

# Commercial Surrogacy and the Status of Women: A Care Ethical Discussion

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## ABSTRACT

The ethics of care that has been found in rooted in feminist thought has offered a distinct moral framework that has challenged the traditional ethical theories by giving importance to empathy, relationality, and context over universal principles. This perspective has been presented by theorists like Carol Gilligan and Nel Noddings, who have given emphasis to virtues that has been traditionally found to be associated with women, such as nurturing and compassion and which have been undervalued in patriarchal societies. The commodification of surrogacy has played a significant ethical dilemma through its reduction of motherhood to a transactional service, divorcing it from its emotional and relational dimensions. Feminist critiques, from Simone De Beauvoir to Adrienne Rich have given emphasised to the question that how such practices have focused on patriarchal ideologies by exploiting women's bodies and undermining their agency in the reproductive process. From a care ethics standpoint, the commercial practice of surrogacy has found to be raised a fundamental question about the nature of care, the autonomy of women, and the ethical implications of treating human relationships as economic transactions.

**Keywords:** ethics of care, feminist ethics, surrogacy, commodification, motherhood

## Introduction:

The Ethics of Care represents a significant and evolving branch of virtue ethics, developed primarily by feminist scholars such as Annette Baier. This moral framework challenges traditional ethical paradigms by emphasizing virtues typically associated with women, such as caregiving, patience, nurturing, and self-sacrifice. Historically, these virtues have been marginalized due to society's longstanding undervaluation of women's contributions. The relationship between care ethics and virtue ethics has sparked considerable debate among ethicists. Scholars like Carol Gilligan and Nel Noddings argue for the unique and independent nature of care-focused ethics, distinguishing it from the broader tradition of virtue ethics. Aristotelian ethics, a foundational element of virtue ethics, has been critiqued for its limited and hierarchical perspective on gender roles, which feminist critics argue marginalizes women and excludes them from achieving true human excellence. This critique underscores the necessity of a more inclusive moral framework, such as the Ethics of Care, which seeks to recognize and value the ethical significance of traditionally feminine virtues (Kumari, 2021). In recent years, there has been renewed interest in integrating care ethics and virtue ethics to create a more comprehensive ethical theory that values both justice and individual virtues. Thinkers like Michael Slote, Raja Halwani, and Margaret McLaren advocate for this integration, proposing an agent-based virtue ethics that acknowledges the interconnectedness of care and virtues (Kumari, 2021). Despite this, some ethicists maintain that care ethics should remain a distinct moral theory, emphasizing the unique relational ontology and practical approach to caregiving that care ethics offers. This paper explores the Ethics of Care as a separate moral theory, particularly in the context of surrogacy. It delves into the moral dimensions of caregiving relationships and responsibilities, highlighting the significance of care and the role of emotions in moral decision-making. By examining care ethics in depth, this study aims to provide a clear understanding of the ethical considerations associated with caring within the practice of surrogacy. The paper will address the commodification of surrogacy, critique traditional gender roles, and discuss the potential for a more inclusive and relational ethical framework.

**Objectives of the Paper:** This paper aims to see the ethical status of the women in commercial surrogacy. It also tries to analyse the issue with the help of the ethics of care. This paper will further try to establish the fact that with the help of ethics of care a better solution of the issue can be provided in comparison with the traditional virtue ethics.

**Date Source and Methodology:** This study will be mainly based on secondary data, based book, book chapters, Journal article and the article from the web. The whole study will be done with the help analysing and describing the issue with the help of some of the ethical theories, more specifically from the ethics of care.

**Virtue Ethics and the Ethics of Care:** Ethics of Care is one of the important and latest branch of virtue ethics. This branch of virtue ethics has been developed mainly by feminist writer Annette Baier. The main theory of ethics of care has been developed on the basis of the idea that men use to think in masculine terms, such as justice and autonomy etc. and women use to think in feminine terms, such as love, caring etc. The advocated of ethics of care has tried to advocate for a reorientation of our moral framework or values by emphasising the virtues traditionally associated with women, such as caregiving, patience, nurturing, and self-sacrifice. Unfortunately, these important virtues of each and all human beings have been marginalized due to society's longstanding undervaluation of women's contributions. (Athanasoulis). Although the Ethics of Care is sometimes viewed as a branch of virtue ethics, the relationship between these two frameworks has been a subject of significant debate within the field of ethics. Ethicists such as Annette Baier, Carol Gilligan, and Nel Noddings have sought to delineate the distinctions between care ethics and virtue ethics, emphasizing the unique and independent nature of care-focused ethics as a moral theory. Aristotle's ethical theory, a cornerstone of virtue ethics, has faced criticism for its limited perspective on gender roles and relationships. Feminist critics have particularly focused on Aristotle's views on women, rejecting the inherent hierarchies and power imbalances that his ethical framework perpetuates. They argue that Aristotle's conception of virtue excludes women from achieving true human excellence, thereby marginalizing their contributions and experiences. This critique underscores the necessity of a more inclusive moral framework, such as that proposed by the Ethics of Care, which seeks to recognize and value the ethical significance of traditionally feminine virtues. (Kumari, 2021). But according to some thinkers the care ethics and the virtue ethics can be integrated to make a stronger and a more comprehensive ethical theory that gives importance on both justice and individual virtues. The idea of merging these two theories has gained renewed attention in recent years, with some thinkers arguing that they are inherently compatible. Advocates of this approach include Michael Slote, Raja Halwani, and Margaret McLaren. Although their perspectives differ, they all contend that the relationship between care and virtues is interconnected, presenting a form of agent-based virtue ethics (Kumari, 2021). On the other hand, some ethical thinkers have mentioned that the Ethics of Care should be regarded as a distinct moral theory and it should be made an independent theory. Although the element of care can be regarded to be one of the central elements in all virtues within virtue ethics, but the ethics of care has three distinctive features. First, virtue ethics gives importance on virtues, but care ethics centres on care and it is the primary characteristic of it. Secondly, unlike virtue ethics, which may give irrational obligations on caregivers, care ethics adopts a more practical approach to caregiving. Thirdly, care ethics has advanced a comprehensive relational ontology that emphasises interpersonal interactions and the development of virtues to enhance the quality of relationships. It has been leading a debate about whether care ethics and virtue ethics should be integrated or not. According to some thinkers make a combination of these two theories might dilute the focus of care ethics. According to some other thinkers with the combination of these two theories, there is a probability to make a better theory. Despite the potential advantages of feminist ethics to both frameworks, many assert that they should remain distinct. Care ethics not only offers a unique perspective for understanding moral principles but also enriches theoretical discourse by highlighting the importance of relational dynamics and emotional engagement in ethical decision-making (Kumari, 2021)

Now, since the issue of surrogacy demands a comprehensive understanding of the notion of care, here in this paper, the theory of ethics of care been analysed. It is already be mentioned that the theory of ethics of care has been developed by the feminist thinkers and they have emphasised the moral dimensions of care giving relationships and responsibilities in it. It has also mentioned the significance of caring for others and the role of emotions in taking moral decision-making. By exploring this theory in depth, this paper will try to have a clear understanding of the ethical considerations, associated with caring within surrogacy.

**Care Ethics:** So far as the Ethics of Care is concerned, this theory has given importance on contextual factors in moral deliberations, by contrasting the patriarchal pursuit of universal truths. Instead of depending on rigid obligations or abstract ideals, this theory mainly centres on empathy. Care ethics always values some of the important qualities like trust, love, emotions, interpersonal connections, and acknowledges the presence of moral responsibilities. The pioneering work of Carol Gilligan and Nel Noddings during the mid nineteen hundred eighties, it has been found that there is an illustration by them about the emergence of care ethics as a distinct moral theory. This perspective emphasizes in deriving moral duties from personal relationships rather than from formal rules and abstract norms, marking a departure in ethical philosophy. The ethic of care has made a significant emphasis on warmth, emotional empathy, and a compassionate understanding of

human experience. It is a moral capacity, which is often been found to be associated with more with women than men. Originally derived from feminist principles, this movement is found to be seek to replace patriarchal and traditional and orthodox ethics with an ethos that respects gender, race, caste, and creed, and which is advocating for a more inclusive and empathetic approach to ethical considerations. (Islam, 2014).

Some feminist thinkers have criticised the conventional ethics for their emphasis on universal principles. In this respect they have argued that on a male-centric perspective of human nature. They specifically criticise some of the traditional ethical models such as Rawlsian ethics, which has given preference on impartiality and rationality while neglecting qualities like care and empathy traditionally associated with women. Gilligan who has introduced the concept of an "ethic of care," has proposed that moral dilemmas frequently stem from conflicts in responsibilities rather than clashes of rights. This perspective has given importance on the contextual reasoning and personal narratives over abstract logic. Care ethicists have highlighted the significance of individual relationships, the uniqueness of each situation, and the contextual nuances often overlooked by universal principles (Islam, 2014). Critics have said that focusing exclusively on the care for specific individuals may overlook broader societal requirements. Susan Moller Okin have mentioned that principles of justice should have encompassed the quality called empathy and has consideration for others. She has challenged the idea that moral decisions should separate itself solely from rational self-interest. Feminist ethics have given importance on contextual understanding over universal application and it has also emphasised the importance of emotions, relationships, and caregiving. They have rejected the conventional notion of ethics that justice and equality should be the foremost moral imperative (Islam, 2014). Martha Nussbaum has supported the liberal universalism and has argued that feminist critiques of liberalism might clash with the caring values favoured by liberalism. Feminist ethics has given importance to ethic of care and it has given importance to individual relationships and responsibilities. They have rejected the notion that morality should base on only abstract principles and have advocated for contextualizing moral judgments. The duty of care is to make a balance between the caregivers and care recipients in the both personal and societal levels. Feminist thinkers have asserted that caring should be a central component of morality, along with the values like honesty and non-harm. They have also challenged the traditional gender roles that have confined the women to only domestic spheres. They have been found to be advocating for women's equal engagement in political, social, and economic realms. According to them cultural traditions, including patriarchy have tried to shape societal perceptions of gender roles and have also tried to influence women's visibility and participation across various aspects of life. Kantian and utilitarian moral theories have emphasised individuals making rational decisions independently, while even it is found that traditional virtue theory have also focused on individual traits. But on the other hand, the ethics of care have given importance on the the interconnectedness of individuals, emphasizing relationships, particularly those rooted in caregiving (Islam, 2014). In traditional normative ethics, virtues have historically found to be made associated with masculine and have elevated them to higher status. This biasness has perpetuated the belief that values like justice, associated with masculinity, are superior to feminine values such as caring. However, it is very important to make a balance between both private and public virtues. Theories of justice have focused on rationality and legal frameworks to ensure fairness are often found to struggle to justify differential treatment of individuals in society and posing inherent challenges. Whereas, on the other hand, the ethics of care have offered a distinct approach. It has given emphasis on context, trust, and meeting individual needs, emphasizing positive relationships and cooperation. Unlike justice, which have primarily safeguarded the equality and the freedom, the ethics of care has nurtured the interpersonal bonds. Feminist thinkers have advocated for an ethical paradigm that have diverged itself from abstract principles toward a focus on real-life situations and empathy. They have asserted that care should form the foundation of ethics. They have also recognised the importance of empathy and equality for all. Human ethical development begins with interactions among individuals. Feminists have criticised the traditional ethics for neglecting women's experiences and reinforcing restrictive gender norms. They have argued for an inclusive ethics that have acknowledged the caring relationships and promotes understanding of diverse needs. The ethics of care have tried to make a significance of addressing specific circumstances rather than adhering strictly to abstract rules. While liberal feminists have supported gender equality, they have often found to be uphold the abstract principles over relational ethics. They do not fully embrace the ethics of care, which places caring relationships at the forefront. Feminist critiques have challenged patriarchal structures and have advocated for justice across genders, aiming to dismantle traditional gender roles and construct a more compassionate and just society (Islam, 2014).

The care-focused feminism has derived its principles primarily from the ethics of care, originally formulated by Carol Gilligan and Nel Noddings. These ideas have not only underpinned care-focused feminist perspectives but also have served as the basis for principles on maternal ethics within feminist discourse. Feminist philosopher Sara (Sally) Ruddick have introduced a distinctive viewpoint on the perspective of motherhood that have challenged the traditional norms. It has portrayed the mothering as an active, ethical engagement with the world. To analyse Ruddick's theory fully, it has become crucial to deal with the historical perspective in which feminists have explored and articulated their perspectives on motherhood. This exploration facilitates a comprehensive understanding of the development of maternal ethics over time.

### **Mothering and Commodification of Surrogacy:**

Simone De Beauvoir's famous statement "One is not born but becomes a woman" have remained a widely studied and acknowledged concept. Beauvoir have challenged the notion that possessing female genitalia inherently defines womanhood. It is been said by her that societal constructs have actually influenced by male dominance. She also criticised the imposition of motherhood and have emphasised it as a choice rather than an obligatory criterion dictated by society. Within feminist theory, motherhood has been an important focus. Beauvoir have further argued that assigning the women to the role of mothering is connected to their oppression within patriarchal structures. It can be mentioned that historically, motherhood was predominantly viewed through a biological lens, deemed a natural function. Beauvoir has contended that patriarchal rules have confined women to roles centered around reproduction. The evolution of culturally constructed notions of femininity and motherhood have marked a significant historical shift. This social constructivism has allowed for made a distinction between biological reproduction and culturally defined maternal roles. It has also contributed to redefining motherhood, shaping new understandings of the private and personal spheres. The deconstruction and the reconstruction processes were found to be integral to this transformation. Beauvoir further have mentioned that maternal instinct is a patriarchal construct, debunking the idea by highlighting women's varied responses to motherhood, which can be laden with societal pressures and guilt. (Kumari, 2021).

Simone De Beauvoir have criticised the societal norms that confined women to roles centered on reproduction and child-rearing and have found to be viewing this confinement as a tool of oppression. According to her the exploration of motherhood have contrasted sharply with the commodification of surrogacy. Surrogacy, when commodified has reduced the motherhood to a transactional relationship devoid of its cultural, emotional, and personal dimensions. It has also transformed the concept of motherhood into a service that can be bought and sold and have found to be neglected the intricate and profound bond between a woman and her child. The reductionist view inherent in commodified surrogacy has disregarded the emotional and psychological complexities of motherhood and have reduced it merely to a biological function. In surrogacy arrangements, the women's bodies are often treated as vessels for carrying and delivering a child and have found to overlooked their own desires, emotions, and well-being. That is why Beauvoir have criticised of the patriarchal systems that limit women to their reproductive capabilities only. Moreover, it is been mentioned that the commodification of surrogacy has undermined the women's agency in the process of motherhood. Instead of freely choosing motherhood, it has been found to be based on their own volition and circumstances, women may have found that themselves have compelled to fulfil the desires of others, potentially have found to leading to feelings of alienation and disempowerment. The involvement of financial transactions and contractual agreements have been further found to be disrupts the natural bond between mother and child. This distortion that has made a challenge of Beauvoir's assertion that motherhood encompasses not only biological reproduction but also emotional and social dimensions integral to human experience. By accepting Beauvoir's, different feminist scholars, including Adrienne Rich, have tried to maintain into the complexities of motherhood and its societal implications. Rich has notably mentioned that to understand the concept of motherhood requires more attention than commonly afforded to subjects like air or oceans. She has challenged the notion that motherhood is a natural and inevitable state, instead framing it as a human construct influenced by historical ideologies. Rich has argued that the practice of mothering has been defined through patriarchal lenses rather than innate femininity. She has distinguished between two facets of motherhood, namely, "experience" and "institution." Rich has explored how these concepts have either conformed to or challenged the patriarchal institution of motherhood and its underlying ideologies. In her writings, Rich has suggested that embracing motherhood can potentially empower women, enabling them to resist patriarchal constraints. By deconstructing societal narratives surrounding motherhood, Rich has mentioned that women can reclaim agency in their roles as mothers, asserting autonomy and challenging patriarchal norms. She has contended that mothering, when viewed through a critical lens, can have become a site of empowerment and resistance against societal structures that seek to control women. Rich's exploration has mentioned that the transformative potential of reframing motherhood within feminist discourse, advocating for its recognition as a complex and multifaceted human experience.

Adrienne Rich has shown the perspective which has focused on the fact that mothering can serve as a site of empowerment where women challenge patriarchal oppression. However, the practice of surrogacy had undermined this potential by disempowering women and by reducing them to providers of reproductive services within a capitalist framework. In surrogacy arrangements, women's agency is compromised as their bodies are commodified and exchanged for financial gain. Rich's argument has mentioned that motherhood is constructed through patriarchal ideology and is amplified by surrogacy, which have treated motherhood as a transactional commodity. This has focused on the view that women's bodies exist primarily for reproduction and economic exchange. Rich's in his seminal work "Of Woman Born: Motherhood as Experience and Institution" has argued that motherhood is not an innate condition but mere a product shaped by historical and ideological forces (Kumari, 2021). So far as the commercial surrogacy is concerned it equates a surrogate mother to a commodity, akin to slavery or prostitution. The main aim of surrogacy is to rent a woman's womb to facilitate childbirth for infertile couples, which is nothing but a process that often exploits the surrogate mother's body. She has become objectified, losing autonomy and decision-making power over her own body.

This kind of exploitation can lead to severe physical and emotional consequences for the surrogate, including medical procedures she may not consent to or readiness for. In extreme cases, the surrogate's life may be endangered, with legal and social ramifications. Furthermore, it can also mention that surrogacy shifts reproductive control from the surrogate to intended parents or facilitating agencies and reinforcing patriarchal notions of ownership and control over women's bodies. This view has been found to be contradicted Rich's vision of empowered mothering, where women reclaim agency in their maternal roles. Therefore, it can be mentioned that while motherhood itself is socially constructed, surrogacy exacerbates these constructs, raising profound ethical concerns about the exploitation of women's bodies for the benefit of others.

Virginia Held, a feminist care ethicist has mentioned that the mothering stands as a profoundly influential activity within society and it has shaped a new individual who has possessed the potential to catalyse societal transformation. While biological functions are universal to all humans, Held argues about the fact that they are profoundly influenced by cultural contexts. For instance, nursing an infant, which has been shown as a biological act tied to motherhood is not purely biological but deeply embedded in social and cultural dimensions. In this regard, Held has emphasised that women invest substantial time and effort in mothering and has asserted that moral theories should be tailored to accommodate the nuances of the private sphere rather than focusing exclusively on the public realm. While acknowledging that not all women reside solely in the private sphere, Held has asserted that there exists a meaningful distinction between the moral experiences of women and men. She has further criticised the traditional Western ethics for undervaluing women's moral perspectives while presenting men's morality as gender-neutral. (Kumari, 2021)

Virginia Held has suggested that if society had been structured around the relationship between mothering individuals and children as the model for healthy human relationships, then it could fundamentally have been transformed into societal norms. However, she has also acknowledged that the relationship between mothering individuals and children can sometimes be as restrictive as the relationship between two rational contractors. While some maternal thinkers have rejected traditional ethics in favour of celebrating the positive aspects of maternal ethics, Held has argued that maternal ethics have the capacity to address concerns that go beyond the "moral minimum" of respecting individual rights. She has further mentioned that mothering individuals exhibit qualities such as fairness and compassion, rationality and emotional intelligence, and possess the ability to generalize while also recognizing the unique aspects of human relationships. Again, Held has said about the role of mothering and regarded that it is not exclusive to women; in many cases even men are also found to be embodied mothering characteristics. That is why she has argued for equal parenting practices that are rooted in mutual respect and consideration, believing that such practices can prevent the development of aggressive and emotionally detached men in positions of power (Kumari, 2021)

Held that is why has proposed that if society are to embrace the relationship between those who nurture and children as the cornerstone of exemplary human relationships, it could have significantly been alter societal norms. However, the commodification of surrogacy has challenged this paradigm. Surrogacy has reduced the basic feature of mothering to a transactional service, whereas of its profound relational and transformative essence have rooted in genuine care and mutual respect.

**Notion of 'Care' and Commercial Surrogacy:** Maureen Sander Staudt, a prominent scholar in ethical theory, has introduced a significant moral framework known as "the ethics of care." This theory has focused on the ethical importance of relationships and aims to contextualise and enhance the well-being of both caregivers and care recipients within the framework of social connections. Care ethics, fundamentally a practice of virtue rather than a purely theoretical construct, is found to be rooted in the sentimentalist tradition of moral philosophy. This tradition has placed a considerable emphasis on caring motivations, emotions, and the embodied aspects of moral deliberation. Central to care ethics, it is found that the recognition of have been given to the fact that caring relationships have played an important role on ethical decision-making and human flourishing. It has further emphasised the need to approach moral judgments by considering the specific and unique characteristics of individual cases, diverging from moral theories that prioritize universal principles and rule (Kalita, 2020)

From the above discussion it is found that care ethics offers a crucial perspective that underscores the significance of relationships and the emotional and physical dimensions of care in ethical reasoning. It has also provided a valuable alternative to traditional moral frameworks and holds profound implications across various domains such as healthcare, education, and social policy.

### Conclusion:

The philosophical exploration into the ethics of care, particularly as applied to the contentious issue of surrogacy has revealed the profound insights into human relationships, moral responsibility, and societal norms. Care ethics that has been articulated by scholars like Maureen Sander Staudt and has enriched by feminist thinkers such as Carol Gilligan and Nel Noddings has challenged the traditional ethical frameworks by emphasising on the moral significance of caring relationships and the unique particularities of each individual case Surrogacy, when have been viewed through from of care ethical perspective have arisen critical questions about the commodification of human relationships and the ethical implications of treating motherhood as a service to be bought and sold. The practice of surrogacy has raised a serious concern about

the emotional and physical well-being of surrogate mothers, who may face challenges in forming genuine bonds with the children they carry due to contractual obligations. This detachment from the emotional aspects of motherhood undermines the relational and transformative nature of care that care ethics seeks to uphold. Moreover, it can further say that the commercialisation of surrogacy can give importance to patriarchal ideologies that has reduced the women to reproductive vessels, disregarding their autonomy and agency. This has undermined the feminist perspective that has advocated for equality and justice in all aspects of life, including reproductive rights and responsibilities. From a care ethical standpoint, it can be pointed out that the emphasis on empathy, trust, and the quality of relationships have given focus on the complexity of moral decision-making in surrogacy arrangements. It has challenged the society to rethink the traditional notions of motherhood and caregiving and has advocated the honour and the dignity and autonomy of all individuals involved. In conclusion, it can finally be said that while the ethics of care has provided a valuable alternative to traditional moral theories by prioritizing relationships and contextual understanding, the application of the theory to issues like surrogacy has focused on the need for careful consideration of the ethical dimensions of care in contemporary society. It has been called for a re-evaluation of the system that how the individuals use to value and respect the caring labour of individuals, particularly the women, within both private and public spheres. Ultimately, the ethics of care has given a challenge to the society to envision a more just and compassionate world where human flourishing is nurtured through genuine care and mutual respect. Further it is to be mentioned that from a care ethical standpoint, women are regarded to be human beings deserving of dignity and respect, not commodities to be bought or sold. Therefore, finally it can be stated that the acceptance of commercial surrogacy as a practice has raised mere complex ethical challenges that must be approached with sensitivity to the ethical dimensions of care, autonomy, and justice

#### References:

1. Athanassoulis, N. (n.d.). *Virtue Ethics*. Retrieved April 19, 2024, from Internet Encyclopedia of Philosophy: <https://iep.utm.edu/virtue/>
2. Islam, T. (2014, August 20). *The concept of care in feminist philosophy: a critical study*. Retrieved April 21, 2024, from Shodhganga: <https://shodhganga.inflibnet.ac.in:8443/jspui/handle/10603/23086>
3. Kalita, T. (2020). *The Issue of Surrogacy: An Ethical Discussion*. (d. s. dr.minakshi das, Ed.) Guwahati: BNit book builders.
4. Kumari, A. (2021). *Self Other and Inter subjectivity A Study in Care Ethics*. Retrieved April 21, 2024, from Shodhganga: <https://shodhganga.inflibnet.ac.in:8443/jspui/handle/10603/462673>