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The Acceptability of Surrogacy

By: Sneha Banerjee

Whose recourse to surrogacy is accepted socially and whose is frowned upon, or even legally prohibited, is a chequered terrain. Popular stereotypes have seeped into policymaking, even as social ways of family-making go beyond conventional usages of reproductive technologies.

Surrogacy is now a legitimate mode of reproduction, at least as far as heterosexual married couples, or single individuals are concerned. News of celebrities having children via surrogacy - be it Shahrukh Khan or Amir Khan a decade ago, or more recently Priyanka Chopra Jonas and Nayanthara - has contributed to this 'mainstreaming' of surrogacy. Popular culture representations in films and other forms of content on OTT platforms also reflect this mainstreaming.

Surrogacy arrangements are located in the milieu of infertility and other physiological conditions that might prevent carrying a pregnancy. Like in the case of Assisted Reproductive Technologies (ARTs), anxieties and changing perceptions about understanding infertility have contributed to a deepening of their social acceptance. Other than these conditions, single individuals and queer couples have also found surrogacy as a viable mode of having their 'own' child(ren). In their context, using ARTs and surrogacy facilitates something that biology renders unattainable.

The sensationalist attention towards the process and its consequent social acceptance piggybacks on a laudatory view of technological assistance in case of 'infertility', often presented as a 'treatment' for a 'disease'. A growing fertility treatment industry in the private sector, that resorts to aggressive marketing and advertising, has mediated the changing understanding of childlessness from a social condition stigmatised in a patriarchal context to its perception as a disease that can be treated medically, as I have argued elsewhere. In this context, the public health expert Imrana Qadeer insightfully observes that "least sensitive cultural norms that contribute to women's anxieties, medicalisation of her life and professional control of her reproduction" are all important axes through which one can analyse "the commercialisation of infertility" (2010: 16).

Perimeters of permissibility

Whose recourse to surrogacy is accepted socially and whose is frowned upon, or even legally prohibited, is a chequered terrain. A closer look reveals how social norms remain seeped in heteronormative patriarchy.

Commercial surrogacy, where the surrogate receives a payment, has been viewed unfavourably and is deemed problematic in portrayals in the media and popular culture. The nature of this arrangement vis-à-vis payment to the woman acting as a surrogate is often perceived through a lens of moralistic concerns. Yet, the larger umbrella - under which discussions about women who act as surrogates remain - is that of exploitation.

In popular cultural representations, surrogates are seen as important actors and agents, whose agency is framed by narratives of sacrificial motherhood and being 'good' women.

> While ethnographic research on surrogacy in India has illuminated the control and surveillance over surrogates by clinics and intermediaries, they also reveal the small but significant ways in which women who act as surrogates negotiate several livelihood options where they 'choose' surrogacy.

On the other hand, those who access surrogacy are represented as exercising a 'choice', often recklessly. In 2016, the then foreign minister Sushma Swaraj proclaimed, "We do not recognise live-in and homosexual relationships […] this is against our ethos […] It has become a culture among celebrities. For them, getting a child through surrogacy has become a fashion, a trend […] not a necessity." Soon after, the cabinet proposed a ban on commercial surrogacy in India.

Consequently, there were regulatory moves to define criteria that established necessity and determine who could qualify to access surrogacy. As Prabha Kotiswaran astutely observes, "numerous legislative drafts on surrogacy have been proposed, making India possibly the only country in the world to seriously consider all possible regulatory approaches to surrogacy ranging from a liberal,

contract-based model in the late 1990s to a prohibitionist, carceral model in 2016."

Since 2012, the Indian government has moved towards stricter regulation for access to surrogacy. It was effectively banned for foreigners in 2015 (with exceptions for OCI and PIO cardholders). Subsequently, surrogacy was strictly secured within the parameters of hetero-patriarchal norms by excluding single and queer people (Nadimpally et. al. 2016, Banerjee and Kotiswaran 2021). The current legislation, the Surrogacy (Regulation) Act 2021, allows access to surrogacy only to heterosexual married couples, widows and divorced women, who are Indians or of Indian origin - that too, upon fulfilment of certain eligibility criteria. Even among those who qualify it is only the ones who can afford this service, available almost exclusively in the private healthcare sector, can actually do so.

> Mimi and Yashoda are more relevant here to understand the way gestational surrogacy has been mainstreamed through the mediation of infertility treatment industry, and the elimination of concerns around 'immoral' sex in this context.

Commercial surrogacy itself, despite functioning in a permissive yet quasi-legal context for over a decade-and-a-half, was ultimately banned in 2021, a proposal first mooted in 2016. The prohibition applies to commercial surrogacy alone and not on surrogacy as a practice. The ban was aimed at addressing "exploitation of poor women," and it took cognisance of cases that brought the spotlight on ways in which such exploitation could happen.

While ethnographic research on surrogacy in India has illuminated the control and surveillance over surrogates by clinics and intermediaries, they also reveal the small but significant ways in which women who act as surrogates negotiate several livelihood options where they 'choose' surrogacy (Pande 2014, Rudrappa 2015). Yet, instead of adopting a strict regulation approach to ensure protection against violations, the Indian government chose a prohibitionist approach.

This peculiar prohibition on a specific type of arrangement that entails payment of a fee to the women who act as surrogates, indicates several tropes that are observable also in the way popular culture representations can be seen to be proxies of social mainstreaming or acceptance, albeit conditional ones.

Surrogacy in films

The plots of two recent films - Mimi (Hindi, 2021) and Yashoda (Telugu, 2022) - are pertinent sites to observe popular portrayals of surrogacy as an option - to have children and to take recourse to it as a way of earning money as surrogates which those women otherwise can't do through other means. They demonstrate how surrogacy is framed as a mode of reproduction in the Indian context.

Surrogacy has been depicted in several Indian films, like the Hindi langauge Doosri Dulhan (1983), Chori Chori Chupke Chupke (2001), and Filhaal (2002). Despite some continuities with Mimi and Yashodha - like the hierarchical relationship between the woman who becomes the surrogate and the intending parents - these older films depict traditional surrogacy, which involves sexual intercourse. Mimi and Yashoda are more relevant here to understand the way gestational surrogacy has been mainstreamed through the mediation of infertility treatment industry, and the elimination of concerns around 'immoral' sex in this context.

Yashoda with Samantha Ruth Prabhu in the titular role is a suspense thriller that comments on commercialisation and ethics surrounding the use of biotechnology. A surrogacy clinic and hostel form the centrepiece of its plot. Mimi with Kriti Sanon in the titular role is a story of a transnational surrogacy arrangement gone wrong.

> In light of the protectionist legal push to save 'our' women from exploitation, primarily from foreigners, these films depict their titular characters as strong agents - who make 'choices' despite the constraints of their difficult lives, and are not reduced to hapless poor women who get 'exploited'.

The protagonists in both films raw upon mythological references to Yashoda - the woman who brought up Krishna who was born to Devaki. Yashoda names the titular protagonist after her, while in Mimi, the protagonist raises a child that was not 'hers' notwithstanding the fact that she was the birth-giver. Mimi does so when the intending parents ask her to terminate the pregnancy she is carrying as a surrogate when a pre-natal test throws up an apprehension of disability. Upon Mimi's refusal, they leave the country, abandoning her. Mimi goes on to give birth and bring up the child despite the setback to her career aspirations and other social constraints. When a conflict arises years later with the intending parents, Mimi's mother proclaims that here, Mimi is both Devaki and Yashoda.

Yashoda too is generously sprinkled with narratives that glorify motherhood. It also includes an interesting reinforcement by opposition. In a plot point that highlights her villany, the major antagonist harvests biological materials from a foetus that she had conceived. In a context where going to extreme extents for having a child of one's 'own' is sought to be legitimised, a vilification of the 'choice' of abortion and a villainous mother sits well to bolster the conservatism around reproductive choices. Conservative - not in means, but in its end - in the premium that is placed on genetic links and blood ties, and showcasing dystopic paranoia around the use of technology upon the human body. However, both films incorporate a feel-good triumph of the underdog in their conflict resolution.





Both Yashoda and Mimi are unmarried women with no children of their own prior to the surrogacy. The American woman who commissions Mimi to be the surrogate harps on about how she is a suitable candidate by virtue of her fitness and strength as a young dancer. Both these plot elements run contrary to the law and practice: those chosen as surrogates are women who have been married, have had children of their own, and possess 'good obstetric history' - a proven track-record of smooth and uneventful pregnancy.

The films include several tropes of anxious portrayals which have also informed the gradually restrictive regulatory approach. The making and release of these films overlap with the deepening discussions on the Surrogacy (Regulation) Bill 2019, which was subsequently enacted in 2021. In light of the protectionist legal push to save 'our' women from exploitation, primarily from foreigners, these films depict their titular characters as strong agents - who make 'choices' despite the constraints of their difficult lives, and are not reduced to hapless poor women who get 'exploited'.

Yashoda depicts an institutionalised set-up where women acting as surrogates live in a hostel. No intending couples are shown in the film and the surrogates are employed by a surrogacy firm. The hostel has a clear chain of command with a matron assisted by nursing staff, a medical doctor who supervises them, and a proprietor of the entire establishment, who resides at the top of the chain. There is round-the-clock medical supervision and strict surveillance. This depiction approximates a dystopic 'baby farm', where a number of pregnant women live in a carceral setting.

> Mimi brings in an interesting window to adoption as a mode of parenthood and makes a welcome proposition to in fact place it above the 'biological' mode by identifying nurturance, affection & commitment as primary determinants.

Yashoda is particularly striking in its portrayal of the women who agree to act as surrogates. There is camaraderie and brewing friendships amongst the women in the hostel. It juxtaposes the protagonist's stint as a surrogate with her otherwise being a gig worker - a delivery person for a food-aggregator app, notwithstanding the plot twist around what her actual professional identity is. Yashoda's younger sister needs a surgery which she can pay for with the fees she earns as a surrogate. In a scene depicting a conversation between Yashoda and other women at the surrogates' hostel, about the technological marvels of gestational surrogacy, she quips that it won't be surprising if surrogacy goes online soon. One of the women pushes the envelope of imagination to wonder: "then we'd have

to go to the client's house. Conceive the baby there itself. Deliver the baby and ask for a star rating," and the group giggles.

Mimi, in contrast shows an arrangement that is more in line with the regulatory vision. The involvement of the clinic and doctor is limited only to administering the medical aspect for the conception. Intending couples scout and find a 'willing woman' on their own. Mimi is a dancer entertainer in hotels performing for tourists, notably Caucasian tourists in Shekhawati, Rajasthan, who aspires to be a film heroine. She takes up the offer to be a surrogate for a very lucrative payment, which will give her the money to move to Mumbai to give her dreams a shot. From her initial hesitation, Mimi becomes a 'willing woman', whose consent is sought, cultivated and secured with the assistance of an intermediary. The plotline has the couple ask their taxi-driver to help them in their search. This 'accidental agent' deftly mobilises analogies of agriculture to explain gestational surrogacy: it is akin to the 'trade' of tilling, irrigating, and, cultivating soil to grow crops that are harvested to be consumed by others.

In conclusion

The subjecthood of women who act as surrogates, as mothers and the nature of work that surrogacy entails, needs to be understood through a nuanced focus on several issues. These include questions of choice, expansion of modes of making families, possibilities that technology opens in this regard and how regulation by the state seeks to frame these.

In its climax, *Mimi* brings in an interesting window to adoption as a mode of parenthood and makes a welcome proposition to in fact place it above the 'biological' mode by identifying nurturance, affection and commitment as primary determinants. As discussions acquire more complexity about technology in relation to human life and society, it is important to not lose sight of social ways of family-making - choices, that go beyond conventional usages of 'new' technology.

Sneha Banerjee is an assistant professor at the Department of Political Science, University of Hyderabad, and an associate researcher at the Centre de Sciences Humaines, New Delhi. Her research interests are in gender and law, politics of reproduction, and feminist international relations.

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