

WHAT IS ALTRUISTIC SURROGACY?

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What is an altruistic surrogacy arrangement? According to the [new Surrogacy \(Regulation\) Bill, approved by the Lok Sabha](#) last week, it includes contracting a 'close relative' as a surrogate by a heterosexual married couple who have been childless for five years of their marriage. This line, in gist, separates altruism from the commercial tinge that surrogacy carries with it.

How is an act of selflessness translated into thinking about a pregnancy that is aimed towards relinquishing the child to a close relative? In the U.K., laws on surrogacy allow only altruistic arrangements where the surrogate can be paid only 'reasonable expenses'. The fluidity in defining reasonable expenses means that this should ideally include payment for medical treatment, and in-vitro fertilisation (IVF) but may include other 'expenses'. In most of Australia, altruistic surrogacy entails restricted — in different parts of the world, varying levels of legal restrictions, or complete bans are practised — pre-approved payments to the surrogate, including for diet during the pregnancy, and/or for the medical treatment. However, altruism also entails the provision that the surrogate is the legal mother of the child, which can be transferred to the parents through a legal process, including adoption. In many countries in Europe, the act of gestation defines motherhood, even though the egg used for the pregnancy through IVF may belong to the couple entering the arrangement.

As per the new Surrogacy Bill, the surrogate in India continues to fulfil her role as a gestate. In keeping with the insistence on gestational surrogacy, which makes the use of IVF and other assisted reproductive technologies mandatory, the current Bill is faithful to the Indian Council of Medical Research's Draft Assisted Reproductive Technology (Regulation) Bill, 2010. The latter has governed the practice of surrogacy till the Surrogacy Bill of 2016 banning commercial surrogacy comes into effect. Motherhood did not belong to the surrogate; she was trained to think of herself as a gestate, as research by Amrita Pande suggests, and the relinquishment of the child was an absolutely essential clause within the draft bills on commercial surrogacy, and in practice in the surrogacy contract.

The science of altruism

The commercial surrogacy arrangement in India was an exchange of money for services: and yet, clinics and surrogacy agents went to great lengths to transform the commercial element of the surrogacy arrangement, primarily identified as the surrogate's fees, into gift-giving, and sacrifice. That motherhood could be for sale is a matter of distress and shock.

In that sense, altruistic surrogacy is not very different from its opposite commercial variant. Unlike the U.K., altruism in India is being defined through the tie of kinship, not through the exchange of payment for 'services rendered'. Here, kinship and family hide the commercial element entailed in seeking a surrogate from among close relatives. Thus, much of the criticism against the Surrogacy Bill in Parliament points toward the lack of definition that the category of the 'close relative' carries.

Let's look at the Transplantation of Human Organs Act (THOA), 1994, as a parallel to the conversation on altruism and its linkages with commercial surrogacy. The Act prescribes that organ donors are allowed to donate their organs before death only to 'near relatives'. Donating organs to 'strangers' or not near relatives before death is not allowed, and may be approved of

only through the authorisation committee. The category of the 'near relative' appears again in a similar vein to the 'close relative'. But unlike the Surrogacy Bill, the THOA identifies 'near relatives' as 'spouse, son, daughter, father, mother, brother or sister'. It's a closed group of relatives — within the structure of the nuclear family unit — members who may not be eligible to be surrogates, unfortunately.

In my research, IVF specialists found the mother and sister of the infertile woman to be perfect as gestational carriers. In 2004, in Gujarat, Nayana Patel, who later became famous for her surrogacy clinic in Anand, facilitated the surrogate pregnancy of a 43-year-old woman seeking to help her childless daughter and son-in-law to have a child of their own. Yet, the women belonging to the father-to-be's family, such as his sister and mother as surrogates, carried associations with incest (even though gestational surrogacy is facilitated through technological interventions).

By banning commercial surrogacy in favour of its altruistic avatar, the identification of 'close relatives' will take on a murky turn. Just like in the case of organ donation, wherein 'strangers' were dressed up as 'near relatives', in altruistic surrogacy too, similar negotiations may be entered into. In an overtly patriarchal society, women are always at the receiving end of ostracism and exploitation. In facilitating altruistic surrogacy among close kin, we have to be wary of the kind of exploitation we are fostering.

Despite exempting gay couples, single men and women, and live-in couples from seeking surrogacy, not clearly defining the regulative mechanisms within altruistic surrogacy, and the very regressive approval for couples with differently-abled children to opt for surrogacy, the Bill does seek certain important changes. The push towards adoption is very welcome, as is the waiting period of five years. The popularity of IVF and other assisted reproductive technologies stems from a problematic conceptualisation of infertility itself, pushing couples to opt for invasive intervention within a year of unprotected coitus. Of importance now is to go back to understanding why and how the desire for children is socially mediated to help couples seeking surrogates, and vice versa.

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The Transgender Persons Bill will do more damage than good if passed without revision

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