countries allow surrogacy (Russia, Ukraine, Georgia, Israel) and in three others some of their states allow it (Mexico, U.S., Canada). Muslim, Catholic, and Social Democratic countries all prohibit the practice though for very different reasons. The war in Ukraine resulted in the desertion of several “babies in process” and the expose of the cruelty of the practice.

Language is one problem. According to the Webster’s New Collegiate Dictionary, “surrogate” means: to choose in place of another, substitute, to put in the place of another, to appoint as successor, deputy, or substitute for oneself. The birth mother is not in the place of another; she’s the mother. That was the law in every country in the world until now. We always knew who the mother was – she was the one who gave birth. In surrogacy, the women who gave birth are no longer the “mother.”

However, if the male in the “intending parents” is the sperm donor, he is the father. The egg donor, a female, who has a genetic link with the child, is not the mother. The birth

mother who actually nourished with her body and gave birth to the child is not the mother. But the male who donated sperm – and then had nothing more to do with the entire process - is the father. His tiny sperm counts more than the egg of one female or nine months of pregnancy and the act of giving birth by another.

The second language problem is the “donor.” A donor is “one who gives, donates, or presents.” Donate means to “make a gift.” Most donors except the “intended parents” are not “giving” eggs or sperm. They are being paid. But since biological material can’t be sold in most countries, specifically in the 29 states that have ratified the Vienna Convention, a legal fiction that has been created to pretend it’s a donation.

Another legal fiction is the payment of money to the birth mother for “expenses” in a so-called “altruistic” surrogacy. Everyone knows it’s not for expenses but for the delivery of a child to another person. If she doesn’t produce a child or if the child dies, she doesn’t get the money. Surrogacy is about money from start to finish. Intermediaries exploit the misguided desires of the “intending parents” and the often-desperate economic need of the birth mother to pocket the difference. This structure makes a mockery of consent, medical ethics, the protection of children, the equality of women, and the Rule of Law.

The main conceptual problem in surrogacy, the production and sale of a child, reduces both women and children to commodities in commerce – things. This is a violation of every human rights concept and convention one can name. The process of pregnancy and birth becomes a mechanistic procedure in which the woman is just a machine. The mother is framed and often referred to as a womb, an oven, a breeder, a producer, a carrier – not a human with inherent rights. The child has become a product, a commodity. These concepts are completely antithetical to the overarching international human rights principle that every person is owed human dignity by dint of birth. Reducing women and children to machines and products violates their inherent dignity and worth.

In some states, particularly in the U.S., a contract is given great weight. Contract law is a woefully inadequate way to deal with such weighty issues that implicate human rights and international conventions on children’s rights, women’s rights, trafficking, slavery, and racism.

Human rights are about human dignity and respect the world over. Racism, sexism, and colonialism drive surrogacy. The “facilitators” are the real moneymakers and no different from traffickers. The “intended parents” often let their desperation outrun their humanity. No one is promised a child. A child is not a “thing” that you have a right to own. The international human rights community needs to say no to the violation of human rights that surrogacy entails both in concept and in operation.

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