



Research Article

COMMERCIAL AND ALTRUISTIC SURROGACY IN INDIA: CHANGING PATTERNS OF PARENTHOOD AND KINSHIP

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ARTICLE INFO	ABSTRACT
<p>Article History: Received 18th April, 2016 Received in revised form 17th May, 2016 Accepted 29th June, 2016 Published online 28th July, 2016</p> <p>Keywords: Surrogacy, Gestational, Commercial, Surrogacy Bill 2016, Society, Social, Kinship, Caste, Family, Culture, Tradition, Power, Posthuman, Reproductive Technologies</p>	<p>Surrogacy is defined as an arrangement by which a woman agrees to carry a pregnancy for the commissioning or intended parents. Surrogate arrangements can be of many kinds, however, in this paper we seek to focus on Commercial (gainful) and Altruistic forms. While gainful surrogacy involves an economic transaction in favour of the surrogate mother from the commissioning parents, altruistic is when a woman agrees, for no financial gains, to bear the child for another person.</p> <p>This paper would deal with the dynamics of surrogacy in a nation like India, which is deeply rooted in cultural and traditional values. Some of the many questions that come to our mind while studying surrogacy in India; what is the position of a surrogate baby in our society? How viable is it for women to play surrogates? What is the position of surrogates in the structural matrix of values and mores? How does it change patterns of kinship vis-à-vis the relation of commissioning parents and the child, the surrogate and the child, the commissioning parents and the surrogate among others?</p> <p>We will also throw light on the Surrogacy (Regulation) Bill 2016, the changes it brings with itself and their implications. The Bill brings about a paradigm shift in the surrogate industry of the country as India used to be one of the popular sites for 'renting wombs'. With only altruistic surrogacy permissible, what does the future have in store for this industry?</p>

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INTRODUCTION

Ours is a land of people that lays great emphasis on the social. Social institutions, social relations, social systems are not only of paramount importance but also sacrosanct! Hence, changes to the same are received with great skepticism and are subject to scrutiny. The 'family' is one such social institution that commands faith of the masses and becomes integral to the functioning of the society on the whole. A family is not only a reproductive unit and a socializing agency; it also provides each person with his main link to the wider society. The roles of mother, father, uncle, aunt, brother, sister etc forms important components of the kinship network of an individual. Becoming the part of such a network by virtue of birth, complemented by a plethora of rites, rituals and customs cements one's membership or belonging to a family and clan. Birth figures as an important aspect of the kinship relations and networks. What would happen if the method of birth were to go through a paradigm shift? What ensuing changes would it bring in the society?

This paper seeks to raise many such questions with respect to surrogacy in India, by virtue of literature reviews of renowned work in this field. For a country deeply rooted in cultural and traditional values; some of the many questions that come to our mind; what is the position of a surrogate baby in our society? How viable is it for women to play surrogates? What is the position of surrogates in the structural matrix of values and mores? How promising are the new regulations on surrogacy?

SURROGACY IN INDIA: NOW AND THEN

Surrogacy is defined as an arrangement by which a woman agrees to carry a pregnancy for the commissioning or intended parents. Surrogacy is of two main kinds, gestational surrogacy where the surrogate is implanted with embryos created by In Vitro Fertilization (IVF) using intended mother's eggs and donor sperms. The resulting child being genetically unrelated to the surrogate. The other form of surrogacy is traditional surrogacy, where the surrogate is the biological mother of the baby, and is artificially inseminated by the father's sperms. There may be other forms of surrogacy depending upon the procedure deployed. However, the kinds of surrogacy we are

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interested can be differentiated on the basis of intention rather than procedure: commercial and altruistic surrogacy. Commercial surrogacy is a form of surrogacy where the gestational carrier is paid to carry a child in her womb; is usually contractual. Altruistic surrogacy is when a woman agrees, for no financial gains, to bear the child of the commissioning parents. Usually discursive tools and narratives like 'global sisterhood', 'gift of god' etc are used to maximize the altruistic nature of a surrogate pregnancy. Even though this had always been a contended issue, the law permitted both commercial and altruistic surrogacy in India until recently. The Surrogacy (Regulation) Bill 2016 banned commercial surrogacy in India, citing the large scale exploitation of surrogates and commodification of women's bodies, uncertainty regarding custody of babies etc. The surrogacy debate as we see today started in India in 2008, when two-week-old Baby Manji Yamada was left stateless after the commissioning parents in Japan divorced during the pregnancy and the commissioning mother refused to accept the baby. The court granted custody to the baby's grandmother after a long legal battle. But this led the Gujarat HC to state that there is "extreme urgency to push through legislation which addresses such issues. Subsequently, the 228th report of the Law Commission of India recommended prohibiting commercial surrogacy and allowing ethical altruistic surrogacy to the needy Indian citizens by enacting a suitable legislation." (The Hindu, 2016). The 228th report of the law commission has now come to be replaced by a more stringent Surrogacy Bill (Regulation) 2016. It promises to ensure parentage of children born out of surrogacy is "legal and transparent." It proposes a complete ban on commercial surrogacy, permitting only 'legally-wedded Indian couples' to have children through surrogacy, provided at least one of them have been proven to have fertility-related issues. Foreigners, overseas Indians, unmarried couples and singles and homosexuals are barred from commissioning surrogacy. Childless or unmarried women cannot be surrogates. It permits a woman (from among the close relatives of the commissioning parents) to become a surrogate mother only for altruistic purpose decreeing that under no circumstances money shall be paid to her, except for medical expenses.

The heavy protectionism imposed by the state on the Surrogacy industry is partly because surrogacy is riddled in controversies regarding its ethics, morality and legalities. "While this is the case in most of the developing countries, surrogacy is unusually stigmatized in India. This is partly because many Indians equate surrogacy with sex work" (Pande in Dasgupta and Dasgupta, 2014; 90). This happens because people are hardly aware of the latest assisted reproductive technologies that separate pregnancies from sexual intercourse. Popular media has a huge contribution in building this perspective. The Hindi film and daily soap industry has over the years constantly equated sex workers to surrogates in the process of romanticizing the plots of stories. Such misconceptions and opinions have not only stigmatized the industry but also shrouded it in the veil of secrecy and anonymity. The end result of this is that surrogacy becomes a job delegated to the woman of the lowest rungs of the society, for women of

'respectable house holds' would never 'rent their wombs' for money. Amrita Pande in her article 'The Power Narratives: Negotiating Commercial Surrogacy in India' conducts a research on fifty two surrogates in a town in Gujarat. All the surrogates were married. Their median income was about rupees twenty five hundred per month (putting most of them below the poverty lines in both urban and rural areas). Their literacy levels ranged from illiterate to high school level. Most of the husbands were employed as informal contract laborers or were unemployed. These women clearly appear to come from classes that have low life chances.

The aforementioned take of Indians on surrogacy seems baffling given that the culture here isn't new to surrogacy. Various legends and epics on the Hindu pantheon of Gods deal with stories of surrogate motherhood. It is believed that the much revered god *Krishna* wasn't given birth by his genetic mother, but rather by his step mother who carried him during the gestational period. Lord *Shiva* and his consort *Parvati* are said to have conceived their first born *Kartikeya* but given him up for the gestational period. The *Mahabharat* epic too is rife with similar legends. Despite finding mention in the lives of the most revered and respected gods, the custom of surrogacy continues to be looked down upon.

Arrival of IVF technologies shook the underlying assumption of 'divinity' surrounding birth. The society came face to face with the fact that babies could very well be created in laboratories. It also raised questions on the conventional notions of parenthood. Surrogacy too, is bound to raise questions about custody along with parenthood. These are simple questions that can't be taken care of by a piece of parchment or the word of law. Does the surrogacy contract matter to a woman who comes to be attached to the baby in her womb? A famous example of the complexity in custody of the baby is the Baby M case in America where the surrogate was a traditional surrogate as opposed to gestational. Despite having entered into a contract with the commissioning parents, that she would lay no claims on the baby, the surrogate couldn't part with the baby after birth. A famous court ruling followed, that granted custody of the baby to the commissioning parents as they were better suited to take care of the baby (however, not by virtue of the contract signed between the commissioning parents and the surrogate). Another case in India is that of the aforementioned two-week-old Baby Manji Yamada was left stateless after the commissioning parents in Japan divorced during the pregnancy and the commissioning mother refused to accept the baby. Cases like these, remind us that the status of surrogate babies and that of anyone who is a part of the surrogacy contracts, either by virtue of being genetically related to the baby or gestationally; can continue to be in a limbo despite the presence of well articulated contracts and handsome monetary transactions.

VARIED PERSPECTIVES TO THE ISSUE

In a documentary titled 'Wombs for Rent in India', Dr. Nayana Patel (a specialist in this field who heads the famous Akanksha Infertility Clinic in Anand, Gujarat) and her staff, are seen engaging with surrogates. At a particular point in the documentary she is seen informing the intended surrogate about the risks involved in this procedure. She also explicitly states

that the baby would be taken away at delivery by the commissioning parents. However, later in the documentary she states that often, when surrogates are asked about the number of children they have, they count the surrogate babies as their very own! These are ambiguities that coax us to delve deeper on the issue of kinship and parentage as distinct from legalities of custody. It is not just parentage that comes under the lens but also the rest of the relations! For instance, would a child born out of surrogacy, share greater kinship with siblings he has shared a womb with or with siblings who he shares the same genetic code with?

Shelley Jackson's Patchwork Girl represents a whole new dimension of looking at such complicated issues. The Patchwork Girl is shown to imbibe traits, characteristics and genetics of all persons from whose body parts she has been sewn together. She transgresses boundaries of natural subjectivities. However, she also retains her individual agency. Will the surrogate baby, who is a product of technological know-how, genetic parents and surrogate mother must then share equal kinship to all of them in this posthuman scenario?

Be it commercial surrogacy or altruistic, such questions can never actually be brushed under the carpet. We must realize that legalities cannot discount the sanctity held by kinship and hence they must not be underplayed. "Kinship ties are generally taken to be the most durable, reliable, worthy, and moral of all social relations. Kinship begins with the family and is extended through the family" (Mandelbaum, 2011; 43). Furthermore, for those who view surrogacy through lens of "global sister hood" or "god's gift"; laying emphasis to the relation between the commissioning mother and the surrogate; what place does the surrogate hold the lives of the commissioning family? Do they hold compassion for each other? Does this open a possibility of an entirely new network of kinship; does it establish several new role relationships? What significance does caste, *gotra*, race and religion of the surrogate hold for the commissioning parents? After all, *Jati* is essential to kinship, and all of a person's kin by descent or by marriage must be within this *jati* and not outside it. What is the position of the surrogate in this matrix?

Association of women with Mother Nature naturalizes her capability to give birth. Therefore, infertility comes to be seen as an abnormality. In many civilizations such as ours, an infertile woman is greatly stigmatized and her inability to produce an heir to the conjugal family leaves her in a limbo. "Her greatest responsibility is to bear a child, preferably a son. Barrenness is a fear, a curse, an unending reproach." (Mandelbaum, 2011; 86). Quite often, giving birth acts as a rite of passage for females. It is seen as being essential for them to be able to separate themselves from the identities of their mothers and enter womanhood as independents. Hence, not being able to give birth, may lead to an identity crisis among women. "For some women, a negative experience of this sense of fusion with their mother can be disastrous, particularly if the young woman goes on to experience reproductive difficulties. It is not common in the course of psychotherapy, that the infertile woman can feel as though she has been cursed by her mother" (Haynes and Miller, 2005; 4).

Furthermore, how is the problem of childlessness dealt with by the family and kin group at large? Adoption of a male heir has been legitimized by the society; its incidence usually simulated by the need of the economy. Various schools of Hindu Law prescribed inheritance by male heirs only; therefore, adoption came to be accepted by the society by and large. "Adoption is firmly rooted in formal law and customary practice. An adopting father takes a boy from his own *jati*, preferably one from his own lineage or that of his wife's." (Mandelbaum, 2011; 96). It is worth noting that *jati* and lineage remain important. We can maybe extrapolate the same to surrogacy in order to answer the question asked above. Purity of caste and *gotra* may be of prime importance to various commissioning parents. Another method, less commonly taken because of considerations of cost and temperament, the husband takes another wife or many more wives to beget a son. We can therefore see how childlessness threatens to shatter the sanctity of marriage between two individuals. Would it be safe to say that systems of adoption and surrogacy can then be seen as attempts to salvage the same? Whatever, the situation, the family must be equipped to celebrate the birth of a son with proper ritual or if birth isn't possible, then secure a suitable alternative.

Borrowing from a research paper by Melissa J. Pashigian who studies womb, infertility and kin relatedness in Vietnam, the womb as a site of analysis provides means to discuss and understand social relations and meaning implicit in the process of producing the next generation. Also, this opens up distinct ways of thinking about reproductive relations that are in turn related to kin practices. Pashigian states in her paper that the womb remains a site of maternal relatedness, given the cultural belief about gestation and the formulation of subsequent reproductive laws in Vietnam. "In restricting legitimate and legally recognized motherhood to birthing women rather than those who might receive a baby from IVF with surrogacy, the Vietnamese state safeguards the womb as a space for creating gestational bonding that privileges links to one's mother rather than one's father. In focusing on and privileging the womb as a defining means of creating relatedness, above and beyond genetics, the state is expressly protecting the relatedness between a mother and any children she bears" (Pashigian, 2009; 56).

The above mentioned instances highlight the contention that can exist in establishing the actuality of relatedness when it comes to highly complicated forms of reproductive technologies. The more complicated the procedure of birth more contested are the boundaries of kinship. Given the scenario it depends a lot on the historical location of a people and their culture what course of action they resort to. Maybe, because ours is a patriarchal society by and large, the emphasis laid on kinship via womb is downplayed. "How individuals assemble relatedness in a context of reproductive limitations, how the state enables or limits the choices they can make, and the overall acceptability of these choices for the larger body politic is where the contemporary meaning of gestation and the womb remains most apparent." (Pashigian, 2009; 57).

Various other sociologists and social theorists have expressed their views with respect to reproductive technologies and their social outcomes. Latimer, in her piece, 'Reproductive Technologies, Fetal Icons and Genetic Freaks' throws light on the issue while commenting on 'The Patchwork Girl' by Jackson. She stresses that reproductive technologies are likely to bring deliberate disruptive changes in kinship structures. "It directly confronts one of the main fears circulating around new reproductive technologies: that technologies such as cloning could disrupt linear sequencing of generations" (Latimer, 2011; 12). Sarah Franklin while arguing for the everydayness of IVF in her work 'The Cyborg Embryo' notes that IVF has opened up whole new modes of everyday kinships. However, some like Hartouni argue that merely the creation of new reproductive technologies cannot change kinship structures, unless social technologies change. Most reproductive technologies have been assimilated into the order of nature and brought to the service of age old institutions and relations. Even though kinship structures are not only social or discursive technology; they are natural and naturally ordered set of arrangement and relationships, the mere use of reproduction technologies not only reproduces individuals, and it also reproduces social relations that organize and recognize and locate these individuals within the larger matrix. Maybe there is a possibility that the use of technology in reproduction has separated birth from womb altogether, increasing the distinction between the new born and pregnant woman's body!

The Surrogacy Bill 2016, with its major changes bought an already controversial issue into greyer areas. The state seeks to provide legitimacy to this issue by bringing it under the ambit of law. It primarily sought to check rampant exploitation of the surrogates. The regulatory mechanism sought to do so seem flawed. India has been the hub for transnational surrogacy, because it provides rich, childless couples from the developed nations access to 'fertile' Indian women for at low rates. This often raises the question whether surrogates are empowered or exploited? The Indian terrain is rife with stories of exploitation; either at the hands of commissioning parents or by middlemen. Kajsa Ekis Ekman in her book 'Being and Being Bought' draws a parallel between prostitution and surrogacy, given both the industries thrive on the exploitation of women's bodies. Both the industries work to the benefit of the rich as against those who aren't. "Two industries profit from women's bodies: one from her sex, the other from uterus. Two industries commercialize basic human phenomena: sexuality and reproduction. And these as it happens are also the basis of the historical oppression of women..." (Ekman, 2013). This issue is, hence, also about 'power' and its confluence with class, ethnicity, age; social standing etc. Such a form of surrogacy outsources 'birth' to countries with cheap labor, much like other industries of the neo-liberal market. Hence, we wonder if, the logic of market which is believed to be 'perfectly competitive', 'secular' and 'rational' permits elements of kinship, global sister hood to emerge and persist at all? Or is it only a part of the hegemony that seeks to cover up rampant exploitation. Does the logic of market completely disembody the surrogacy industry from the fabric of social? Who is to say!

But, should surrogacy for money by default be viewed as an instrument of exploitation of women? To the contrary, attaching an economic value to the gestational service provided by a surrogate should be viewed as a form of emancipation for the women; much like attaching economic value to a day's work done by a housewife. After all, for all we know, many of these surrogates might be single women trying to get back on their feet after separation from family. Deomampo in her work 'Transnational Surrogacy in India: Interrogating Power and Agency', finds on interviewing a doctor in India who worked with surrogates that approximately 30-40 percent of them were separated; most of them walking out of their marriages due to abuse and alcoholism. "The views and experiences of women I spoke with resist reduction to simplistic stereotypes and binary oppositions between agent and victim, rich poor, East-West" (Deomampo, 2013; 168). While there may be many reports of in-laws and husbands coercing women into surrogacy agreements, Deomampo interviews women like Nishi who assert their own decisions about surrogacy, often in the face of disagreement from their husbands. Therefore, we must be aware of the fact that commercial surrogacy thrives not only on the demand of commissioning parents and agents, but also on the demands of a number of women who take this as an opportunity to push their way upward the social matrix!

CONCLUSION: THE MISFIT OF SURROGACY BILL

The Surrogacy Bill also seeks to restrict the 'luxury' of surrogacy to heterosexual, married couples; limiting possibilities of accommodating diverse family types. By doing so, the state seems to have segregated the normal from the abnormal, the conventional from the unconventional. Having done this, the society or the law clearly seems to have no appetite to recognize change in social, kinship structures either. Moreover, having decreed live-in relationships as being at par with marriage and children born out of long-standing live-in relationships as legitimate; the state is setting a wrong precedent by limiting the option of surrogacy to 'legally married couples'.

By ruling that only close family members can offer their wombs and must do so for free, the government is not preventing exploitation. It is instead launching an inevitable black market. Further, would implementing a blanket ban on commercial surrogacy and restricting the possible surrogates to close family change the views the society holds for surrogacy? What is the probability that the female relative who offers to carry the fetus isn't looked down and stigmatized for doing so? Leela Dube in her book 'Women and Kinship: Comparative perspectives on gender in South and South-East Asia' gives a plethora of reasons and facts behind the position of women in kinship networks across South and South-East Asia. One of the primary reasons behind the almost common custom linking family/clan honour to that of the women was that the 'wombs' and 'sexuality' of women was believed to be the bearer of the same. Given the emphasis and value invested in a woman and her capacity to carry the honor of a family and a child in her womb simultaneously; can women of 'respectable households' ever become surrogates? After all this wouldn't be her stand alone decision. Her in-laws, husband and parents will be stakeholders to the same! Becoming a surrogate, even to your closest kin

might jeopardize family honor and prestige. It also complicates the kinship question we have been asking in this paper. In cases where the surrogate mother would be a close relative (a maternal or paternal aunt), issues of parental control and other legal rights should be expressly dealt with to avoid any future claims, concerns, or worst - litigation. Individual legislations may also require appropriate amendments. With the genetic mother and gestational mother being part of the same family (leaving no room for a secrecy contract) would kinship terminologies change? For instance, would becoming a surrogate for one's sister make the mother's sister or *maasi* (literally means mother-like) more of a mother and less of an aunt? Would she assume greater importance? These are certain questions that will be answered as time takes its course.

Also, the assumption of a close relative volunteering to be '*altruistic surrogate mother*' may be incorrect as a similar assumption with respect to availability of organ donors is said to have failed; as family member fail to come forward in times of help!

Furthermore, delegating the task of voluntarily carrying a relative's baby on women takes for granted a proposition that, women are expected to not just carry their own babies but also that of a related couple in need! It puts a great burden on the shoulders of women. It now becomes her prerogative. Putting the concerned female in a moral dilemma as well! Can a woman on being approached for the same afford to turn down the request of an aspiring mother? Especially, knowing that she might be the only hope of the other woman ever having a child!

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