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Panel 40: Reproductive Tourism in India: Ethical and Legal Concerns

Convenors: Dr. Sheela Saravanan, University of Heidelberg and Dr. Laurent Pordie, University of Heidelberg, Germany.

Ethnography-based policy recommendations: Taking a fresh look at surrogacy regulations through an anthropological lens

Elly Teman

Abstract

Surrogate motherhood, a practice in which a woman agrees to carry a child to term for a couple who will then keep the child as their own, has emerged from the academic literature as an extreme case study for feminist, ethical, legal and social concerns. Because of its controversial nature, the common theme that emerges from the decisions of policy makers and legislators on surrogacy in different jurisdictions is the "sense of profound anxiety and ambivalence" that has pervaded their thinking on the subject (Cook 2003). As a result, the majority of governments around the world have felt justified in banning the practice entirely, and those countries that do allow surrogacy do not explicitly endorse such contracts, but sanction them to varying degrees. Much of the discussion of surrogacy in policy circles and in academic scholarship, however, has been based upon theoretical possibilities of such arrangements rather than on the actual experiences of the surrogates and intended mothers who are involved in surrogacy agreements. This paper draws upon an ethnographic study of surrogacy participants in Israel in order to critique the popular myths about surrogacy that are influencing policy today and to suggest new ways of thinking about surrogacy based upon anthropological observations.

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Reproductive Technologies: Science, Ethics and Social Expectations

Priya Nanda and Sonvi Kapoor

Abstract

In India, though preference for sons and discrimination against daughters goes back centuries, methods to select sons have been evolving over time. These methods range from reproducing children until the desired number of sons have been born, to neglect of living daughters, female infanticide, female foeticide, and more recently assisted reproductive technologies (ARTs) for

pre-conception sex selection, a focus of this paper. According to estimates put forth by various studies, the country loses 0.1-0.5 million girls due to sex selective abortions each year (UNFPA, 2003). ARTs are growing rapidly in a highly globalized environment where concepts of motherhood are getting redefined or reinforced: such as enabling a woman to be a mother or be a mother of a son or a surrogate mother. Our paper positions ARTs as sex selection technologies, and discusses the concerns around rapid and unregulated growth of these techniques in contexts where choice is socially constructed and gender discrimination has persisted over time. We point to the implications of ARTs for sex determination, and discuss some of the confounding questions around advancement of science versus ethics.

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Assisted Reproductive Technologies and Transnational Reproductive Care in India

Sandra Bärnreuther

Abstract

This presentation constitutes a preliminary report on my fieldwork on assisted reproductive technologies and transnational reproductive care in India. I examine this topic from an interdisciplinary angle blending anthropological approaches and science and technology studies. In India a vast number of infertility-clinics offer treatments like intra uterine insemination. In Vitro Fertilization or Intra Cytoplasmic Sperm Injection and caters to the needs of Indian as well as foreign patients. In different clinical settings, I examine the performance of treatments and the use of reproductive technologies. Questions arise as to why people decide to seek reproductive care in India. How do they experience treatments in clinical settings there? Furthermore, how are reproductive technologies and related concepts and practices negotiated? For example, in what ways are they contextualized and modified by both medical staff and patients? And in how far do they impinge on (and are themselves shaped by) notions of infertility, local biologies, subjectivities, and moralities? These steps also include the study of the historical trajectories of assisted reproductive technologies in India, of legal and political frameworks, of economic dimensions, and of possible moral concerns and contestations.

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Maternal-fetal bonding in the complex setting of transnational commercial surrogacy in India

Sheela Saravanan

Abstract

Commercial surrogacy challenges the conventional assumptions of maternal bonding which is based on the concept of natural and instinctive link between the mother and her fetus/child. Recently researchers have contested this assumption and argued that most surrogate mothers do not bond with the babies they relinquish to the social parents. The detachment has been measured by the success rate of relinquishment, percentage of surrogates reporting satisfaction with the process and evidence of no psychological problems as a result of relinquishment. I draw on my empirical findings on gestational surrogacy in India to contend that maternal bonding is effectively an emotion integral to the physiological process of child birth and is deeply rooted in the cultural context of motherhood. The study aimed to explore the interpretation of maternal-fetal bonding as experienced by the gestational mothers, perceived by the social/genetic parents and advocated by medical practitioners. The study includes participant observation and personal accounts of 13 gestational mothers, 6 spouses, 5 intended parents and 5 doctors within 2 IVF clinics in India. The study reveals that the interpretation of parenthood and maternal-fetal/infant bonding varies widely between the experience of gestational mothers and the perception of social/genetic parents and medical practitioners. What starts as a commercial contract turns into an emotional attachment and social responsibility integral to the process of bearing, birthing and tending the babies after birth. The study suggests that new relationships with social/genetic parents are formed but that does not nullify diminish the feeling of bonding existing among the gestational mothers.

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Experimental Bodies and Markets in Transnational Indian Surrogacy

Kalindi Vora

Abstract

This paper examines some of the ways that participants in transnational Indian surrogacy, including women contracted as gestational carriers, their families, commissioning parents, and the infant produced through Indian surrogacy are all experimental subjects as a result of the shifting social, market and legal conditions under which it occurs. I also look at the ways that the construction of the surrogate's body itself is experimental, produced through a western medical understanding of the body that constructs the uterus as surplus, and a genetics-based model of parentage that creates a connection between the intended parents and fetus and a distance between the surrogate and the guest-fetus. After outlining these experimental sites, I then look at how the clinic portrays surrogacy as a form of social work in order to overwrite the commercial aspects of the practice, emphasizing instead the ways that surrogacy fees materially improve the lives of the surrogates.

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Parentage and Citizenship Issues with Respect to Surrogate Babies Born in India

Usha Rengachary Smerdon

Will be presented by N.N.

Abstract

International surrogacy arrangements have created paradoxical situations of “legal orphanhood” where highly desired surrogate babies with multiple parents are not recognized by either the child’s country of birth or the country of the child’s commissioning parent(s). This paper examines recent cases brought in India concerning the parentage and citizenship status of children born to Indian surrogate mothers and foreign commissioning parent(s). In the absence of comprehensive legislation, Indian courts have struggled to address these fundamental issues of surrogate babies given the differing interests of the parties and countries involved. By viewing the rights of the surrogate child as paramount, this paper asserts that surrogate children born through surrogacy arrangements in India should have their origins known and documented accurately to preserve their identity. In addition, Indian citizenship should attach at birth to prevent statelessness. The paper outlines how contrary conclusions place the interests of other parties above the rights of the child.

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Questioning Rights of Mothers and Children: Case Study Analysis of Anand (Gujarat, India) twin children case, 2008.

Anuja Shah

Abstract

Reproductive tourism has emerged as a vast subset of multibillion dollar industry of Medical Tourism in India, which is gradually earning a comfortable space in the health sector. The paper aims to elucidate how promotion of this ‘first world treatments’ at ‘third world pricing’ are penetrating rapidly in the socio-political and economic spaces of the nation with the already existing widened gaps in health service. The attempt is to reflect and locate tensions between national regulations and the global demand in the realm of reproductive and child health. Critically looking at the issues of identity, nationality, complications with surrogacy and legal dynamics with, paper supports its critical analysis with case study - (Anand district’s twin children case, 2008) largely in the perspective of child rights in the light of existing provisions and policies in India and the recently passed Gujarat State high court's decision (November 2009) on the same.

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Parenthood and nationality issues in the complex situation of transnational surrogacy in India Documentary Film on Transnational Surrogacy in India

Mr. Rahul Ranadive

Abstract

The Assisted Reproductive Technology (ART) Bill in India is not yet legally binding and intended parents have to adopt their babies to take them back to their countries. There are several countries in the world where surrogacy is banned; however parents from these countries also come to India to seek surrogacy as an option for their fertility problems. Transnational surrogacy arrangements in India have thus created complex situations of stateless children where babies with multiple parents are not provided nationality by the country of birth or by the country of the child's intended parent(s). Two pairs of twin¹ babies born through surrogacy to German parents are presently in India awaiting passports required to leave the country. Surrogacy is banned in Germany and therefore they have been refused German passports. The first twins were born on 4th Jan 2008 and their parents have been struggling in India to try and get Indian passports for their children. The egg used for the twins babies are not of the German mother but an unknown Indian egg donor, the sperms however were of the German father. Indian courts have struggled to address the differing interests of the parties and countries involved. After 2 years of court struggle, recently the German government has given them permission to adopt the children as a special case. However there is another set of twins born through the surrogacy in India of German parents almost a year ago and the mother is similarly trying to bring the babies back to Germany by all means. This documentary film reveals the legal complications of parenthood and nationality issues with transnational surrogacy in India.

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¹ Given that many embryos are transferred into the gestational mothers' uterus at any given time, there are many twins born through IVF technology.