



SURROGACY AND THE CHANGING FAMILY RELATIONS

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Abstract: Surrogacy as a process falls under the ambit of Assisted Reproductive Technology. It has led to a shift away from the previously perceived natural form of family. It has served as a way to obtain an offspring for those unable to conceive. It entails the formulation of relations beyond the sphere of relatives formed as a result of blood or marriage, thus bringing to light the role played by the gestational mother. Women are socialized into imbibing that the end goal of marriage is procreation, and without it, married life is incomplete. The birth of the idea of having a child is first conceived by the woman wanting to avail the services of the surrogate and the father, which then is put into motion with the aid of medical assistance and a surrogate. This process is not without its pitfalls; it has produced “kin labour” and, in many cases, encouraged the commodification of the bodies of women. This paper will begin with analyzing the impact surrogacy has on kinship ties. It will then further analyze the case of Baby M, and then it will look at surrogacy in the Indian context. The last section of the paper will engage with legal provisions regarding surrogacy and its implications.

Keywords: surrogacy, gestational mother, adoptive mother, ART, kinship, lineage, fictive kin, womb

I. INTRODUCTION

Kinship ties serve as the main basis for tracing genealogy, enabling us to trace descent and helping in the furtherance of the line in both matrilineal and patrilineal societies. Traditionally, copulation between a man and a woman is legitimised for procreation. With the advancement in technology “...traditional belief of the origins of motherhood are thereby challenged”(Kahn,2004,p.362). In order to overcome the shortcomings of procreating in the ‘traditionally sanctioned’ way, new ways of obtaining an offspring have emerged. These are categorized as Assistive Reproductive Technologies(ART) to aid in the reproduction process. The term itself implies that medical practitioners will ‘assist’ prospective persons in conceiving a child. Techniques like In Vitro Fertility, donor insemination and Surrogacy have come into existence to complete the family or to provide a chance at developing a family with an offspring.

As new technology is being developed every day, it would be interesting to see the effect such techniques have upon the existing family pattern and who will be regarded as ‘legal’ parents. Many scholars have done extensive work on assisted reproductive techniques to look at the changing patterns of kinship, marking a shift away from the age-old biological ties(Ragone,1994; Kahn,2004; Pande,2010; Team,2009). Such technologies help one to obtain a progeny. There may be several reasons for not being able to conceive, one of which is infertility. Fertility is a quality that is cherished in every society, and the infertile are looked down upon. Infertility in recent times has become a major hurdle in countries, which has led to demand for assisted reproductive technologies. Among various causes for infertility, stress accounts for one of the major reasons among both men and women. Women who are unable to provide a progeny are termed “barren”. Women, more than men, in our society, continue to be despised for being unable to conceive a child. In such scenarios, both the man and the woman in a marriage suffer from mental instability and tend to drift away from each other, as has been highlighted in many studies previously. In terms of surrogacy, a potential mother

is able to 'rent' a womb from another to obtain a child. Hence, her body does not undergo the changes that are mandated during a biological process of pregnancy when one opts for surrogacy. This paper is based on secondary literature available on surrogacy, with particular reference to kinship.

Methodology

This paper first sets out to understand kinship from the point of changing patterns distinct from the normative. The first section is focuses on kinship and marriage. It then goes on to look at Assisted Reproductive Technology, the Baby M case in the U.S., which highlighted the complications in surrogacy. The next section is aimed at analysing debates on surrogacy and then locating literature on surrogacy in the Indian context prior to any legal provision for the same, and then dealing with statutory provisions regarding surrogacy that were formulated owing to the changing family patterns in our country.

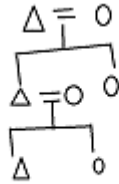
Kinship and marriage

Kinship and marriage are considered to be "basic facts" of life, encapsulating "birth", "copulation", and "death". Copulation is concerned with the mating partner and the resulting parenthood from it. Both birth as well as parenthood are aimed at providing "an heir"(Fox,1967,p.26). Marriage has been an essential component of kinship studied by many scholars. Edmund R. Leach defines marriage as- "... establishes a relationship of affinity between the family of the bride and the family of the first husband and it gives the disposal of the bride's sexuality to the husband, subject to the bride's personal consent"(Leach,1955,p.185). Upon reading the above statement defining marriage, one is led to think at greater length about the "consent" issue, is there truly any form of personal consent applicable in control of another person's sexuality? This definition gave legitimacy only to the union of a man and a wife. Thus leading to critique by Gough(1959) who reformulated the definition of marriage as "is a relationship between a woman and one or more other persons, which provides that a child born to the woman under circumstances not prohibited by the rules of the relationship, is accorded full birth-status right common to normal members of his society or social stratum"(Gough,1959,p.32). Gough here emphasises the role "status" plays in the life of the child in society, an aspect which is debated in terms of surrogacy as well.

Schneider(2004) states that what has been emphasised in kinship work has been the "biological" context of relations. The kinship ties are seen mostly in terms of the blood ties known as "consanguines" or through marriage ties known as "affines". He is of the opinion that apart from this, there exist "social ties" which are equally important and relevant. Many theorists have also studied biological and social parents, thus accounting for changes taking place in our traditional understanding of society. The biological father is known as the "genitor", and the social father is called "pater". The biological mother, on the other hand, is regarded as "genetrix", and the social mother is termed as "mater"(Schneider,2004). Just as there have been attempts to incorporate other forms of marriage other than the traditional man and woman arrangement, similarly, there is a growing need and attempts to incorporate other forms of 'having a baby'. There is a growing need to look at changing patterns of kinship and the contribution that technology-generated Assisted Reproductive Technology can make to one's family. These studies cannot be regarded as mere scientific intervention, as the forerunners of kinship studies have explored the aspect of both social as well as biological parents.

II. Assisted Reproductive Technology

Assisted Reproductive Technology means techniques employed by medical professionals to help infertile men and women conceive a child. This implies dealing with embryos and sperm. There are several ARTs, namely -InVitro Fertilization (IVF), Gamete Intrafallopian Transfer(GIFT), Zygote Intrafallopian Transfer(ZIFT), Intracytoplasmic Sperm Injection (ICSI), Donor Eggs and Surrogacy. ART acronym initially stood for "artificial" reproductive technology, but the term artificial was changed to "assisted" to find acceptance in society of this new form of not-so-natural form of obtaining a child(Harrison,2016). In several parts of the world, including India, marriage between a man and a woman is not viewed as complete unless the woman bears a child. The sexual intercourse between them is legitimised by the birth of a child. Procreation is the main aim of marriage. In a family without children, there is no one to carry forward the family line, which serves as a threat to the perpetuation of the lineage. Descent can be traced through the father's line, known as patrilineal, or through the mother's line, known as matrilineal. The following diagram depicts a patrilineal society, where the triangle indicates male and the circle denotes female. The equal to sign implies marriage, and the line overhead the triangle and circle shows siblings. The son marries a woman from another family, shown via the second "=" sign. However, with the inability of the pair to reproduce, they will be deprived of the bliss of children of their own, a common



argument which is often made. “Without surrogacy, thousands of years of family evolution and lineage will end. Children are symbolically representative of love and unity of a couple”(Ragone,1994,p.248). In such a case, what seems the most viable option is either adoption or surrogacy. Adoption has been viewed with suspicion as the child is seen as a ‘total stranger’ as someone unrelated to either parent. While in surrogacy, the child can be biologically related to at least one parent.

Ragone(1994) states that surrogacy “de-emphasises the biological and social motherhood” in two ways. First, by separating the blood relation of a surrogate to the child and secondly by ensuring that the father and the surrogate do not have any relationship. She highlights the fact that once a child is born, the relationship between the surrogate and the commissioning parents ends. People are aware of the consequences of surrogacy and yet they opt for it as the only viable option to obtain a baby within the “rubrics of pre-existing kinship structure and ideology” (ibid,p.342). It marks a shift in the understanding of “conception”, “parenthood”, and “reproduction”. This shift necessitated the growth of surrogacy in the 1980s. The third shift was seen with the new advances in medicine to reproduce, hence leading to the delinking of pregnancy and motherhood. Sexual intercourse was no longer needed to get pregnant. “Assisted Reproductive Technology has led to the fragmentation of motherhood”(ibid,p.342). There is no one form of motherhood. She examines gestation surrogacy and in this kind pregnancy, sexual intercourse are not related. This type of surrogacy involves three categories of motherhood- the “biological mother” who contributes the ovum, the “gestation mother” who carries the baby in her womb but is not biologically related and finally the “social mother” who undertakes the task of nurturing the child. The biological mother’s role is seen to be similar to a woman who puts her child up for adoption, while the surrogate is seen as someone who creates a “wanted child”, a child desired by many. What Ragone throughout her article emphasises is that American Kinship lays great stress on “blood ties” and contract or intentionality do not fit into the criteria. Surrogacy can be seen to fulfil the norms of American kinship as it too involves certain “basic ideology of family”, “biological relatedness” and “nurturance”. However, it leads one to rethink the sequence of events after marriage, which entails procreation and motherhood. This argument is also true for Indian society as well, wherein the natural progression of marriage must lead to the birth of a child. Ragone goes on to compare Donor Insemination with surrogacy, wherein the sperm of another man is used, thus placing in the same position as a surrogate. Anti-surrogacy propagators regard it as a means to convert women’s bodies into commodities.

Couples choose to opt for a third party to conceive a child, after the various infertility treatments fail to show any results. The purpose is to have a complete family, even if it implies transgressing the traditional kinship boundaries. After all, “what unites these couples and solidifies their marriage is their quest for a child”(ibid,p.346). She looks at letters and research and concludes that women tend to suffer psychologically more than men in the absence of a child. The couples “want” a child to fulfil traditional ends of a family. Women from a young age are taught that they must get married and bear children. Thus, the inability to do so has a greater impact on them. While men are taught to be more economically sound. Children serve as a physical depiction of sexual prowess, as a symbol of love, motivation to work hard in life and as someone who will look after their parents. This aspect of children looking after their parents during old age has been contested lately, as more and more children are moving away from their parents. The biological child is needed for the furtherance of ‘biological lineage’. In surrogacy, the child is related to the father, who is the pater and the genitor; the surrogate serves as genetrix, in some cases, leaving the adoptive mother out of this circle.

In the past, social and biological motherhood were seen to reside in the same woman, but today, with the help of surrogacy, both are seen as different. Just like men who had the double identity of being social and biological, similarly, women, with the help of surrogacy, have achieved this identity (Strathern,1991). Traditionally, the role of procreation was seen as a function of men alone. “Surrogacy provides couples with partial biogenetic remedy (in case of traditional surrogacy) or a complete biogenetic remedy to childlessness (in case of gestational surrogacy)”(Ragone,1994,p.344). In all the cases she examines wherein the court held the contract “unenforceable”, she states that the judiciary refuses to make any judgment or changes since the legislature did not. Since it would violate one’s right to procreate and privacy. Surrogacy has highlighted the social role of women, too; it has altered our

understanding of the process of obtaining a child. The relation between the surrogate and the adoptive mother is important as it creates a bond between the latter and the child. It also helps to maintain distance between the adoptive mother's husband and the surrogate. It is the idea of having a baby which is first "conceived in the heart" of the adoptive mother that leads to surrogacy; hence, the role of "mythical idea of baby" is highlighted to depict the role of social mother as well. This "social" and "biological" divide reinforces the "nature-culture dichotomy" (Ortner, 1972). Thus, Ragone highlights that people undertake "non-conventional" means to have a child to meet the traditional norms of society and its definition of marriage, which is linked to procreative function.

III. Baby M case and initial debates regarding Surrogacy

Legislation's approach to surrogacy has also changed with the changing times. It focuses on emphasising the role of intended parents whose names are to be recorded on the birth certificate. Changing patterns of surrogacy over the past twenty years and questions related to the same have been analysed. The Baby M or Baby Melissa case drew a lot of criticism, as with this case it was being conveyed that surrogacy was a procedure which led to the selling of children, and a woman's womb was seen as a "factory" for bearing children. It sparked national attention with a school dropout housewife versus a couple (Sterns) with degrees and professional career in the U.S. The Baby M case was contracted in February 1985 between Mary Whitehead and William Stern, brokered by the Infertility Centre in New York, and director Noel Keane. After Ms. Whitehead gave birth to the baby who was handed to the Sterns, next day she realised how much she missed the baby (Scott, 2009; Ragone, 1994). Soon, Whitehead and her husband hid their baby with a relative in Florida. Miss Whitehead fought against the Stern to keep the child but lost since the verdict of the court, which was in favour of the legal right of the other party mentioned in the contract. The New Jersey Supreme Court nullified the verdict by the lower court, stating that such a practice promoted the sale of children and it was against the adoptive policy of the state, thus regarded it as "unenforceable" and stated that a woman cannot predict her feelings towards the baby before it is born. This case brought to light the uncertainty of the impact of "novel use of reproductive technologies on the family structure, nature of motherhood, welfare of children and the role of the court in unfamiliar terrain" (Scott, 2009, p. 114). Public opinion of the case kept changing, they first sympathized with Sterns for being an innocent couple trying to obtain a baby, but later Miss Whitehead came to be seen as a victim as she was being pressured by the working-class couple to give up her right over the baby. This led to an investigation into surrogacy. New Jersey Governor Thomas Keane formed a task force to look into the matter. It was discovered that surrogacy would give legitimacy to the buying and selling of children. This case of baby Melissa had influenced the social and political aspects of American Law. This case led to strict regulation of commercial surrogacy, and feminists critiqued such surrogacy for selling women's bodies (Scott, 2009). The feminist advocates were thus torn between those supporting the right of women over their own bodies and the exploitation of women. This case showcased the role that gender discrimination and class play in deciding such cases. It was also emphasized that the party that acts as the broker, in this case Noel Keane, are the one responsible for the exploitation of women.

Surrogacy was opposed for being "immoral" for women and diminishing the "social value" of children. In 1987, a bill was put forth that aimed at protecting women and children from being exploited and ensuring "judicial" enforcement of surrogacy contracts. Regardless of the restriction on surrogacy in New York, it continued to flourish. There began a shift towards gestational surrogacy, which is different from traditional surrogacy. In the former, the "pre-embryo" is introduced into the body of the surrogate, while in the latter, the "egg" of the surrogate is inseminated. Gestation surrogacy came to be seen as a service. Gestation Surrogacy Act 2004 only allowed gestation surrogacy and regarded the adoptive parents as legal parents of the child. The media also had a great role in constructing the opinion of the people (Scott, 2009). When a child using IVF is introduced into the womb of another woman, the birth mother has no right over the baby after it is born, is the verdict of many courts of surrogacy under the Illinois Gestation Surrogacy Act 2004.

Thus, surrogacy was seen as a threat to conservative roles of women as mothers and wives. It led to debate regarding women's rights over their bodies, women as mothers began losing rights over the child to the father, as seen in the case of Baby Melissa. The argument that surrogacy affects the psychology of the baby is nullified as Baby Melissa is believed to have adjusted to her adoptive parents. Scott (2004) states that ninety-five of the cases of surrogacy involve IVF, which implies that surrogate serves only as a "carrier" of the baby and not the biological mother. Thus, it can be said that there exist a few cases that lead to questioning the practice, but in many cases, it helps infertile parents. It must also be taken into account that those who are desperate to form a family continue to resort to commercial surrogacy by "outsourcing" and hiring poor women from other countries, such as India, to carry

their baby. Therefore, a need was felt for better regulation of surrogacy. Women are shifted to the “periphery” wherein the doctor and reproductive technology decide (Bonnicksen, 1990). “Dependency” as a concept has been used to depict the shifting role of a surrogate to the periphery, especially in cases where the adoptive parents and reproductive technologies are seen as “core actors”; class distinction also plays a great role in women’s “powerlessness”. Policy for surrogacy should “empower” women (Woliver in Bonnicksen, 1990), and should take into account the health of women (Hill in Bonnicksen, 1990). The welfare of the child should be of utmost importance in case of any disagreement or dispute. From a “traditional” point of view, surrogacy becomes a “hard” test case for a deconstructive examination of contracts and family (ibid, p.196). Surrogacy has been analyzed by various theorists, and in spite of covering the harm it entails, none of them advocate banning it as the benefits of surrogacy outweigh its harms. Surrogacy leads to diverse opinions, as is captured by Bonnicksen. “Whether one views surrogacy from the perspective of the surrogate, the couple, the family, or the law, all observers must eventually meet in the middle of the policy arena” (Bonnicksen, 1990, p.198).

Kahn (2004) conducted ethnographic fieldwork on how women undergo assisted reproductive techniques to provide a child. She beautifully captures the procedure and the environment of the clinic which she chose for her fieldwork. She draws a connection between “maternity, religious and national identity in Israel” (Kahn, 2004, p.363). What she notes is that in the clinic, the babies born out of IVF, ZIFT OR GIFT are seen as “our” children since the entire medical team, from nurses to doctors, all work together to produce this miracle. There is the creation of a “fictive kin network” which can be observed to be taking place in the clinics. Since her field of study is in Israel, the Rabbi of the couple intending to undergo such procedures instructs them, there are rules that a woman’s uterus must not bleed when such procedures are undertaken as she is considered impure at this time and the child born out of this is termed “ben niddah”. Kahn was interested more in “egg related procedures challenge rabbinic and folk-cultural understandings of maternity” (Kahn, 2004, p.363). The clinics always have a traditional “maschgichot” or “Halakhic inspector” to oversee the work, to ensure that syringes with the sperm of others are not mixed. All the procedures undertaken were in conformity with Jewish law, and only married couples were allowed to undergo treatment. The eggs of young girls are in demand, especially those of unmarried girls, since they are considered sexually pure. Kahn states that such procedures by doctors to aid in reproduction make “explicit” what is “implicit”. This particular work shows how new age technologies for having children are accepted and moulded to fit into the laws of any religion. In the Indian context, Chaudhary (2019), on the basis of her research carried out in 2017 in South Delhi, points out that the intending parents usually want the process of childbirth to coincide with the predictions made by their Gurus. This includes the birth of the child at a time pre-determined by their religious Gurus.

IV. Surrogacy in India

The paper so far has only looked at surrogacy in the United States to provide clarity regarding surrogacy. This part will look at the Indian context to see how it has impacted and influenced the Indian kinship. First and foremost, it is essential to keep in mind that couples from other countries used to hire surrogates from India owing to the cheap availability, thus contributing to the “commercialization” of the bodies of women. A “perfect surrogate” as per Pande is believed to be someone who is “cheap, docile, selfless, and nurturing—is produced in the fertility clinics and surrogacy hostels” (Pande, 2010, p.970). Pande, in her paper, analyses surrogacy in the Indian context and prefers to use the term “labour” for such work as it holds double meaning, first as work and second as the labour which a pregnant woman experiences before the birth of the child. In another paper tracing kinship in 2015, she regards the act undertaken by surrogates as “kin labour” as this involves “*khoon pasena*” since it is related to the process of childbirth, which would involve biological elements and sweat of the surrogate. It must be noted that these two papers were published prior to any laws regarding surrogacy, and hence, they also look into commercial surrogacy and transnational surrogacy.

“Most countries—for instance, Australia, China, the Czech Republic, Denmark, France, Germany, Italy, Mexico, Spain, Switzerland, Taiwan, Turkey, and some U.S. states—ban surrogacy altogether. Some have imposed partial bans, as in Brazil, Israel, and the United Kingdom. Others, such as India, Belgium, Finland, and Greece, have no regulations at all (Teman, 2006, 10). Apart from the recent spurt of surrogacy in India, commercial surrogacy is mainly practiced in the state of California and in Israel” (Pande, 2010, p.972).

Since the article by Pande was written in 2010, when the Surrogacy bill wasn’t passed, she states there is no regulation in India. Later in this paper, the legal status of surrogacy in India will be dealt with. Pande conducted fieldwork in Anand in Gujarat from 2006 to 2008, wherein the surrogates she came across were between the ages of twenty-five and forty-five and had children of their own. Most of the women undertook this job because the income generated by their husbands from the informal sector

was not enough. The reason why India has women indulging in this business is that the ratio of the poor is high in our country. These surrogate women have to face a lot of stigma, they are regarded as having sexual relation with a man other than their husband by people who don't understand the procedure. Brokers are used to find such women who would agree to be surrogates, the broker usually charges a commission fee for finalizing the deal. The contract for surrogacy is usually in English and difficult for these poor women to understand; however, through awareness and counselling, they understand the fact that they have to give up the child once it is born. Surrogates were told that it was like "renting a house for one year"; it is often compared with prostitution. These women were constantly reassured that there was nothing "immoral" about it. The reason why the surrogates of Anand are in demand is because of the control and surveillance doctors have over these women as they live in a surrogacy hostel. Their routine acts are monitored, thus creating a perfect 'mother-worker'. These hostels are very close to the clinic, and the family members of the surrogate can come to visit, but the husband cannot stay overnight. These women are also prevented from feeding the child born from their 'labour' to prevent the formation of any bond between the gestation mother and the child. Sometimes the process of breastfeeding can form bonds greater than genes and hence risk the agreement of surrogacy. Pande also highlights contradictions in this perfect mother role wherein the surrogate is to take care of the child inside her womb, but at the same time is restricted from meeting her own children. These women have a schedule for everything, even leisure. They are also taught English and computer knowledge to enable them to interact with international clients. She also records the hierarchy that exists within this hostel, wherein those women with an embryo waiting for confirmation of pregnancy rank highest. Women serving as surrogates can be noted to be withdrawn from their own family in pursuit of raising a life in their womb for 'completing' the family of those hiring their services. It has also been highlighted that sometimes the bond between the surrogate and adoptive mother strengthens.

She gives an example of surrogate Parvati claimed,

"We can't really call surrogacy 'work.' I personally feel it's nothing strange to us Hindus; it's in our religion. It's something like what Yashoda Ma did for God Krishna. And Krishna loved his Yashoda Ma, didn't he?" (Pande, 2010, p.987).

While some surrogates see their work in a "positive light", there are others who regard it as something they have to do to fulfil the basic needs, for the education of children and for the welfare of their family at large. These surrogacy hostels serve as a "gendered space" where these women live together. A bond of "sisterhood" develops between them, all of them get pregnant at nearly the same time, and all do it for other people. Commercial surrogacy continued to flourish in 2010, and Pande states that women of the Global South were subject to carrying the babies of women of the Global North. This phenomenon could be seen in other major cities of the world as well. This pattern sparked debate over the exploitation of poor women residing in developing or underdeveloped nations.

Another study conducted in Kolkata by Mukherjee and Sekher (2015) depicts that the women who serve as surrogate mothers are between 22 and 35 years old and are mostly poor and illiterate. The husbands of these women support them since they need the money to provide for their own families. Like the surrogates in Anand, surrogates in Kolkata also undertake surrogacy to accumulate money for their daughters' weddings. It must be noted here that women are undertaking "renting their womb" to ensure that one day their daughters can fulfil their obligation of being a mother, the most important role of a married woman. It can be seen as a "cycle of the womb". Commercial surrogacy has put pressure on poor women. Surrogacy contracts fail to account for the "mental" and "physical pain" women suffer after delivery. Banning such surrogacy might help but "concerns of health, economic, legal and ethical exploitation of the vulnerable women will remain" (Mukherjee and Sekher, 2015, p.88). In their study, they found that some intending couples were encouraged by their families to opt for surrogacy. They conclude that surrogacy enabled by "innovation" has led to the creation of a baby for those who are unable to conceive it naturally. There is a shift from "humanitarian" values to ones dictated by "commercial" values. "Commercial surrogacy has brought child-bearing into the domain of the market in an unprecedented manner, challenging the ideological constructs of the family and the very basis of kinship" (ibid, p.89). Bhattacharjee suggests that the need of the hour is to look at the surrogacy issue not from the point of view of "desperate poor women" but as "dignified actors".

Some cases pertaining to the custody dispute of a child born out of surrogacy occurred in India as well. In case of baby Manji in 2008 wherein the couples were separated, leaving the baby girl stateless and as result had to be taken care by her grandmother. In another case in 2012, the Australian couple only took one of the two children born to the surrogate, of whom she received

less than the amount promised, and half of this amount was taken by the broker(Pande,2004). Surrogacy Bill is hoped to ensure such things don't happen in the future, and the surrogate mothers from India are not commissioned by people from other nationalities. The ban on commercial surrogacy will also give impetus to adoption (The Hindu 2017). Surrogacy has existed in the country since 2002 when it was legalized (Chaudhary,2017). Since 2016, the practice of surrogacy has undergone changes owing to the Surrogacy Bill. Karan Johar was the last of the single parent to obtain children using surrogacy, after Tushar Kapoor since the ban on commercial surrogacy. The depiction of celebrity surrogacy cases in media in a way tries to normalize the new form of formation of family, it is being depicted as being "just like everyone else"(Harrison,2016).

In 2019, a bill dealing with surrogacy was introduced in the Parliament, which was finally passed in 2021, titled 'Surrogacy (Regulation) Bill,2019'. This bill specifically dealt with surrogacy, it stated that commercial surrogacy is banned in India and "altruistic" surrogacy is approved. Commercial surrogacy entails renting a womb in exchange for money. It defines "altruistic surrogacy" as

"surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses incurred on surrogate mother and insurance coverage for surrogate mother, are given to the surrogate mother or her dependants or her representatives"(Surrogacy Bill 2019,p.2).

Altruistic surrogacy is not undertaken for money; instead, it is out of goodwill of the heart to help others struggling to procreate. Here, only the medical cover is provided by the person or couple hiring a surrogate. Earlier, altruistic surrogacy required a close relative to be a surrogate, but this clause has been done away with. In order to be eligible as a surrogate, a woman must be between the age 25-35 years old, has children of her own, should have been a surrogate only one time in her lifetime, must possess certificate assuring that she is psychologically and mentally fit and she cannot provide her gametes for surrogacy. It also provides for sixteen months of insurance coverage for post-partum complications. Surrogacy boards are also to be set up at the national and state levels to ensure strict adherence to rules and prevent black marketing. The act defines "couple" as a man and a woman of age 21 and 18 years, respectively, who are legally married. It also describes who the "intending couple" are, these are those who decide to avail themselves of the services of "gestation" surrogacy. The Bill also states that the intending couple must be proven infertile in order to undergo surrogacy practice. For this purpose, a certificate of infertility for one or both persons is to be obtained from the District Medical Board. The parentage and custody of a child from surrogacy are to be passed by the Magistrate's court. They must be Indian citizen, must have been married for five years and must not have any children; this does not include children with fatal illnesses, mental or physical disorders. Apart from a couple, the bill allows intending women to hire a surrogate. It further defines "intending woman" as a woman who is a divorcee or widow between the ages of 25 and 35 years. It must be noted that this Act provides a chance for single women in their late 30s to have a child via a surrogate. This again is pointing out that even without a man legally related to her, she can have a progeny to carry forward her lineage. This act clearly highlights that in order to obtain a child via a surrogate, a woman must have been married to a man during her lifetime. This act will also regulate surrogacy on the basis of the Assisted Reproductive Technology(Regulation) Act,2021 and for the same purpose, a Board will be set up at the national and state levels. The national level surrogacy board is required to assist the union government in formulating policies on surrogacy, regulating state surrogacy boards and monitoring the conduct of surrogacy clinics.

The introduction of a bill, which has now become an Act with the assent of the President in December 2021. It will provide some clarity regarding regulation on surrogacy; however, it can also lead to the creation of a black market for eggs, which can lead to violations of the bodies of women and their mental health. It also deprives unmarried women and non-heteronormative couples of the chance to have a child. There is a need to adhere to these rules strictly and ensure the safety of surrogates, along with bearing in mind the interests of the child to be born. Amendment to the Surrogacy(Regulation) Rules,2022 was made in 2024, allowing the usage of donor gametes, either ova or egg cells and sperm. A case was reported, and the court decided to let commissioning parents make use of donor gametes if a medical board determines that either of the commissioning parents has a medical condition making their gamete unfit for use.

V. Conclusion

Women are socialized into imbibing that the end goal of marriage is procreation, and without it, married life is incomplete. The birth of the idea of having a child is first conceived by the “adoptive mother” and the father, and then is put into motion with the aid of medical assistance and a surrogate. The media tends to influence the perception of “surrogacy” among the public. With the increasing adoption of surrogacy by celebrities, there is greater public discussion on the same. Thus, assisted reproductive techniques are important aspects in modern times, which have a great influence on kinship patterns. The deciding factor of parenthood was “biological” criteria. It was these technologies that have emphasised the role “social status” plays. In surrogacy, as can be seen from above, the task of a surrogate is to bear the child in her womb, to “rent her womb”, and give birth to a baby. The rights over the child, as per the surrogacy contract, are reserved by the parents who “conceive” the idea of hiring a surrogate to carry their baby. Babies serve as a link between a man and a woman; in their absence, the couple is believed to suffer psychological imbalance. Children also serve as an “investment” for their old age and the reason why parents work hard to ensure secure and assured future for their young one, this understanding in recent times, has been questioned as old parents are left to fend for themselves and there is an exponential increase in number of assisted living for seniors.

Surrogacy narrative, in terms of altruistic surrogacy, tends to overlook the power imbalance that is in favour of wealthy intended parents over the surrogate. It also paints surrogacy as an act carried out of the “goodness of heart” of a woman for a fellow woman as a form of “gift giving”. It must be borne in mind that surrogacy gives a chance to infertile people to have a chance at having a child. This tendency to avail the services of surrogates is a class-specific phenomenon wherein the relatively better off can hire a surrogate. In some cases, surrogacy enables gays and lesbians a chance to start their own family with a biological component of one of the partners in countries where it is legalised. This technique serves as a boon for several people, but it is detrimental to the health and psychology of surrogates. They are even exploited by the brokers arranging the contract. These women are supposed to give up their rights over the baby to the “adoptive” parents. This technique enables women to make someone’s family happy by their ability to give birth to a new life, to fulfil the dream of having a child for others. Commercial surrogacy has deteriorated the intent of surrogacy. No doubt, it has provided more women with an incentive to be a part of this process, but it has contributed increasingly to the exploitation of both surrogate mothers and children. Most of the surrogate mothers in India, before the Surrogacy Bill was introduced, were married and had children of their own. Their husbands supported them in this process to produce kids to help build someone else’s family. Sometimes, a bond of “sisterhood” was created between the commissioning mother and the surrogate. The surrogate is required to surrender her claim over the child, thus emphasising the ‘social’ role over the biological one. In such a case, the “genitor” and “genetrix” are more important than pater and mater. It highlights the importance of ‘nurturance’. Many countries of the world permit only “altruistic” surrogacy, and India too has become one of these countries with the recent Act. It cannot be denied that this Bill, which states no remuneration for surrogacy, will lead to the withdrawal of women from this “business”, and very few women would be willing to volunteer for others. The Bill also states that the woman who is to be a surrogate must be married, with her own children, must be between 25-35 years of age and must be a relative. This requirement will make the resulting child a part of the “biological” family, but it will put pressure on relatives to help the infertile couple in the family. The age limit of the surrogate is also likely to impact her own conjugal family relations. The need for the surrogate to be a relative of the intending couple will lead to confusion of family relations since the resulting child will be born from a woman who is a relative of the intending couple and can be a biological mother as well. The kinship terminology will further be complicated in the case that the surrogate is of the same household. The Surrogacy (Regulation) Act has invoked mixed feelings. On one hand, it will create a black market and put pressure on relatives to help the infertile couple, while on the other hand, it will restrict all others except those who are married, divorced, or widowed from having a child. It will prevent exploitation of women’s bodies especially by foreigners. However, it will lead to creation black market. The fact that only relatives of the family can become a surrogate once again marks the relevance of “blood ties”. Assisted Reproductive Technology leads to creation of “fictive kin groups”.

Surrogacy is an unconventional way to bring a child into this world, which once again leads to conformity with the conventional way of imagining a family, which becomes holistic with the birth of a child, thus bringing to the fore the ties of kinship and lineage. While earlier surrogacy marked the importance of social parents, this move would revive the importance of blood relatives. ART are sparking debate over the changing forms of family. In spite of the above-mentioned consequences of surrogacy, it must once again be highlighted that surrogacy serves as a way to obtain a child when those intending to have children through the “natural”

process are unable to conceive. The kinship ties might get a little tangled with the involvement of a few more actors when the biological mother is different from the social mother, but that is a decision that is made by the intending parents to reveal the identity and relation of the child to its gestation mother. These relations become more complicated when the gestation mother is a close relative of the adoptive mother or intending woman. It can be observed that in the process of surrogacy, many fictive relations develop, one between the commissioning fertility clinic, the other between the gestational mother and the adoptive mother, yet another one between the gestational mother and the life residing in her womb.

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