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Challenges of transnational parenthood

*Exploring different perspectives of surrogacy in
Sweden and India*

ANNA ARVIDSSON



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Abstract

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Transnational surrogacy challenges traditional norms of parenthood, especially motherhood; additionally, it is viewed as the exploitation of poor women. The overall aim of this thesis was to shed light on the consequences of an unregulated situation on surrogacy in the Swedish and Indian contexts, and to give different perspectives on surrogacy and the surrogate. The experiences of using transnational surrogacy and the consequences of using this reproductive method in a context of a largely unregulated situation had rarely been explored at the start of the study. Between 2012 and 2015, qualitative interviews were conducted with commissioning parents in Sweden who used transnational surrogacy mainly in India, as well as with social workers in Sweden, who have handled cases regarding the legal recognition of parenthood. To capture a non-western perspective on surrogacy, the views of women and men in different social strata in Assam, India were explored through individual interviews and focus group discussions. At the start of the project, India was the most common country to turn to for surrogacy. The results reveal that both commissioning parents and social workers needed to navigate inadequate parental legislation, with the result that commissioning parents felt questioned as parents. Social workers tried to balance the protection of the surrogate's rights with the child's best interest. The ethical aspects made the users of surrogacy ambivalent, and, for social workers, it resulted in further reluctance to handle legal parenthood cases. However, from an Assamese point of view, no ethical considerations were expressed; instead, the surrogate would either be stigmatized for her act and seen as though she was "selling her child," or seen as a woman doing a noble act, helping a childless couple. All the informants demonstrated a pragmatic view of legal parenthood, but the current legal situation in Sweden limits the scope to act as parents in relation to society, because of the length of time it takes to be recognized as legal parents. This comes with a risk for children. From the perspective of reproductive justice, a clearer regulation on surrogacy, and kinship rules that are more adjusted to the current family practice, are needed. Additionally, to limit the risks for all parties involved in the surrogacy process, a more transparent surrogacy process is needed.

Keywords: Transnational surrogacy, Surrogacy, Assisted reproduction, Commissioning parents, Legal parenthood, Social workers, Exploitation, Surrogate, Motherhood, Kinship, Social constructionism, Reproductive Justice, Sweden, India, Assam

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To my friends and family

List of Papers

This thesis is based on the following papers, which are referred to in the text by their Roman numerals.

- I Arvidsson, A., Johnsdotter, S., Essén, B. (2015). Views of Swedish commissioning parents relating to the exploitation discourse in using transnational surrogacy. *PLOS ONE*, 10(5): e0126518.
- II Arvidsson, A., Johnsdotter, S., Emmelin, M., Essén, B. (2016). Gauging the interests of birth mother and child: A qualitative study of Swedish social workers' experiences of transnational gestational surrogacy. *European Journal of Social Work*, 21(1): 86-99.
- III Arvidsson, A., Vauqueline, P., Johnsdotter, S., Essén, B. (2017). Surrogate mother – praiseworthy or stigmatized: a qualitative study on perceptions of surrogacy in Assam, India. *Global Health Action*, 10(1): 1328890.
- IV Arvidsson, A., Johnsdotter, S., Emmelin, M., Essén, B. (2019). Being questioned as parents: An interview study with Swedish commissioning parents using transnational surrogacy. *Reproductive BioMedicine and Society Online*, 8: 23–31.

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Abbreviations

ART	Assisted reproductive technology
CSO	Civil society organization
CSR	Centre for Social Research – An organization in India who works for the improvement of women’s situation in society
ESHRE	European Society of Human Reproduction and Embryology
FGD	Focus group discussion
IVF	In-vitro fertilization (when conception takes place outside of the body)
LGBT	Lesbian, Gay, Bisexual, and Transgender
Prop.	Proposition [Legislative bill]
RFSL	Riksförbundet för homosexuellas, bisexuellas och transpersoners rättigheter [Swedish Federation for Lesbian, Gay, Bisexual and Transgender Rights]
SMER	Statens medicinsk-etiska råd [Swedish National Council on Medical Ethics]
SOU	Statens offentliga utredningar [Swedish Government Official Reports]
Svt	Sveriges television [Swedish television]
SW	Social workers
U.K	United Kingdom
U.S	United States of America
W	Woman
WHO	World Health Organization

Definitions

Altruistic surrogacy	Surrogacy arrangement where no payment is allowed to surrogates except for expenses.
Biological mother	A woman who has carried and given birth to the child, but not necessarily provided own eggs in the conception
Commercial surrogacy	Surrogacy arrangement where surrogates are paid over and above any reasonable expenses. There is often a payment to an intermediary, an agency, who arranges the surrogacy process and the contact with the surrogate
Commissioning father	A father who commissioned surrogacy to have a child
Commissioning mother	A mother who commissioned surrogacy to have a child
Commissioning parents	Parents who commissioned surrogacy to have a child
Exploitation	Exploitation can be described as a situation where someone is taking advantage of another, and gives a proposal that the other person feels the pressure to accept or is not able to reject.
Genetic father	A man who is genetically related to the child by having used own sperm in the reproduction method

Genetic mother	A woman who is genetically related to the child by having used own eggs in the reproduction method
Surrogacy agreement	An agreement where the surrogate agrees to carry and relinquish a child to the commissioning parents, and the commissioning parents agree to take care of the child from birth. If the case may be, the surrogate's husband also agrees to the process. The agreement also contains certain terms that the surrogate must fulfill during pregnancy, to keep the fetus and herself in good health.
Surrogate	Surrogate mother. A person who before conception agrees to carry and give birth with the intention of relinquish the child at birth to another person or persons.

Preface

More than seven years have passed since I was asked whether I wanted to be part of a research project on transnational surrogacy, gathering perspectives from Sweden and India. With my interest in complex issues outside the norm, and although I had little knowledge of surrogacy, I gladly agreed to be part of the project. It did, however, turn out to be a somewhat longer project than anticipated. The many perspectives and contexts involved, as well as my limited knowledge from the start, might have contributed to this. Additionally, it is an interdisciplinary project, with a combination of social, anthropological and medical perspectives, which may have complicated the project further. Nevertheless, obtaining an understanding of the different perspectives is the strength of this study, and this made it an interesting journey into this particular reproduction method. The somewhat lengthy project also made it possible to follow the many changes that occurred in the field, where laws on surrogacy have changed worldwide, in Sweden as well as in India, despite this having further complicated the research.

Surrogacy is a subject that attracts much interest, and, since the start of this project, much research has been conducted. It is clear that this reproduction method still encompasses many legal issues and discussions on the related ethical issues. In Sweden, and in many other countries, the discussion often circles around whether surrogacy should be banned or permitted and regulated. It shows that this reproduction method is still highly contentious and needs to be explored from different perspectives to be able to understand the effects of different regulations and discourses.

This thesis might not dig deep into any one particular issue in surrogacy, but, by taking its point of departure from multiple perspectives, it will provide further insight into the complexity of the subject and the different views on surrogacy, as well as some of its consequences for those involved.

Introduction

The different methods available to people to become parents have increased rapidly since the 1970s. With the introduction of in-vitro fertilization (IVF), in which conception takes place outside of the body, more people have been given the possibility to have children, especially genetically related children (Shanley 2002). However, assisted reproductive technologies (ARTs) are not always affordable or accessible (Inhorn and Birenbaum Carmeli 2008; Sharma et al. 2009) or accepted (Inhorn et al. 2010; Grtin 2011) in the home country. This leaves many people without access to a domestic reproductive method.

The regulation of ART is often concerned with the potential risks for the offspring, the commercialization of bodies or body parts, or moral views on family formation and reproduction (van Hoof and Pennings 2011). One of the most controversial IVF methods is surrogacy (Ciccarelli and Beckman 2005). Surrogacy challenges traditional perceptions and the legal landscape of family formation, as the woman giving birth is not intending to be the mother of the child (Horsey 2010). This reproduction method has created a heated debate, with the main discourse portraying surrogacy as the exploitation of the surrogate. This view is particularly prominent in the critique related to transnational commercial surrogacy because there is a view that rich westerners exploit poor women when they seek surrogacy in often low-income non-western settings.

Transnational commercial surrogacy is nevertheless an increasingly used reproduction method due to the lack of possibility to use surrogacy in the home country. Besides the ethical and norm-breaking issues within transnational commercial surrogacy, it causes additional legal problems. When the commissioning (intended) parents seek to be legal parents in their home country, the process is aggravated by the situation where the two countries' legal systems for determining parenthood after surrogacy diverge. Because surrogacy is a reproduction method that often is not in accordance with legal and cultural understandings of reproduction, many countries have had difficulties in regulating this reproduction method, which can leave it unregulated.

In this thesis, the focus is on the experiences of using transnational surrogacy in an unregulated situation, but the issue of surrogacy is explored from several perspectives: in Sweden, commissioning parents using transnational surrogacy and social workers handling legal parenthood after transnational surrogacy; and in India, Assamese community members' public views on sur-

rogacy are explored from the perspective of a non-western, low-income setting to contrast with the views of the commissioning parents and the social workers. At the start of the project, India was the most common country, worldwide, to turn to for surrogacy, but the public view of surrogacy among people in India does not seem to have been studied to any extent (Karandikar et al. 2014a).

Reproductive health matters, legal praxis, governmental policies, socio-economic realities, as well as culture-based notions, are all at play in this situation and will be addressed in the thesis. This is a broad aim, but the purpose here is to cover a variety of different perspectives, as transnational surrogacy contains multiple issues and possible perspectives encompassing the legal system and cultural understandings of reproduction and motherhood in two countries. Through the lens of a reproductive justice framework, I will highlight the consequences of the current legal situation, and will provide some reflections on how to manage the current situation of transnational surrogacy conducted in low-income settings.

Transnational surrogacy

Many countries have legal restrictions regarding the use of surrogacy, but it is also largely unregulated, including in Sweden, and, until recently, in India. However, in Sweden, ART used for surrogacy is illegal within the Swedish healthcare system (Genetic Integrity Act 2006:351), while in India, commercial surrogacy was allowed at the time of the study. The legal restrictions in the home country of the commissioning parents can be overcome by turning to other countries for treatment. Because transnational surrogacy often occurs with people from western countries going to countries with a low-income population, ethical issues have been raised about the risk of exploitation of poor, vulnerable women (Twine 2011; Mohapatra 2012; Rotabi and Bromfield, 2012; Panitch 2013; Saravanan 2013). India was the most popular country for transnational surrogacy (Gupta 2012) until it was banned for foreigners at the end of 2015 (Sherwell 2015). Domestic surrogacy still occurs in India; however, for transnational surrogacy, European commissioning parents nowadays turn to, for instance, Georgia, Ukraine, and Russia, in addition to the U.S. (Engström 2017; Salama et al. 2018; Sándor 2018; Symons 2018; Ørts Rahbæk and Þórný Stefánsdóttir 2018).

Although there are studies on commissioning (intended) parents' experiences in using transnational surrogacy (Riggs and Due 2010; Kroløkke 2012; Kroløkke and Pant 2012; Melhuus 2012; Everingham et al. 2014; Deomampo 2015; Hammarberg et al. 2015; Hvidtfeldt Madsen 2015; Engh Førde 2016b; Riggs 2016; Rudrappa 2016; König 2018; Sydsjö et al. 2019), at the start of the study, in 2012, only a few had focused on the experiences of the process of becoming legal parents in the home country. However, studies have been

added since then (Kroløkke 2012; Melhuus 2012; Deomampo 2015; Hvidtfeldt Madsen 2015; König 2018). There are also a few studies on social workers' experiences of handling legal parenthood after surrogacy (Crawshaw et al. 2012a; Crawshaw et al. 2012b; Purewal et al. 2012).

There is a lack of official data, but it is clear that surrogacy is a growing phenomenon (Gupta 2012; Permanent Bureau of the Hague 2012; DasGupta and DasGupta 2014; Rozeé Gomez and Unisa 2015; Salama et al. 2018). This increased use of transnational surrogacy has raised legal issues regarding the determination of parenthood. There is no uniform international law for handling legal parenthood in relation to surrogacy, and legal obstacles toward the recognition of parenthood have arisen for commissioning parents in the home country when conducting transnational surrogacy (Gamble 2009; Storrow 2011; Kroløkke 2012; Melhuus 2012; Brunet et al. 2013; Crockin 2013; Hale 2013; Millbank 2013; Hague Conference on Private International Law 2014; Deomampo 2015; Hvidtfeldt Madsen 2015; König 2018). The country where the surrogacy arrangement takes place provides the commissioning parents with parental status, while, for example, the Swedish parental law regards the woman who gives birth as the mother (Parental Code 1949:381).

Involuntary childlessness and assisted reproductive technology (ART)

It has been estimated that infertility affects around 10–15% of the world's population (Inhorn 2009). A study involving 17 countries found that the infertility rate ranged from 3.5% to 16.7% in more developed nations and from 6.9% to 9.3% in less-developed nations (Boivin et al. 2007). However, there may be reasons other than medical conditions to explain difficulties in having a child. Those who live in same-sex relationships, are single, or are transgender (if they have undergone an operation where the reproductive organs, such as testicles, uterus, and ovaries have been removed) often cannot have children of their own.

Involuntary childlessness has been found to be very stressful for both women and men, who often describe it as a life crisis, and people can go to great lengths to have a child (Becker 2000; Fisher et al. 2010; Greil 2010; Volgsten et al. 2010). The wish to become a parent has also become increasingly visible among gay men (Norton et al. 2013), who would usually have limited options to be parents. Previously, they will have mainly achieved parenthood through adoption and foster-care, or by co-parenting with same-sex female couples or single women, although there can be limited possibilities to adopt for same-sex couples (Golombok 2012; Dempsey 2013). Today,

when women who live in same-sex relationships, have access to ART, it further limits the options for gay men to have a child, as the possibility to arrange this with these women has decreased (Malmquist et al. 2012).

Historically, adoption has been the main solution for involuntary childlessness, from informal inter-family adoptions to regulated inter-country adoptions (Merino 2010). Today, it has become more difficult to adopt due to stricter requirements for adoptive parents, resulting in long delays for inter-country adoption (Rotabi and Bromfield 2012). With an increasing number of new methods of ARTs, the possibilities to have children, especially genetically related children, have increased (Shanley 2002). Studies have revealed that involuntary childless people are prepared to conduct repeated IVF trials to have a child (Mann 2014). Surrogacy is yet another option to have a child for those who do not have any possibility of carrying a child. This would include women without a uterus and same-sex male couples, who have very limited options to have a child of their own (Dempsey 2013).

What is surrogacy?

Surrogacy, surrogate motherhood, host motherhood, or contract pregnancy, as it is also called, refers to a reproductive method in which a woman bears a child on behalf of another couple or single person who intends to be the child's parent(s), referred to as intended or commissioning parents. I will mainly use the term commissioning parents as the parents I interviewed had already conducted the whole process of surrogacy and were legally the parents, not the intended-to-be-parents. The woman who gives birth to the child has been referred to as: surrogate mother, surrogate, host mother, gestational mother, gestational carrier, or simply carrier (from here on, I will only use the word surrogacy and surrogate, as these are still the most commonly used terms).

Before pregnancy, the surrogate usually enters into an agreement with another couple or a single person to relinquish the baby to them. There are two different types of surrogacy: 1) gestational or full surrogacy involves implantation of the embryo through IVF. The egg can come either from the commissioning (intended) mother or from an egg donor. Consequently, the surrogate has no genetic connection to the child. The sperm usually comes from the commissioning (intended) father, but it can also be sperm from a donor; and 2) with traditional or partial surrogacy, the surrogate uses her own egg and usually is inseminated by the commissioning father's sperm, but it can also be donor sperm (Stark 2012). With traditional surrogacy, the surrogate has both a genetic and a biological (in the sense of carrying and giving birth to a child) connection to the child. Before the introduction of IVF technology, only traditional surrogacy was possible. However, with IVF, gestational surrogacy is the most commonly used method, especially in transnational surrogacy. If the

commissioning mother's own egg can be used, both parents can be genetic parents.

Regulations of surrogacy

Laws relating to surrogacy vary widely around the world; from surrogacy being totally forbidden to the allowing of commercial surrogacy. With commercial surrogacy, the surrogate is paid over and above any reasonable expenses; moreover, there is often a payment to an intermediary, an agency, who arranges the surrogacy process and the contact with the surrogate (Sharma 2006). Commercial surrogacy is only legal in a few countries, for instance, Ukraine, Russia, Georgia, some states in the U.S. and, until recently, also in India and Thailand (Reddy et al. 2018). Altruistic surrogacy, in which no payment is allowed except for expenses, is legal, for instance, in the U.K., Canada, Australia, and the Netherlands (Mitra et al. 2018), while both commercial and altruistic surrogacy are illegal in, for instance, France, Germany, Austria, and Italy (ibid.). Surrogacy can also be unregulated. For instance, in Sweden, there is no direct law that prohibits or allow surrogacy, but the medical process for surrogacy is not allowed within the Swedish healthcare system. This variation in laws is one of the reasons for the increased use of transnational surrogacy (Storrow 2005).

Who uses surrogacy?

People use surrogacy for various reasons. Most mixed-sex couples have tried other assisted reproductive methods before turning to surrogacy. In a clinic in the U.K., the most common reasons for using surrogacy were: cancer surgery, congenital absence of the uterus, post-partum hysterectomy, and repeated failure with IVF treatments (Brinsden 2003). Similar reasons were found among mixed-sex couples in Australia and Sweden (Hammarberg et al. 2015; Sydsjö et al. 2018), while same-sex male couples in Sweden reported that they had not found any other possibility to become parents, and some among these had also unsuccessfully tried to adopt a child (Sydsjö et al. 2018). Besides the above reported reasons for not being able to carry a pregnancy, postponing pregnancy to late age has also been stated (Panitch 2013). A study in the U.K. showed that the mean time that mixed-sex couples had tried to have a child before seeking surrogacy was 7.5 years (MacCallum et al. 2003). In studies in the U.S., it was shown that most commissioning parents were white, married, generally had a college degree, and were financially well situated (Ciccarelli and Beckman 2005). In a study on the use of surrogacy in India, the majority of the parents were found to be well educated, fully employed, and belonged

to the higher sections of society (CSR 2012). The majority of the commissioning mothers in the study were more than 35 years old, and most reported non-functional reproductive organs or difficulties in carrying a pregnancy to term as the reasons for using surrogacy.

Surrogacy challenges the traditional norms of parenthood

Surrogacy challenges the traditional view of family formation because it is an agreement between people wanting a child and a woman who will carry a child to term and thereafter relinquish the child upon birth (Hale 2013). With surrogacy, there is a primary question of who should be the mother, as it is possible for three women to be involved in the reproduction: the commissioning mother, the woman giving birth (the surrogate), and a possible egg donor who is genetically related to the child (Jaiswal 2012). Traditional regulations on parenthood apply the presumption of motherhood as being where the woman giving birth is seen as the mother, and the presumption of fatherhood as being where the birth-mother's husband is seen as the father (Baker 2016). In Sweden, this is regulated in the Parental Code. When surrogacy is used, the woman giving birth and her husband are not intended to be the parents; thus, surrogacy does not correspond with the traditional views of parenthood.

Surrogacy as a contentious issue

The debate on surrogacy has been a heated one. It can be said to have begun with the Baby M case in the U.S. in 1988 (Markens 2007; Peng 2013). In this case, the surrogate refused to relinquish the child she had carried for a mixed-sex couple (Peng 2013).¹ The case caused a tremendous number of reactions from feminists (ibid.). However, the feminist groups were divided in their views on surrogacy. Radical feminists claimed that surrogacy commodifies women and labor and alienates them from their child (Bailey 2011). Additionally, it was seen as another way for men to exploit women's bodies and to use poor women's vulnerability and need for money to make them into surrogates, which made their consent to engage in surrogacy arrangements questionable (Markens 2007). The radical feminists, Andrea Dworkin (1983) and Gena Corea (1985), compared surrogacy with prostitution and asserted that surrogacy would reduce women to being "wombs for rent". The radical feminists argued for the abolishment of surrogacy. On the other hand, liberal feminists perceived it from a different angle, although at the time they were the minority

¹ Although, in the end, the surrogate was obliged by the court to hand over the baby, it was ruled that she was entitled to limited visiting rights (Shapiro 2014).

(Busby and Vun 2010; Shapiro 2014). They claimed that, to protect women's autonomy, women should be allowed to engage as surrogates (Busby and Vun 2010). In their view, the prohibition of surrogacy would amount to legal paternalism and would disqualify women as rational agents (Bailey 2011).

This debate is still ongoing in the media and between feminists. Currently, different discourses on surrogacy range from the condemnation of all forms of surrogacy as a commodification of children and of women's bodies, and exploitation *per se*, to others emphasizing that it can be seen as part of reproductive liberalism, and that women should have the democratic and reproductive freedom to enter into surrogacy contracts (Banerjee 2010; Ekis Ekman 2010; Jaiswal 2012; Markens 2012; Fixmer-Oraiz 2013). From the pro-surrogacy point of view, prohibition would deprive women of their autonomy and not regard them as capable of making decisions in their own lives (Jönsson 2003; Bailey 2011). The organization for LGBT (Lesbian, Gay, Bisexual, and Transgender) rights in Sweden perceives surrogacy as one of very few ways for same-sex male couples and transgender people to have children, and they have argued for its legalization since 2008 (Gondouin 2012).

The increased use of transnational surrogacy has further fueled the debate, with issues relating to inequalities, in similar ways to the debate initiated during the Baby M case. Critical voices contend that the global fertility market is structured along lines of class, ethnic, and racial inequalities, and that capitalist logic leads to exploitative relationships between poor women in low-income settings and wealthy western commissioning parents (Twine 2011; Mohapatra 2012; Panitch 2013). Scholars argue that surrogates are not seen as engaging in surrogacy by choice, as transnational surrogacy is often practiced in societies dominated by patriarchal structures in which vulnerable women act out of desperate poverty and lack decision-making power (Damelio and Sorensen 2008; Qadeer 2009). However, other discourses on transnational surrogacy perceive this reproduction method as mutually beneficial for surrogates and commissioning parents, as the surrogate gains financially (Markens 2012; Fixmer-Oraiz 2013). Surrogacy in low-income settings has then been described as both an opportunity for poor women, but also as an exploitation of them (Parks 2010; Wilkinson 2016). These two views of transnational surrogacy are visible in the media, especially the discourse on exploitation.

The media can be seen to play a key role in claims-making, where a certain phenomenon is claimed to be undesirable, and often is the ground on which we base our understanding of a phenomenon. (Johnsdotter and Essén 2010). The media are said to be the source through which most people obtain an understanding of surrogacy and surrogates (Gondouin 2012), which might affect their responses to this phenomenon.

Health risks

Health risks in surrogacy have been much debated. There are those who highlight that surrogates have increased risk of suffering due to, for example, hormonal treatment, multiple gestation, depression, and unnecessary caesarean sections (Jaiswal 2012; Shetty 2012; Kirby 2014). In a meta study of the outcome for surrogates in domestic surrogacy, mainly in the U.S., pregnancy-induced hypertension (high blood pressure) was found in 4.3–10% of the single pregnancies of surrogates, a much smaller incidence than for regular egg donation, which has been reported in 16–40% of the cases studied (Söderström-Anttila et al. 2015). It has been speculated that the less-reported health problems for surrogates compared to those who use regular egg donation is because surrogates have already undergone successful pregnancies and are screened to be medically capable of carrying a pregnancy (ibid.). In the meta-study, they also found that post-partum depression occurred among 0–20% of the surrogates (ibid.). The estimation of incidence of post-partum depression, when surrogacy is not the purpose, vary depending on time after delivery and methodological differences in the studies, however, it seems to range from 5,6-14,5% (Bennett et al. 2004; Gavin et al. 2005).

In India, the often-performed multiple embryo-transfer to increase the success rate, as well as the high number of cesarean sections, involves a higher risk of complications (Shenfield 2011; Shetty 2012; Tanderup et al. 2015b). However, other scholars report that surrogacy arrangements in India are conducted with higher quality of care compared to the level of publicly funded obstetric care in India, and rigorous surveillance and high frequency of antenatal care, thus reducing the risk of severe complications (e.g., Singh and Singh 2012).

Sweden: involuntary childlessness and assisted reproductive technology (ART)

Insemination of the spouse's sperm and non-anonymous sperm donation has been regulated since the mid-'80s by the Insemination Act (1984:1140), although insemination with the spouse's sperm had been practiced long before the '80s. In-vitro fertilization (IVF), has occurred since 1982 in Sweden, but it was regulated by law in 1989 through the In Vitro Fertilization Act (1988:711). A study revealed that assisted reproduction is seen as the normal way to achieve a child in Sweden if people have fertility problems (Westerlund 2005). It is possible to access assisted reproductive technology, both within the public healthcare system and at private clinics; however, not all kinds of ARTs are available. Nonetheless, during the last 15 years, Sweden has changed its laws to include more people in assisted reproduction. Egg donation was allowed in 2003, and same-sex female couples obtained access to

insemination within the Swedish healthcare system in 2005 (Wennberg et al. 2016). In 2016, insemination became permitted for single women, and, as recently as 2019, embryo donation is also allowed (Prop. 2017/2018:155). Because these ART methods still do not apply to same-sex male couples and women without a functioning uterus, they would need to use surrogacy. For same-sex male couples, opportunities to adopt would also be limited. Although adoption has been allowed since 2003 (Prop. 2001/02:123), almost no country permits adoption for homosexuals, and domestic adoption is very rare.

Surrogacy in Sweden

Surrogacy is not clearly regulated in Sweden and there is no law that explicitly prohibits the use of surrogacy or being a surrogate. Nonetheless, the strong emphasis in the law on the presumption of motherhood makes the use of surrogacy more difficult because the surrogate is considered to be the mother of the child. The regulation regarding IVF also has an aggravating effect on the possibilities for surrogacy. The donation of eggs is regulated in Chapter 7, section 3 and 3a of the Genetic Integrity Act (2006:351), and to assist with medical treatments that are not in accordance with this regulation is considered a crime that can lead to fines or imprisonment for up to six months (Chapter 8, section 5 Genetic Integrity Act). Although surrogacy is not mentioned directly in the law, the preparatory work, such as Prop. 2001/02:89 and Prop. 2017/2018:155, states that the use of surrogacy should not be allowed, mainly as there should be no risk of emotional or financial pressure to carry a child, and because of the risk of harm to those involved if any of the parties regret the surrogacy arrangement. It has also been stated that there is too little research on the consequences for the children born through surrogacy (Prop. 2017/2018:155). However, the criminalization only applies to professional assistance, hence, it is not illegal to use transnational surrogacy or to use home insemination for the purpose of surrogacy.

Swedish couples and singles have used surrogacy abroad, mainly in India, until 2015, when surrogacy there was restricted to being available only to Indian citizens (Reddy et al. 2018). Other countries where transnational surrogacy is sought include the U.S., Russia, Ukraine, and Georgia (SOU 2016:11). There are no statistics on how many children in Sweden are born through surrogacy. However, by the end of 2014, it was estimated that at least 200 Swedish children had been born through transnational surrogacy (SOU 2016:11). Recently, it has been estimated by a Swedish surrogacy agency, *Nordic Surrogacy*, which arranges transnational surrogacy, that the number of children born through surrogacy each year will soon exceed the number of transnational adoptions, which has declined dramatically over the last 10 years (Svt 2018).

Opinions on surrogacy

The debate on surrogacy in Sweden has been highly visible, especially among feminists. Kajsa Ekis Ekman, a Swedish feminist, compared surrogacy with prostitution and conveyed that women in low-economic groups, in particular those in India, are exploited by rich westerners (2010). Her book not only began, but also heavily influenced the debate in Sweden. In the Swedish media, surrogacy is described as an exploitation of women's bodies, which is used as an argument against surrogacy (see Wiklund 2010; Berglund 2018). Female bodies are viewed as being used as commodities and exposed to risk of medical complications, exemplified in an article by Åström from the Swedish Women's Lobby and Fahlén from Swedish Medical Women's Association (2012). Others claim that altruistic surrogacy in Sweden should be allowed because it otherwise would take away women's autonomy to choose for themselves whether they want to be surrogates, as argued by Westerlund (2010) from the Swedish LGBT organization, RFSL. In a study among physicians working in reproductive medicine and obstetric care, the majority were neutral or positive toward allowing altruistic surrogacy in Sweden (Stenfelt et al. 2018). Among politicians, there is no consensus on the opinion about whether surrogacy should be permitted within the Swedish healthcare system (Bratt Lejring 2017). In state investigations, various arguments have been put forward to justify why it should or should not be allowed. The last two state-initiated investigations have come to different conclusions. The Swedish National Council on Medical Ethics (Smer) concluded that it could be ethically possible to allow altruistic surrogacy (Smer 2013:1). However, pediatricians have criticized the Smer Report for taking the desires and rights of the childless adults too much into account (Kjellmer 2013). A Governmental Inquiry later concluded that surrogacy would still not be allowed within Swedish healthcare (SOU 2016:11).

Legal regulations of parenthood in Sweden

The presumption of motherhood (that the woman giving birth is seen as the mother) that is practiced in Sweden is similar to that in many other countries. However, motherhood had not been regulated by law before egg donation was permitted in Sweden in 2003. It was not until then that it was considered necessary to regulate maternity. Hence, in Chapter 1, section 7 of the Parental Code (1949:381), it was made clear that the woman who gives birth to a child is the child's mother, regardless of whether the woman has any genetic link to the child. Through the presumption of fatherhood, the birth mother's husband is seen as the father.

Globally, when commissioning parents return to their home country with a child born through surrogacy, the decision about legal parenthood is usually made in the courts. This can be the case in Sweden as well, but commissioning

parents have often turned to social workers to obtain recognition of their parenthood status. In Sweden, social workers handle issues related to legal parenthood, for instance, the establishment of paternity and decision-making of custody when a child is born outside of marriage. The mother and the father then need to confirm paternity and approve of a custody agreement, according to the Parental Code. A social worker also deals with the investigation of a potential adoptive parent before a district court decision. However, there are no regulations for handling any of these matters in the case of surrogacy (Stoll 2013). In a study on regulation related to surrogacy in Sweden, it was stated that social workers 'feel ill-equipped to respond to the problems faced in establishing paternity of the commissioning father and in securing custody in relation to the surrogate-born child' (Stoll 2013:334). Still, at the start of our study, according to the National Board of Health and Welfare, at least 29 municipalities had encountered cases regarding surrogacy, and at least 101 children were born through this reproduction method (Socialstyrelsen 2012).

During the time of the study, laws and national advice linked to surrogacy have changed. For instance, in Sweden, the Migration Agency would no longer be involved in the process of providing children with Swedish citizenship, when they are born abroad, as in the case of transnational surrogacy. The social workers had also been advised by the supporting authority MFOF – Myndigheten för familjerätt och föräldraskapsstöd [Family Law and Parental Support Authority] – to not provide assistance in cases regarding surrogacy. Nonetheless, some social workers have assisted in such cases, although to a lesser extent. However, since January 2019, a revised law has been introduced that will permit social workers to handle paternity issues, even when the child is in a foreign country (Prop. 2017/18:155), which means that social workers are at least set to handle paternity cases today.

India: infertility and assisted reproductive technology (ART)

In India, it is estimated that 8.8% of the women have primary or secondary infertility problems (Unisa 2010). Infertility often creates social and financial problems because of the importance of having children to secure support in old age (Vora 2010/2011) and to ensure the continuation of the lineage (Bharadwaj 2003). Women, in particular, suffer the consequences of not being able to bear children, and childlessness carries a social stigma (Unnithan 2010; Vora 2010/2011).

Although infertility treatments can be found within the public healthcare system, they are available on a very small scale and are difficult to access (Sama 2010). ARTs are mainly provided in private clinics in India, and there has been a huge increase in registered private ART clinics. In 2002, 60 clinics

were registered with the Indian Council of Medical Research (ICMR) (Sharma et al. 2009). However, in 2018, it was estimated that there are over 20 000 ART clinics in India, but only 1500 are registered with the Indian Council of Medical Research (ICMR) (Parliament of India 2018).

Surrogacy in India

Surrogacy has a long history in India and is referred to in the Mahabharata, an ancient epic poem (Srinivasan 1997). Traditionally, surrogacy was achieved through intercourse with the surrogate (Jaiswal 2012). The first IVF surrogacy in India took place in 1994 (Smerdon 2008). At this time, there was no payment made to the surrogate, who was often a relative (Srinivasan 1997). The first time that a surrogate officially stated that she claimed money for engaging in this service was in 1997 (ibid.). Commercial surrogacy became legalized in 2002. Surrogacy clinics and agencies have been promoting surrogacy as a chance for women to have children and avoid a vulnerable childless situation (Qadeer 2009).

The debate on surrogacy in India has been dominated by the view of poor women being exploited, but more recent discourses in the media frames surrogacy as a possibility for the empowerment of poor Indian women to earn their own money (Majumdar 2014). Some Indian scholars have argued that surrogacy in their context is an opportunity for women to empower themselves and improve their socio-economic life conditions (Banerjee 2010), while others view surrogacy simultaneously as exploitative and empowering, for surrogates (Rudrappa 2016). The discourse in Indian agencies presents surrogacy as being mutually beneficial for commissioning parents and surrogates (Shetty 2012).

There has been no regulation of ARTs in India and only non-binding guidelines (ICMR 2005) were in place until December 2018 (Reddy et al. 2018). The earlier non-binding guidelines for surrogacy have stated that the commissioning parents must prove that they cannot carry a child due to physical or medical reasons, and only full surrogacy would be allowed, where the surrogate's egg is not used. A surrogate contract should be drawn up in which the surrogate relinquishes all parental rights. The commissioning parents should pay for all costs associated with the surrogacy and have full custody of the child immediately after birth (ICMR 2005). However, the increased use of ARTs, and in particular transnational surrogacy, created a need for regulation. Some legal cases,² in particular, prompted the need for restrictions in transna-

² In the cases of Baby Manji in 2008 and the Balaz Twins in 2010, the intended parents faced long-winded legal difficulties in bringing their children home to Japan and Germany, respectively (Majumdar 2018). A Norwegian single woman, not genetically related to her two children, born out of surrogacy, faced more than a one year long legal process before she was allowed to bring the children to Norway (Kroløkke 2012).

tional surrogacy (Majumdar 2018). Since the end of 2015, the Indian Government has prevented foreigners from engaging in surrogacy in India, and only Indian citizens are allowed to use this reproduction method (Sherwell 2015). The ban had been preceded by both international and domestic critique on surrogacy, as it was perceived to be exploitative (ibid.). Previous bills had been criticized for not protecting the surrogate's health and interests enough, and for instead focusing on the benefits for the ART industry and the commissioning parents (Deonandan 2015). The latest Bill from 2016 was passed in the Indian Parliament in December 2018, and now prohibits commercial surrogacy for Indian citizens as well (Reddy et al. 2018; see Table 1 regarding the previous bills to regulate ART and surrogacy). The reason for the ban on surrogacy is stated in the Surrogacy Bill: 'it had become necessary to enact a legislation to regulate surrogacy services in the country, to prohibit the potential exploitation of surrogates and to protect the rights of children born through surrogacy' (The Surrogacy Bill 2016:19).

However, the Bill has been criticized for not taking into account the previous research that describes the medical and ethical deficiencies in surrogacy, and for lacking regulation to protect the surrogates' interests (Rao and Khan 2017; Reddy et al. 2018).

Table 1. *Changing policies in India on ARTs and surrogacy*

Guidelines/Bill/Law	Descriptions
ART guidelines from ICMR 2005	Relatively few clinics registered per the guidelines.
ART (Regulation) Bill 2008	The practice of surrogacy should follow the ICMR guidelines. It indicated that surrogates were to be paid 75% of the remuneration at the time of the embryo transfer.
ART (Regulation) Bill 2010	The practice of surrogacy should follow the ICMR guidelines and was not restrictive in terms of nationality or sexuality. Required documents from foreigners stating that their home country permitted surrogacy and taking the baby home. Surrogates were now to be paid the remaining 75% of the remuneration at delivery.
ART (Regulation) Bill 2012	Only allowed surrogacy for married mixed-sex couples. A surrogacy Visa was required for foreigners.
ART (Regulation) Bill 2014	Effectively banned surrogacy for foreigners. A surrogate was only allowed to undergo three IVF cycles, and should be paid irrespective of the birth outcome.
Surrogacy (Regulation) Bill 2016	This Bill was passed by the Parliament in 2018 and now bans commercial surrogacy. Only Indian citizens who are married mixed-sex couples (for at least five years) are allowed to use altruistic surrogacy with a close relative as the surrogate. Profit is allowed for surrogacy clinics, but not for surrogates.

Legal changes on surrogacy

Laws and national advice linked to surrogacy have changed while conducting the studies for this thesis, and some of the experiences narrated would no

longer be relevant to the current situation. Although Indian transnational surrogacy no longer exists, much can still be learned from this thesis about the complexities of this reproduction method. Moreover, the findings from this thesis can, to some extent, be applicable to other contexts that Swedish people turn to today for surrogacy options, such as Georgia, Russia and Ukraine. The situation of transnational surrogacy in, for example, Ukraine can render similar legal problems (Röstlund and Bouvin 2019) and similar views about the surrogate are visible when conducting surrogacy in Georgia (Engström 2017). The findings of the thesis are then relevant for a wider discussion about transnational surrogacy, and the effects of an unregulated situation regarding a highly debated phenomenon.

Conceptual framework

Social constructionism

By adopting a social constructionist approach in this thesis, I have tried to highlight a variety of different possible views on surrogacy, surrogates, and also kinship, as this is related to legal parenthood. Social constructionism can be seen as an overall theoretical framework upon which many other approaches can be built (Burr 2003). It is connected to a critical stance on the taken-for-granted understanding of phenomena and concepts (ibid.). A social constructionist approach shows how taken-for-granted assumptions about the meaning of a concept may have other associated meanings in other contexts or how it has undergone changes historically (Winther Jørgensen and Phillips 2000). Using social constructionism as a theoretical framework is a way of raising awareness of this situation and for pointing to other possible social constructs. At the same time, people have real experiences of a certain phenomenon, and although these experiences can be influenced by the social construction of the phenomenon, they are nevertheless real to the person and have actual consequences (Hacking 1999). I also want to highlight the consequences of the different constructs related to surrogacy, the surrogate, and kinship and, especially, motherhood. Additionally, through using a social constructionist approach, I want to underline that the “knowledge” that is produced in this thesis can also be seen as being socially constructed. The empirical data are a result of the interactions between the researchers and the informants, and it is possible to take on many perspectives and different interpretations. What is highlighted in this thesis is based on the authors’ different ontological approaches, and their different understandings of the empirical data.

Concepts of kinship

Kinship can be seen as being socially constructed. By analyzing the empirical data through the lens of concepts of kinship, the different constructions of kinship at play in the surrogacy context can be highlighted. This understanding is significant, especially in an unregulated context of surrogacy.

Kinship is the idea of what constitutes family and parenthood, and, in western tradition, it would mainly be based on biological relationships and heterosexual marriage. However, in societies outside of this context, kinship may have other grounds (Stone 2014).

With ARTs, the often ancient kinship rules are challenged (Strathern 2002). Although reproductive technologies are set out to mimic the “natural” making of kinship, inevitably they create new forms of reproduction that could not be foreseen by those who first set the rules for parenthood. Janet Carsten (2004:167), an anthropologist, has recognized that ‘Whereas kin relationships previously would have been seen to have their basis in nature, and could be socially recognized or not, the effects of assisted reproduction are that relation can be perceived either as socially constructed or as natural relations assisted by technology’. However, with ARTs, there is ‘uncertainty about what motherhood itself means, as it is no longer inevitable and given’ (Taylor 2005:191). This would be particularly true regarding the fragmentation of motherhood, with a split between biological (giving birth), genetic, and social motherhood (Stone 2014). With surrogacy, there can be a split between biological, genetic, and social parenthood, with potentially differing claims of what should take precedence for determining parenthood and, in particular, motherhood. Until now, decision-making on motherhood has not been viewed as necessary because it has been considered to be in line with the ancient Roman view that the mother is always certain (*mater semper certa est*) (Thompson 2005). While motherhood is solely based on giving birth, fatherhood can be based on marriage to the mother (marital presumption), genetic relation to the child, or intent to be the father with consent, to insemination of donor sperm for the mother to be (Hubin 2014).

Concepts of motherhood

Motherhood is one kinship tie that traditionally is understood in many cultures as originating from carrying and giving birth to a child (Gruenbaum 2012). This has shaped the understandings of what it is to be a mother and how there is an inevitable bond between a mother and the child (Brembeck 1998; Stone 2014). This can be seen as the grounds for why surrogacy is often displayed as a controversial and often-questioned reproduction method, as the birth giving woman is not supposed to be the mother. However, the meaning of motherhood can be seen as being socially constructed.

Motherhood is not a natural condition. It is an institution that presents itself as a natural outcome of biologically given gender differences, as a natural consequence of (hetero) sexual activity, and as a natural manifestation of an innate female characteristic, namely the maternal instinct. The existence of an institution of motherhood, as opposed to an acknowledgment that there are simply mothers, is rarely questioned even though the proper qualities of motherhood are often subject of debate. Motherhood is still largely treated as a given and

as a self-evident fact rather than as the possible outcome of specific social processes that have a historical and cultural location which can be mapped (Smart 2013:37).

Motherhood would then be constructed in other ways than just being based on giving birth; its construction also depends on the context and the historical setting. The ideology of motherhood would also state that women are natural nurturers and giving birth is connected to rearing the child (Smart 2013). Still, the emotional bonding and attachment with the fetus for a birth-giving woman and a connection with motherhood has been debated (Porter 2015). Some claim that there is an inevitable bond between the woman and the child at birth that has been developed during pregnancy (Gheaus 2012), while others claim that this perception is normative and ‘serves primarily to police women’s feelings about maternity’ (Porter 2015:18), and is not an actual medical and social relationship.

As part of the ideology of motherhood, there is an expectation for women to be selfless and to sacrifice themselves for others, especially for their children (Anleu 1992; Malacrida and Boulton 2012). ‘The ideal mother and the ideal, potentially pregnant female are culturally framed as selfless women who have abandoned—or at the very least are prepared to abandon—their former, childlike, and self-centered selves for a higher version of womanhood’ (Malacrida and Boulton 2012:751). By analyzing the empirical data in light of these concepts of motherhood, we can show what impact the view of motherhood has on the view of surrogacy and the surrogate in different contexts, and what consequences this construction has for those involved in surrogacy.

Reproductive justice

The reproductive justice framework involves reproductive rights, social justice, and human rights (Ross and Solinger 2017). It also recognizes the importance of protecting the health of both mothers and infants, and underlines that the definition of family should be based on individual decisions (Gaard 2010; Mohapatra 2012). I recognize that to use the reproductive justice framework contrasts with the social constructionist approach, as it is itself a normative concept. Still, based on the findings in this thesis and in other studies, I found it useful to employ as a framework in the recommendations section as a guide for how to approach surrogacy.

The term “reproductive justice” was coined in 1994 by women of color as a reaction to the focus on choice in the reproductive rights discussion at the *International Conference on Population and Development in Cairo* (Smietana et al. 2018). White middle-class women had argued for having the possibility to make their own reproductive choices so as to have the possibility to use fertility services or abortion (Hayden and O’Brien Hallstein 2010). However,

the “choice rhetoric” did not take into account the situation for women of color and other marginalized women (Smietana et al. 2018) that not all people live with the possibility of making a “free” choice because of structural inequalities (Luna and Luker 2013). Ideally, all women should have the possibility to make well-informed decisions about their bodies and families (Ross and Solinger 2017). Reproductive justice emphasizes reproductive access and human rights (Smietana et al. 2018). The reproductive justice framework has an intersectional perspective, and includes class, gender, sexuality, and race in the analysis of benefits and risks of reproductive technologies. This perspective highlights the lack of these aspects in the reproductive rights discussion (Gaard 2010; Luna and Luker 2013).

The purpose of the reproductive justice movement was to include the issues of reproductive rights for women who fall outside of the norm, such as women of color, poor women, and lesbians. In this thesis, I have expanded the use of the reproductive justice framework. With a wider definition of who is targeted in the reproductive justice framework, it may be suitable to include men living in same-sex relationships. They also fall out of the norm, especially regarding reproduction. Similarly, I include commissioning parents in general when analyzing the consequences that they face in transnational surrogacy, because, although they can be seen as privileged in society, they all fall outside of the norm in relation to their ability to reproduce and become legal parents.

Aim and objectives

The overall aim of this thesis was to provide a multifaceted view of surrogacy and the surrogate from different perspectives, and to shed light on the consequences of an unregulated situation on surrogacy in the context of Sweden and India.

Specific objectives:

- To explore, in light of the exploitation discourse on surrogacy, the views on surrogacy and surrogates from different perspectives (commissioning parents, social workers, and men and women in Assam) (Papers I, II, and III)
- To explore how social workers in Sweden view the handling of legal parenthood after the use of transnational surrogacy (Paper II)
- To explore how Swedish commissioning parents have experienced the process of seeking official parenthood status when using transnational surrogacy (Paper IV)
- Within a reproductive justice framework, and with knowledge from the studies in this thesis, provide pragmatic suggestions on how transnational surrogacy can be handled in the current legal situation (Papers I, II, III and IV)

Material and Methods

Study design

A qualitative design was used for all the studies in this thesis. Semi-structured and in-depth interviews as well as focus group discussions (FGDs) were used for data collection because the purpose was to capture several perspectives on transnational surrogacy. Although the focus is on the experiences of using transnational surrogacy in an unregulated situation, the purpose of the studies was also to provide a multifaceted picture of the complex and changing reproduction method of surrogacy, obtaining views from different contexts. Accordingly, a cross-cultural design was chosen to be able to show variations and similarities in views, depending on the two cultural contexts. Sweden and Assam, India were the selected settings for the study. In Sweden, the perspectives of both commissioning parents and social workers have been depicted, in order to capture different perspectives in the same cultural context. Studies I and II are based on studies conducted in Sweden, and Study III is based on a study conducted in Assam, India. See Table 2 for an overview of the methods, participants, and analysis employed for each study.

Study settings

Sweden

Studies I and II were conducted in Sweden. Sweden has 10 million inhabitants, approximately 86% live in the urban areas, and the literacy rate for the total population was 99% in 2016. Sweden has a fairly equal distribution of income and is one of the most economically competitive countries in the world (World Population Review 2019).

The importance of having children in Sweden is evident and is seen as a part of normal adult life (Lampic et al. 2006; Lundin 2007; Engwall and Peterson 2011). When ARTs are used to solve involuntary childlessness, there are many restrictions, especially when it involves a third party, for instance, financial compensation for donating sperm or eggs is not allowed, this must be voluntary (Lundin 2007).

Table 2. *Overview of studies, papers, participants and methods in the thesis*

Study	Study design	Participants	Data analysis
I	Qualitative in-depth and semi-structured interviews (Papers I and IV)	20 commissioning parents (15 men and 5 women) representing 15 couples in Sweden	Thematic analysis
II	Qualitative semi-structured interviews (Paper II)	21 social workers (18 women and 3 men) at 13 social welfare offices in Sweden	Thematic analysis
III	Qualitative individual semi-structured interviews, Focus group discussions (Paper III)	128 individuals from different socio-economic groups in Assam (78 women and 50 men)	Thematic analysis

Sweden was chosen as the study area because surrogacy is unregulated in Sweden and there seemed to be an increase in transnational surrogacy, accompanied by a heated debate, especially around the use of transnational surrogacy. Study I, with commissioning parents, was conducted in the area where the self-selected commissioning parents lived, mainly in the capital area, but also in mid-sized and small municipalities from the capital area to the south of Sweden. Study II, with social workers, was conducted where the contacted social welfare offices had reported experiences of dealing with surrogacy cases, mainly in large and mid-sized municipalities from the capital area to the south of Sweden.

Assam – India

Study III was conducted in Assam. Assam is one of the eight states in north-eastern India. It shares borders with Bhutan and Bangladesh. The population is 31 million, with mostly Hindus (60%) and the rest mostly Muslims (30 %)

(Gandhi et al. 2011). The majority, 85.9%, live in rural areas (Census 2011). The index for poverty in Assam is below the national average, and a large part of the population is marginalized socio-economically (Gandhi et al. 2011).

Political organizations claim that Assam is economically underdeveloped due to the Indian Government's ill treatment of Assam. This situation has resulted in armed organizations striving for independence, but many of the groups have now laid down their arms and it is seen as a post-conflict area (Singh 2010).

The female literacy rate is 67.3%, slightly higher than the national female literacy rate. The overall literacy rate for Assam is 73.2% (male 78.8%), slightly lower than overall India (Census 2011). At the household level, the decision-making power is higher for women in Assam compared to the situation overall for women in India (Purusottam and Bidisha 2009). In India, sex-selective abortions are relatively common due to a male preference (Robitaille and Chatterjee 2018). On a national level, there are 940 females per 1000 males, compared to 958 females per 1000 males in Assam (Census 2011). As a whole, this bears witness to a slightly better situation for women compared to the rest of India, although there is malnutrition among many women in Assam (Gogoi et al. 2014).

There is an increase in private ART clinics in Assam, targeting reproductive issues for those who can afford it. There are at least four private clinics providing IVF and more clinics are opening, but surrogacy is not provided on a very large scale (Handique 2013). No government hospital had any planned IVF department in 2012 (*The Telegraph, Calcutta* 2012). We chose Assam as our study area because the region is known to be a novel area for IVF surrogacy, but this seemed to be increasing. Based on this aspect, it would provide us with an opportunity to capture views on surrogacy before people in general were perhaps influenced by discourses in the media. Additionally, our research group already had an established collaboration within the area, which facilitated the study on surrogacy with a non-western perspective as a comparison to the Swedish western perspective given from commissioning parents and social workers.

Study I – Swedish commissioning parents' perspectives (Papers I and IV)

Recruitment of participants and data collection

Commissioning parents in Sweden who had used surrogacy abroad were invited to take part in a study of the experience of using transnational surrogacy. The administrator for Föreningen för surrogatmödraskap (Association for Surrogate Motherhood, <http://www.surrogat.nu/>) was contacted, who (by e-mails) informed its members about the study. Additionally, an advertisement about

the study was placed on an infertility website, Vill ha barn (Want to Have Children, <http://www.villhabarn.se/>). Those willing to participate in the study contacted the first author through e-mail or by phone. Snowball sampling and word of mouth was then also used for the recruitment of participants to the study. Even though the focus of the study was transnational surrogacy in India, the inclusion criterion was only to have used transnational surrogacy, as it was a fairly new reproduction method at the time of the study, and few people had used transnational surrogacy. Fifteen couples, nine same-sex male couples and six mixed-sex couples, participated in the study. Almost all had used surrogacy between 2010 and 2014. Ten of the couples had travelled to India for surrogacy, three couples had turned to the U.S., and two couples had experiences of having a woman in Northern Europe as the surrogate. The age of the informants, at the time they had had their children, ranged from 29–52 for those in same-sex couples, and 36–44 for those in mixed-sex couples. All couples were married, and all couples had used their own sperm for the surrogacy process, but only one commissioning mother had used her own eggs. The rest had used donor eggs, chosen from egg donors at the agency, except those who had travelled to northern Europe, where the surrogate's own egg was used. The majority of the informants had university degrees. Many lived in the capital area, but they had approached different social welfare offices to obtain legal parenthood. A combination of in-depth and semi-structured interviews were conducted with the commissioning parents. With the 15 couples in the study, mainly individual interviews were conducted with one member of the couple; two women and eight men. However, for four couples, both were interviewed upon their request; two same-sex couples and two mixed-sex couples, and in one mixed-sex couple, both were interviewed but separately, also at their own request. The interviews were conducted between July 2012 and January 2015, and took place in a setting convenient for the participants: their home, a private space in their workplace, or a café. The interviews lasted from 1.0 to 2.5 hours. They were recorded and transcribed verbatim by the first author and the quotes cited in this thesis were translated into English by the authors.

Open-ended questions were used. The focus of the interview was the participant's reason for using surrogacy, their experiences of using transnational surrogacy in the particular country to which they traveled, their views regarding the surrogate and their experiences of contact with her, and their experiences and views of the process to obtain legal parenthood. Probing was used to allow informants to clarify or elaborate on their answers.

Study II – Swedish social workers’ perspectives (Paper II)

Recruitment of participants and data collection

In order to recruit social workers for interviews, 32 social welfare offices in mid-size and large municipalities in different geographical areas in Sweden (of which there are 290 municipalities in Sweden) were contacted via telephone or e-mail. They were mainly contacted based on the size of the municipality, as a social welfare office in a larger municipality would more likely have encountered cases of surrogacy. Written information about the study was sent to the social welfare offices. Seven of those reported that they had not encountered any surrogacy cases. Others were not willing to participate because: they did not want to risk identification of cases or the social welfare office involved, they had referred all handling to the district Court, the social worker who handled a case was no longer working there, or they had only partially handled a case earlier. Some did not report back. In the end, 21 social workers (18 women and 3 men, aged from their early 30s to early 60s), who had encountered at least one case each, at 13 social welfare offices agreed to participate in the study. All the social workers had experience regarding decision-making on legal parenthood, and three had leading positions in the social welfare office. Most social workers had only encountered one surrogacy case, and only a few had encountered more than three cases. The cases were related to the use of surrogacy between 2010 and 2013, mainly in India, but five social workers had experience of handling cases related to using surrogacy in the U.S. and a few other countries. They were interviewed at their workplace. Most interviews involved only one participant, but at four social welfare offices, two social workers had dealt with the cases together and both chose to participate in the interview. At another office, a group of five social workers participated. In the group interview, all except one had direct experience of “surrogacy cases”. The interview themes were focused on their decision-making processes for granting legal parentage, and perceptions of handling this process when transnational surrogacy was used. The interviews also contained questions about their contact with the commissioning parents, and their views on surrogacy. Open-ended questions were used, along with follow-up probing. Each interview lasted between 1 hour and 2.5 hours. They were recorded, then transcribed verbatim, and the quotes used in the thesis were translated into English by the authors.

Study III – Assamese community members' perspectives (Paper III)

Recruitment of participants and data collection

This study was conducted in two parts during four trips to conduct fieldwork, for the period of two to seven weeks each, between April 2012 and the end of 2013. For the study, we collaborated with Gauhati University, Department of Women's Studies. Initially, we wanted to understand the occurrence of surrogacy performed through IVF in Assam. For this reason, we interviewed four physicians at four different IVF clinics in Guwahati, the largest city in Assam. We also conducted semi-structured individual interviews, mainly with women from a low-socio-economic group. At this point, we particularly wanted to understand the awareness, knowledge, and opinions about solutions to childlessness, and in particular surrogacy among women in a low socio-economic group, because they were most likely to be recruited to be surrogates (see Table 3). Staff at clinics in the rural areas acted on behalf of the researchers to recruit those who wanted to participate in the study. The contact with the clinics was facilitated by the Department of Health and Family Welfare in Guwahati. For some interviews, held in a village on an island in Brahmaputra, recruitment was facilitated by the C-NES (Centre for North-East Studies). The interviews were held privately at the clinics or in the participant's home, and lasted between 30 and 60 minutes. The findings from the first phase of the study revealed that women in the low socio-economic group did not have much awareness of IVF surrogacy. In the second phase of the study, we then chose to conduct focus group discussions (FDGs) with people from different socio-economic groups to increase the possibility that informants had more awareness of surrogacy, and to get different socio-economic groups' (relating to level of education and income) opinions on surrogacy, but also on other solutions to childlessness.

The Department of Women's studies at Gauhati University facilitated the recruitment of FGD participants from different villages in Assam and Guwahati, the largest city in Assam. They recruited teachers (representing the middle socio-economic group) and students through the university and colleges, and informants from low socio-economic groups through their contacts in the villages, mainly working as farmers or "daily wage earners". The Rotary Club of Guwahati was contacted by the second author, who works at Gauhati University, to gather people from higher socio-economic groups. However, it turned out to be difficult to organize a FGD with women from a high socio-economic group, so they were interviewed individually instead. The FDGs took place where it was convenient for the participants, in their home, an assembly room, or a classroom. In total, 15 FDGs with 5–8 informants in each FGD were held (see Table 3). We tried to maintain homogeneity within the FGD groups, which seemed to have been successful, except for one group,

which turned out to have participants of different socio-economic backgrounds. The individual interviews with women from a high socio-economic group were mainly conducted at their workplaces, apart from one interview, which was held at the guesthouse where the first author stayed. Most of the participants were Hindus, and a few were Muslims or Christians.

Table 3. *Overview of the participants and data collection*

Level of socio-economic background	Type of interview	Age	Area	Period
Lower	23 Individual (20 women, 3 men)	20–38	Rural	Fall 2012
Lower	7 FGD (4 with women, 3 with men)	20–70	Rural/urban	Fall 2013
Students	5 FGD (2 with women, 2 with men, 1 mixed gender)	18–23	Rural/semi-urban/urban	Fall 2013
Middle	2 FGD (1 with women, 1 with men)	25–60	Semi-urban area	Fall 2013
Higher	1 FGD (men)	43–60	Urban	Fall 2013
Higher	4 Individual (women)	38–49	Urban	Fall 2013

FGD = Focus group discussion

For the FGDs, we used a vignette (see Appendix); a short story about a childless couple was presented to the participants as a point of departure to initiate

the discussion about their perceptions of childlessness and possible solutions to childlessness. The same vignette was used for the individual interviews with women from a high socio-economic group, and they lasted between 45 and 90 minutes. The FGDs took between 30 and 60 minutes.

All interviews and FGDs were recorded with consent from the informants. The initial individual interviews and FGDs were conducted by the first author, together with a Swedish registered nurse midwife and with the help of a female interpreter. The individual interviews with women from a high socio-economic group were held in English and conducted by the first author. The initial individual interviews and most FGDs were held in the local language. A few FGDs were held in English, but with the interpreter present, if needed, for translation and explanations. The interpreter was local to the area and had experience in conducting studies on reproductive health issues in Assam. This experience was helpful in putting together the vignette that was used for the FGDs, but also for reflection on the informants' narratives after the interviews and the FGDs were complete. During the FGDs, the interpreter summarized what was discussed in the FGDs but did some probing as well, as she was well aware of the topic and aim of the study. Representatives from Gauhati University were also helpful in interpreting and probing at some FGDs. When informants did not know about IVF surrogacy, the interpreter thoroughly explained both the reproduction method and the surrogate's role in the process. IVF surrogacy was explained as "the egg and sperm of a childless couple are put together, and then inserted inside the womb of a woman who will give birth to their child". The surrogate's role was described as "a woman carrying a child for someone else, without using her own eggs". Thereafter, the informants were told about the financial compensation received by the surrogate to make a distinction about the opinions on the actual reproduction method and the involvement of payment.

Interviews and FGDs conducted in the local language were transcribed and translated into English by a research assistant at the Department of Women's Studies at Gauhati University. Some of the transcripts were also double-checked, and back-translated by the second author, who is from Gauhati University, to verify the translation and how the questions were asked. The interviews and FGDs conducted in English were transcribed by the first author and the registered nurse midwife. In addition to the mentioned interviews and the FGDs, we also had informal talks with civil society organizations (CSOs) about surrogacy. Interactions with people in general in Assam also helped to further contextualize the data for our study.

Analysis

Thematic analysis, as described by Clarke and Braun (2006), guided the analysis of all papers in this thesis. The reason for using thematic analysis was that

it serves the aim of the study well; to illustrate a group's comprehension of a phenomenon and to identify similarities and differences in meaning in the material (Joffe 2012). In order to find these similarities and differences, the material was read and re-read several times. For the coding, we had both pre-existing codes and data-driven codes. Pre-existing codes were related to narratives linked to views of exploitation. Coded extracts from data items, which are coded chunks of data from transcribed interviews or focus groups, were color-coded with annotations, and then categorized together. We looked for patterns of interest among the codes, which were then organized into themes related to the aim of each paper. The themes were refined and revised, and, in order to coherently elucidate the themes, data were transferred between themes. During the process of creating themes, we also went back and forth between the entire dataset and the original color-coding to review the themes in relation to the data. Peer debriefing was used among the authors for discussion of the data, in order to reach agreement on its interpretation. Only themes that were connected to the overall findings, were then selected for the analyses presented in the papers. Overall, the analysis was based on a social constructionist approach, which implies that the studied phenomena and identities are seen as being socially constructed and that their definition depends on the context (Burr 2003).

For study III, based on the Assamese community members' perspectives in India, the first author and the second author, from Gauhati University, analyzed and categorized all data from the transcripts separately. The second author interpreted cultural meanings of the data. A preliminary analysis was presented at seminars in Assam and Delhi to obtain reflections on the analysis from other researchers who were familiar with the context of Assam or other parts of India.

In order to validate the data used for Paper IV, based on commissioning parents' perspectives, a key informant, connected to a network for commissioning parents, was given the opportunity to respond to the findings in an interview, which can be seen as *member-checking* (Dahlgren et al. 2007). For this paper, the concept of reproductive justice was introduced and related to the themes developed. This concept was additionally applied for developing the reasoning in the recommendations section of this thesis.

Methodological considerations

In order to ensure the trustworthiness of the data, it is necessary to thoroughly describe the processes of data collection and analysis of the data to enable readers to validate the interpretation of the data (Lincoln and Guba 1985). I have tried to accomplish this in the above methods section by giving detailed descriptions of the different steps taken in the data collection process and in the analysis of the data. Another important part of ensuring trustworthiness is

to be aware of and reflect on one's preconceptions, and how this might have influenced the research process, the questions asked, and the analysis of the data collected (*ibid.*). When I was first engaged in the research project, I had limited knowledge of surrogacy and thus little preunderstanding, which can be seen as a strength of the study; however, it is also a limitation. It might have rendered an insufficient capacity to obtain a deeper understanding of some issues. Regarding the analysis of the data, it might have been influenced by my background as a social worker, and having a master's degree in sexology, resulting in giving priority to the social and normative aspects of this phenomenon. However, peer debriefing was used in producing the preliminary findings. These discussions with the co-authors made it possible for me to reflect on other aspects and interpretation of the data (Dahlgren et al. 2007). To analyze the data collected in Study III, the second author listened to selected interviews used in the analysis, to ensure the validity of the translations. To further ensure validity, the second author provided cultural interpretations and reflections for the analysis of the collected data. Additionally, the first and second authors analyzed the transcripts separately.

A strength of this thesis is that multiple perspectives are captured to shed light on surrogacy. Still, the multiple perspectives might also have limited the possibility to obtain a deeper understanding with regard to specific perspectives. Trustworthiness of the data can also be seen to be achieved through the triangulation of data sources, as this would provide perspectives from different angles (Dahlgren et al. 2007). Triangulation has been carried out in this thesis by listening to both commissioning parents and social workers about their experiences and views related to surrogacy. During the data collection, efforts were made to limit the effects of the researchers on the research process (Aull Davies 2008). This was more likely to be achieved in the FGDs and the paired interviews, because the participants engaged in discussions amongst each other.

Data collection

Commissioning parents who were interested in taking part in the study were, to a large extent, included in the study through self-selection. This might have affected the data collection, and certain experiences might not have been captured. However, it transpired that the informants did have a wide range of experiences, where both a fairly smooth surrogacy process and those with great difficulties were depicted. The discourse about surrogacy being exploitative might have made commissioning parents anxious about defending their reproduction method, resulting in them perhaps withholding descriptions that would be less positive about the use of surrogacy or the surrogate's situation. Still, many informants were also anxious about reflecting on the surrogate's situation in different ways. For the study with the social workers, the novelty

of transnational surrogacy when the study was conducted may also have affected the data collection. The lack of experiences regarding cases of surrogacy meant that the social workers might have answered differently if they had had more experience. Only a few had experiences of handling cases in connection with the U.S. If there were more informants with this experience, there would likely be other perceptions revealed as well.

The lack of knowledge on the reproduction method would have affected the data collection in Assam. Due to the Assamese informants' lack of knowledge on surrogacy, many informants were first told about the reproduction method by the researchers. The researchers might then have influenced how surrogacy was interpreted, as surrogacy was described by the research team, and our description might have influenced their opinions. Informants might also have changed their minds about the subject after the interview when given time to reflect. Still, the views on surrogacy and surrogates varied, and both positive and negative thoughts were expressed.

Cross-cultural study

Conducting a cross-cultural study involves difficulties such as not being familiar with the language and lack of knowledge about the specific context where the study takes place. This can give cause for misunderstandings in interpretation of participants' narratives, and can be seen as a limitation of the study. However, it can also be an advantageous position to have less knowledge of the context and culturally specific views. This will provide an outsider's perspective, requiring much discussion about the subject studied to reach understandings of the data collected. In the study with Assamese informants, I additionally perceived an eagerness to share their thoughts and specific cultural perspectives with me as a foreigner. An advantage when trying to capture views in Assam, would be that women here are seen to have more decision-making power at the household level (Vauqueline 2006; Nayak and Mahanta 2009) compared to other parts of India. This may have contributed to more openness when they spoke about surrogacy. However, the high socio-economic group and the students, in particular, narrated less about their own opinions, but instead described the perceptions of the people in general, especially about the surrogate. This lack of narratives presenting their own perceptions might have been caused by our presence, as western foreigners, and a wish to not reveal opinions that would contradict western perspectives. This might have resulted in some loss of perceptions from these groups.

I spent a total of about three months in Assam, living in an environment resulting in much interaction with the people, which increased my knowledge of the context. It also meant that I had the opportunity to have informal discussions about surrogacy.

There are difficulties when using an interpreter because the researcher does not obtain firsthand knowledge of the narratives. Still, with much preparation in discussions with the interpreter about the topic and the purpose of the study

beforehand, the interpreter might have acted as a valuable bridge between the informants and the researcher to enhance the understanding of the narratives (Williamson et al. 2011). I believe that this was the case in our study, especially as the interpreter had much knowledge from doing her own research within reproductive health. We also had the opportunity to discuss and reflect together about the interview topics beforehand, as well as the different aspects that came up during data collection. Nonetheless, there might be meanings that are lost in translation. Furthermore, because the subject was new for many informants, this could have caused further misunderstandings in the translations and interpretations of the narratives, which is a limitation of the study. However, we believe that the general meaning of the informants' views was captured, especially because we obtained a large amount of narratives from which to draw conclusions. With the FGDs, the translation was more difficult, but the second author confirmed that the general meaning of what was narrated was encapsulated in the translation.

Focus group discussions

In Study III with the Assamese informants, although we tried to promote the homogeneity of the groups in the FGDs, with regard to position in society, there were evident differences in status and position among the participants in one FGD. This meant that mainly the men with a higher status spoke, and, as a result, there were fewer discussions in this group and it affected the possibility to capture some perceptions in this group.

In Study II, the group discussions, and perhaps the interviews conducted with the two social workers, may have contributed to our having obtained less detailed information compared to the single interviews. However, it made it possible for the social workers to discuss and reflect upon cases, the phenomenon as such, and on the handling process, similar to the discussions they might have in their daily working lives. This situation would also be in line with the purpose of FGDs, to capture a group's comprehension of a phenomenon (Kitzinger 1994). Nevertheless, there was a risk that some participants would not speak in the group discussion, although all participants were encouraged to speak about their specific cases.

Ethical considerations

Surrogacy is a sensitive subject with many ethical connotations that might make people hesitant to discuss opinions about the subject or disclose information about the use of surrogacy. Studies I and II were approved by the Regional Ethical Review Board in Uppsala (registration number 2012/462). For Study III, ethical approval was obtained from the Centre for Media Studies Institutional Review Board, New Delhi IRB no: IRB00006230.

Prior to the interviews, all participants received information about the purpose of the study, the specific measures that would be taken to ensure confidentiality and that partaking in the study was voluntarily and could be interrupted at any time. Written informed consent to participate in the study was given by all participants in the interview studies (Studies I and II). Those who participated in the FGDs and interviews in Study III gave written or oral consent prior to the discussions.

Some of the commissioning parents were cautious about revealing their reproduction method to others. For this reason, we did not present detailed background information, and were extra careful with quotes, to eliminate the possibility of identification. Because many commissioning parents had contact through networks on the Internet, these measures of de-identification also served the purpose of keeping the informants anonymous for others using surrogacy. The social workers in Study II expressed a need for being extra careful with the quotes so that the narratives would not be traceable to them, their Social Welfare office, or their clients. Participants in both Studies I and II were given the possibility to delete any quotes from their interview before the manuscript was concluded. However, none of them took this opportunity, although one social worker and one commissioning parent made minor alterations to their quotes.

In Study III, with women and men in Assam, it seemed that some participants had not been informed beforehand about the study. This meant that, after being informed by the research team about the purpose of the study, some decided that they did not want to participate in the study, and subsequently left the room where the FGD was being held. Data from the interviews and FGDs have been anonymized in the paper to avoid identifying persons participating in the studies. Interview interpreters and translators received instructions to maintain the confidentiality of all participants and interview material.

The subject of surrogacy was novel and somewhat controversial to the participants. However, by mainly asking about their perceptions and not about their specific experiences, the risk of creating anxiety was minimized.

Results

The results are presented under two main headings: 1) *The surrogacy process*, with sub-headings focusing on the views on using surrogacy and views on the surrogate from both a Swedish and an Assamese perspective; and 2) *The legal process*, with sub-headings describing the legal process, depending on the context for surrogacy, and displaying the commissioning parents' and social workers' views about the legal process.

The surrogacy process

Views on transnational surrogacy from the perspective of Swedish commissioning parents and social workers (Papers I and II)

Transnational surrogacy was perceived as the last or only hope to become parents. The mixed-sex couples had undergone many IVF attempts and used egg donation before they came to the conclusion that this would not be a successful way to become parents. Surrogacy was then found to be the only option left for many because adoption was viewed as difficult to access, because they had reached an age that limited their possibilities to adopt, or they had some disease that also decreased the possibilities to adopt, due to the strict rules in the adoption countries. The chances of having an infant and a healthy child were seen to increase if they used surrogacy. The option of not having a child was not expressed, and when all medical treatment was carried out without success, and adoption was not possible for medical reasons, it made one woman feel reassured to take the only option left to her to have a child:

We have tried everything we can before deciding to choose surrogacy [...] Yes, I have done everything I can. I reached the point where my body said, 'Enough, no more now.' Knowing that I've done all that I can made me feel reassured about making that decision [regarding surrogacy]. (Woman in mixed-sex couple using surrogacy in India)

Some same-sex couples described that they never thought they would be able to have children of their own. One man explained:

We have always agreed that we wanted children and we have seen our lives that way, and felt that it's pretty, well, it's quite a hard question too, that you feel like no, but how are we going to be a family in that way, being two guys and well, that's a pretty tough question. (Man in same-sex couple using surrogacy in India)

When the same-sex couples found out about surrogacy, they finally saw a solution to have children together, and not have a third person involved as a parent. Surrogacy was then seen as their only possibility to have children.

Most commissioning parents had experienced great hesitancy before they came to the conclusion to use surrogacy, to a large extent due to the views presented in the media. With little knowledge about transnational surrogacy, they sought information through others who had used surrogacy. They also contacted clinics and agencies in India and the U.S. in search of a way to conduct surrogacy that they thought was acceptable. India was the primary choice for many couples for financial reasons, as surrogacy in the U.S. is considerably more expensive. Before going to India, one man explained how they took measures to secure a good surrogacy process, but also how it still might not be enough:

I also contacted a couple of the larger clinics that everyone recommended, and also have ... a good reputation and it felt like ... people have had their eyes on them long enough to make them show that they, yes, do not make a fool of themselves or do anything wrong. At the same time, and I think, we always felt we'll never be able to be in full control of everything, it's like ... it's impossible to have control of it all. (Man in same-sex couple using surrogacy in India)

Commissioning parents did not seem to face reactions of condemnation for their choice of reproduction method, from friends and family. In this case, the focus was on the arrival of a long-wanted child. However, it seemed that the exploitation discourse put them in a situation where they needed to explain and defend their use of transnational surrogacy in India, as this woman exemplifies:

I have worked with women's rights and have done a lot of thinking before using surrogacy. I wanted it to be good. I stand by my decision to choose India before the U.S... It would just be a burden for the surrogate mother to care for another child, so she would surely not have liked to keep it. People say it is exploitation, but it is just as much exploitation to purchase a backpack [produced by an Indian woman in a sweatshop], but people in that case are not nearly half as grateful. As long as it is such an attitude, it makes you a little, ahhh... I have no desire to end up in discussion with every person I meet. I feel that you have to explain and defend yourself, otherwise there will be misunderstandings (Woman in mixed-sex couple using surrogacy in India)

Some commissioning parents felt that they were in the hands of the clinics and agencies, although many informants expressed that the clinics and agencies

conducted the process well. Many were satisfied with the contact, while some still had doubts about how the process was conducted in relation to the surrogate or all the paperwork and costs. Although the commissioning parents came to the conclusion that transnational surrogacy could be conducted in an ethically acceptable way, they thought it ought to be allowed and better regulated in Sweden, to protect all parties involved. With the intermediaries, they felt that they had limited control of the surrogacy process in India and limited contact with the surrogate, which was not seen as an ideal situation by this man:

We didn't do any follow-up to see whether the woman's husband just took the money and left ...We have no idea, so no one would be happier than us if we had been able to do it in Sweden in an orderly manner. That would, of course, have been good, if an ordinary Swedish woman had said, 'Well, yes, I have had my three children,' and then we could go to the hospital and arrange everything. That would have been much better than all those agents and intermediaries, which is of course not optimal. (Man in a mixed-sex couple using surrogacy in India)

The social workers employ the parental law as their basis for making decisions on legal parenthood, but surrogacy is not mentioned therein. Using surrogacy was then seen as bypassing the law. This resulted in their reluctance to be part of the process to determine legal parenthood after such a reproduction method. However, with surrogacy, they perceived that there are two vulnerable parties involved in the process: the surrogate and the child, which complicated their decisions regarding these cases. The many parties involved in the situation of transnational surrogacy made this social worker confused about how to deal with the legal issues:

I think I feel more confused now than before, but it is also due to the increasing debate, which makes you see it from different angles. You now see it from the surrogate mothers' and the children's point of view as well. It really is not simple. Whose perspective shall you take? The child's? But it is the adults we meet. It is more complicated than I thought from the start. (Social worker)

Views on using surrogacy from an Assamese community perspective (Paper III)

Surrogacy was seen as a taboo subject, rarely spoken about, and the knowledge of IVF surrogacy was limited among the informants. In low socio-economic groups, they did refer to women carrying children for others, but it was mainly in connection with a couple handing over their own child to a childless couple, or that the surrogacy process was connected to sexual intercourse. In higher socio-economic groups, and among students, the informants were more familiar with IVF surrogacy. The informants' knowledge evidently influenced their views on the matter. When only surrogacy was presented (to

those in low socio-economic groups) as “a woman giving birth to a baby for another couple”, and the medical procedure was not explained, some thought surrogacy would require the man in the childless couple to be involved in sexual intercourse with another woman; hence, this was not perceived as an acceptable reproduction method.

I think it would be bad if my husband were to get involved with another woman in order to have a child. But if a couple has a child and gives it away to a childless couple [by adoption], then it is OK. (Woman from low socio-economic background)

Few in the low socio-economic group had knowledge of surrogacy as a medical procedure, but when surrogacy was explained as an assisted reproduction method, it was acceptable.

Yes, putting together the egg and sperm and inserting them inside the uterus of another woman is a totally scientific process. In such a case, we have no objection, and it is not against our social system. (FGD with men from low socio-economic background in a rural area)

When explained as a medical method, surrogacy was often considered as a good method, as it would provide a childless couple with their “own child”, “a child of one’s own blood”; hence, they would not have to use adoption. Although informal adoption is commonly practiced as an only option for most infertile couples in low socio-economic groups, it was seen as being problematic for not generating “a child of one’s own blood”. They thought that a child “of own blood” would be more likely to take care of them in old age than an adopted child. Additionally, one woman described how she had been blamed for the couple’s childlessness, and how she was ridiculed in society. The importance of having their “own child” was often given as a reason for why surrogacy was seen as a good option to have a child. This was a perception found among all socio-economic groups.

If one who can’t give birth to a child, and is able to get a child through another woman, it is very good and it would be like great help to that couple, like humanity, and they [surrogates] will feel peace also by helping. And this will be known only to the doctor and the husband and wife. So, no one knows of it, and other family members will think that this is her own child. She and her husband will only know how the process was conducted. (FGD with women from a low socio-economic background in an urban area)

Through surrogacy, a mother can have her child, even if she has some health problems. Maybe she is not able to conceive or has other physical difficulties, like heart disease or something. Surrogacy is again a good choice because the couple will have their own children. (FGD with men of high socio-economic backgrounds in an urban area)

Views related to the surrogate in India from the perspective of Swedish commissioning parents and social workers (Papers I and II)

The views about the surrogate differed among the informants and depended on the context for surrogacy. The commissioning parents who had been to India believed that the women had chosen to be surrogates to improve their financially poor situation. Commissioning parents related to how compensation for the surrogacy arrangement had been beneficial for the surrogate. This was their argument for why surrogacy should be accepted, and not seen as exploitation.

She had no job and wanted to be home with her kids and then perhaps get some money for it. I felt it was very fair and very correct and it never felt like taking advantage of someone. Certainly, many argue that we are rich, that we in Sweden exploit the system, but it certainly has not felt like that, never ever! (Man in a same-sex couple using surrogacy in India)

I believe that in Sweden, you think ... you would not do it here because here we have other choices—here you can actually enter the university without being wealthy, you can educate yourself, but there of course you cannot. The opportunities are so limited ... If they then have the ability to carry a child for nine months and get a whole new life, why can't people accept it? That is what makes me really disturbed. (Man in same-sex couple using surrogacy in India)

Commissioning parents thought surrogacy was a win-win arrangement; the surrogate conducted a service she financially benefitted from, and the commissioning parents got a long-wanted child. However, even if they argued against the exploitation discourse, they were observant about the conditions for the surrogates. Many were anxious to find out whether she really wanted to be a surrogate. However, communication was limited, because all contact with the surrogate needed to be facilitated through the agency and with them as interpreters, as surrogates rarely spoke English. Some agencies arranged for contact with the surrogate through Skype during the pregnancy, while other commissioning parents did not have any contact with the surrogate. Some commissioning parents had reacted negatively toward the agency's control of the information and the limited communication with the surrogate, and they worried about the surrogate's health.

Every time we asked, everything was good. Then, I realized a long time afterwards that she had not felt good at all. She had been vomiting for a long time and had been to a hospital, and had a difficult time. And yes, it's a bit hard when you do not know. (Woman in mixed-sex couple using surrogacy in India)

Although the medical surveillance of the surrogate's condition was described as thorough, the surrogate's situation during the pregnancy also raised questions about her well-being.

When they did this amniotic fluid test, they put her in [the hospital] for a month, over Christmas and New Year and her birthday, poor thing. This was really hard. In Sweden, it is only for 48 hours (laughs). You should take it easy for a while, but here they said, 'the miscarriage risk is not over, she must remain [at the hospital].' We were really surprised. When we Skyped with her, she looked so unhappy, 'do you long for home?' (Woman in mixed-sex couple using surrogacy in India)

Although some commissioning parents were worried about the surrogate, they did not see her as being exploited. This is in contrast to many social workers, who depicted the surrogates as being exploited. They were affected by the view of transnational surrogacy in the media, representing surrogacy as exploitative, and some questioned whether surrogacy could be an ethically acceptable way to have children. They expressed much concerns about the surrogate's treatment during the surrogacy process, and related their concerns to TV-documentaries and books about surrogates in India.

SW2: What is most difficult is, of course, if you believe that the woman is very exploited or just ...

SW4: Yes, that's what it's about.

SW2: Living under very dodgy conditions, and utilized in many different ways and getting very little compensation and so on. (Group interview with social workers)

You feel like uh, but it is completely wrong, you can't do that. You cannot buy a child, and you feel sorry for those who carry it, they are exploited. (Social worker)

Although some social workers admitted that the views reflected in the media affected them and complicated their decision-making related to surrogacy, they also felt that they needed to put aside their own views about surrogacy and handle the cases as well as possible. Still, they were hesitant about dealing with surrogacy cases. One reason was that they needed to make sure that the birth woman had not felt forced to be part of the surrogacy process and that she had properly consented to relinquishing the child. They thought this task was very difficult to manage, as they were not able to have any contact with the surrogate.

One would like to know that these children that we are to manage have come to be born in a fair way so that the surrogate mother knows what she's doing, that she has been informed and so on. [...] Even if we decide that we should

do this, we must make sure that everything is done in a correct way, that the documents have been written up in a correct way and that nobody is forced into the process. (Social Worker)

Views related to the surrogate in western countries from the perspective of Swedish commissioning parents and social workers (Papers I and II)

When both commissioning parents and social workers narrated their views on surrogates in the U.S., their views contrasted with how the surrogates were referred to in India. Although those commissioning parents who had been to the U.S. or countries in Northern Europe could reflect on the sacrifices made by the surrogate, they did not relate to the exploitation discourse. In India, the financial benefit was seen by commissioning parents as being the reason for surrogates not being exploited. In comparison, commissioning parents who had been to the U.S. or Northern Europe, emphasized how the motive for the surrogate in these countries was instead to help a childless couple (while also receiving some financial compensation).

It feels important to me that you do not do it for compensation. Instead, as in our case, you do it because you want to help another person, but then you can also get a certain amount of compensation for the pain it means to have ... to be pregnant and the sacrifices it means to be pregnant. (Man in same-sex couple using surrogacy in the U.S.)

The commissioning parents also talked about the good and close relationships they had developed, and some still had, with the surrogate in the U.S. Some even had contact with the egg donor (in comparison to commissioning parents who went to India, where the egg donor was anonymous and was mainly significant to them, in terms of possible fertility qualities, and sometimes resemblance). The contact with the surrogate was encouraged by the agency in the U.S., and was facilitated by a mutual language.

This agency that we have hired is pushing ... he who runs it, he himself got a child through a surrogate mother. And he has seen how important it is to have an ongoing contact with ... the biological mother. So then, therefore, we have worked quite a lot with that and being over [to the U.S.]. (Man in same-sex couple using surrogacy in the U.S.)

For those couples who had been to countries in Northern Europe to use surrogacy, they had a very different experience with the woman giving birth, who also used her own eggs. The women's motives were expressed as wanting to help a childless couple, but they were also paid some compensation for their act, similar as for the U.S. surrogates. However, there were no intermediaries involved, and the commissioning parents had direct contact with the woman

from the start and continued to have contact after the surrogacy process. One couple even referred to her as the mother.

We go over to her family at least once a year, and every second year they come here, or every third year maybe. We have been there twice and then once here and then ... So now we were there in June and then we met the children's grandmother for the first time or her mother then, and it was great fun.

Interviewer: Do you see her as their grandmother then?

Commissioning parent: Yes, and X [the woman who gave birth] is their mother and ... because, what else would she be? (Man in same-sex couple using surrogacy in a country in Northern Europe)

The social workers' views about the surrogates in the U.S. differed significantly from how they referred to the surrogates in India. The American surrogates were not seen as poor or exploited and they did not seem to have any doubts about their treatment or well-being.

They [surrogate mothers in the U.S.] have good incomes and good educations. They did not do it because they needed money. From what I know, I do not think it is like that in India. It might be my prejudice, but in India, I think it is much more a case of women who need money to feed their families. In those cases, I am more hesitant. (Social worker)

A view about a more equal relationship between the commissioning parents and the surrogate is shown in the social workers' narratives when relating to surrogates in the U.S. This view contributed to a perception that surrogates in the U.S. are not used in the same way as they thought surrogates in India would be. When social workers related to the surrogates in the U.S., they did not express uncertainties about finding out whether the surrogates had freely relinquished the child. Social workers also referred to the court decisions from the U.S., which made them less hesitant to handle the cases. In these court decisions, the surrogate had relinquished custody to the genetic father and his spouse.

When talking to my colleagues, many people think this is very unpleasant, but the cases I have had from the U.S. have been very transparent. I have been able to have contact with the surrogate mothers via phone or e-mail. I have not felt that they are so exploited as perhaps many have thought with the Indian surrogate mothers. Emotionally, it is a big difference. Feels clean and comprehensible. I don't think it is very strange. (Social worker)

Views about the surrogate from an Assamese community perspective (Paper III)

Among many Assamese informants, regardless of the socio-economic group, including students, it was taken for granted that an emotional bond is created between the woman giving birth and the child. Pregnancy and giving birth were presented as important factors for the definition of a mother, despite the fact that the woman giving birth had not used her own eggs. Many informants from low socio-economic backgrounds, particularly women, expressed that the surrogate would be seen as having sold her own child and preferred money while denying her maternal feelings.

W3: We would not tolerate it! If a woman gives a baby to another couple just for money, it would be considered a bad practice – because if she does that, it would mean she prefers money to her own child.

W4: She would be called a greedy woman.

Interpreter [explaining]: But the child is not from her own egg.

W3 and 4: Yes, we get it, but still people will have these opinions.

W2 and 5: Yes, they will call it a business. (FGD with women from low socio-economic backgrounds in a rural area)

The narratives from the informants, making it clear that they do not accept that the surrogate “has sold her baby”, indicate that even poverty is not an acceptable reason, as also seen in this woman’s view:

Everybody wants to bring up their child in their own home, even after facing the problems of survival [i.e., poverty]. So, no one will ever give their child to another couple for money. (FGD with women from low socio-economic backgrounds in a rural area)

Although the emotional bond between the woman giving birth and the child is described in different ways, being a surrogate and relinquishing the child are not described as exploitation.

Informants from a high socio-economic group and students had a tendency to refer to how they thought people in general in their society would think of a surrogate. They mainly depicted the surrogate as being stigmatized: ‘In our society, surrogate mothers are looked upon as equal to prostitutes’ (FGD with female students in urban area). Even though the negative views regarding the surrogate would be the most common perception, others would describe a surrogate as doing a noble deed. Childlessness was described as being highly stigmatized and couples without children suffer. With the surrogate’s help, they would be removed from a stigmatized situation and the women especially

would be better valued in society and by the family. Still, the informants referred to the child as being that of the surrogate.

If someone can give her baby to another couple, we should thank her for performing such a noble deed. If she can sacrifice her child to make someone happy, we feel she is a good woman and has done something in the service of God. (FGD with women from low socio-economic backgrounds in a rural area)

The involvement of money in surrogacy seemed to be appalling to most Asamese informants. However, some, mainly students, expressed that the sacrifice the surrogates had made by being pregnant for someone else and then giving away the child was worth remuneration.

It is not important how much money she gets. She is entitled to accept the money because she is sacrificing her labor and her motherly feelings. (FGD with male students in a rural area)

Many informants described the emotional bond between a surrogate and a child as being self-evident, and some implied that a surrogate would be at risk of suffering when having to relinquish the child. However, some women in high and middle socio-economic groups were not as certain of this state, depending on the surrogate.

There is also the psychology of the mother [the surrogate]. If she has that intense feeling of having her own baby, or 'I'm just doing it like I'm doing a business'. (Woman from high socio-economic background in urban area)

The legal process (Papers II and IV)

The legal process could be conducted in many different ways, both depending on the country for surrogacy, but also depending on how the commissioning parents had managed to prepare before opting for transnational surrogacy and how the authorities and the courts in Sweden had handled the cases. In this section, the most common processes are described, and also the views of the legal situation and processes.

Surrogacy conducted in India

The legal process in India

The commissioning parents had been established as legal parents in India. This was conducted through the surrogacy agreement, where the surrogate had renounced her parental rights prior to birth and, if she was married, where the surrogate's husband had confirmed that he was not the father. A commission-

ing genetic father, and a commissioning mother, regardless of her having provided eggs or not, were listed in the birth certificate as the father and the mother. In the case of a same-sex couple, only the commissioning genetic father was identified on the birth certificate. The child's citizenship was seen to be connected to the commissioning parents' citizenship. A legal process was needed to provide the child with a Swedish passport. At the time of the study, the Migration Agency provided the child with a Swedish citizenship. This was based on DNA-proof of paternity from the genetic father, as well as the surrogacy agreement, documents from the clinic and a statement from the surrogate that she agreed that the genetic father was the father and was allowed to bring the child to Sweden. The tax agency then issued a temporary national security number and a temporary Swedish passport to the child. This process also means that one in the couple needed to use own sperm in the reproduction method to be able to get Swedish citizenship to the child and bring the child home.

The legal process in Sweden if surrogacy conducted in India

When the commissioning parents arrived in Sweden, the surrogacy agreement was seen as illegitimate, and DNA-proof of paternity was not enough for recognition of paternity. Neither of the commissioning parents were then seen as the legal parents. Instead, the surrogate was seen as the mother, and, if she was married, her husband was seen as the father, based on the presumption of parenthood. In order to transfer legal parenthood to the commissioning parents, a legal process was needed. The overall process is described below, and could be conducted in many different ways.

Paternity and custody for the genetic father: If commissioning parents turned to a social welfare office for help with the legal process, the first step was for the genetic father to present DNA-proof of paternity. A document was also needed where the surrogate confirmed the genetic father's paternity, her husband denied paternity, and the genetic father confirmed paternity. This was grounds for recognition of paternity. In the next step, the surrogate relinquished custody in favor of the genetic father, who was then given sole custody. These two steps could start while the commissioning parents were still in India, if they had either been given documents from the social workers in advance, or if they had compiled their own documents with the help of solicitors. The documents were then often signed at the Swedish consulate in India. If the commissioning parents had not brought documents to India, the Swedish documents needed to be sent to India after they returned home, which greatly delayed the legal process, and the surrogate was often not able to be reached. Social workers could also refer the entire handling of the case or either of the steps to the district court. Moreover, the commissioning parents could turn to the district court themselves for the legal process. The district court based paternity on the evidence of DNA-proof and, if contact was possible with the surrogate, her consent to the recognition of paternity. Usually this was not

possible. Custody was similarly decided after contact with the surrogate, if was possible and where her consent to relinquish sole custody to the genetic father was obtained. If the surrogate was not reached, a person representing the child, spoke on the child's behalf, for legal connection to the genetic father.

Legal parenthood for the genetic father's spouse: The spouse of the genetic father needed to go through a step-child adoption process, which meant undergoing an investigation of the suitability of the commissioning parents to be a parent to the child. The investigation was conducted by the social workers, with different levels of thoroughness, but always involved a home visit. The district court then decided on step-child adoption based on the result of the investigation. However, the genetic father also needed to consent to the adoption.

Surrogacy conducted in the U.S.

The legal process in certain states in the U.S.

In the U.S., in those states where the commissioning parents sought surrogacy, an agreement was arranged where the surrogate agreed to relinquish the child after birth. However, a court decision was also made after the birth of the child, in which the surrogate relinquished custody to the genetic father, and agreed that his spouse could adopt the child. Two birth certificates were then issued; the first had the name of the commissioning genetic father listed as the father and the surrogate listed as the mother. After the court decision, another birth certificate was issued where the surrogate's name was removed and replaced with the name of the genetic father's spouse. When born in the U.S., children are given U.S. citizenship automatically. The children born in the U.S. were then given the opportunity to accompany the commissioning parents to Sweden on a U.S. passport.

The legal process in Sweden if surrogacy conducted in the U.S.

The tax agency in Sweden could, in some cases, recognize part of the court decision from the U.S. and recognize the genetic father as the legal father. In other cases, the district court could, based on the U.S. court's decision, grant legal parenthood to the genetic father. However, they could also need to conduct a similar process as if conducting surrogacy in India, with Swedish documents for confirmation of paternity.

The genetic father's spouse needed to go through a step-child adoption process to become a legal parent.

Views about the legal process from commissioning parents' perspective (Paper IV)

All commissioning parents became legal parents eventually. With a few exceptions, they reacted negatively toward the legal process, which was seen as complicated and stressful. They had difficulties in understanding what documents were needed, and how to conduct the process. They were confused about how they should best prepare and fulfill the process to secure the legal connection to the child. Commissioning parents would question the requirements of the Swedish documents to become legal parents. In their view, the documents from the country in which the surrogacy was conducted would state the same thing as the Swedish papers.

What is really strange is that Swedish authorities disqualify other countries' systems and pretend that these Indian documents are worth nothing. As a result, there is a need for an enormous set of papers that state the same thing only to fit into the Swedish system, but most of those things are already covered in the Indian agreement. (Man in same-sex couple using surrogacy in India)

The commissioning parents had reacted negatively to authorities dealing with these cases in different ways. The different ways of coping with the situation made the process to attain legal parenthood even more complicated and unpredictable. One man expressed his frustration over the legal situation:

But what is so frustrating and suggests a considerable legal uncertainty is that it is very different from case to case. So, it seems to be up to the administrator to decide. And many who have children who are born in the U.S. do not have to go through this whole process [that we have been through]; one dad is then a legal custodian directly ... and they have the same laws as here. (Man in same-sex couple using surrogacy in the U.S.)

Most genetic fathers reacted negatively to how their DNA-proof of paternity was not enough to grant them paternity. The Migration Agency, at the time, had granted the children Swedish citizenship, while the commissioning parents and the child were still in India. This made it possible to obtain a Swedish passport to be able to bring the child home. This decision was mainly based on the genetic father's proof of paternity, but, on arrival in Sweden, the DNA-proof was not enough to get recognition of paternity. The commissioning parents also needed Swedish documents for confirmation of fatherhood, where the surrogate's husband had confirmed that he was not the father, and where the surrogate also needed to confirm the paternity of the genetic father. Besides the reaction that the DNA-proof was not enough to grant them paternity, they also reacted negatively to how the surrogate was seen as the mother, as expressed by this commissioning parent:

It needed to be our Indian surrogate mother's husband who renounced the paternity, because he is married to our children's then, 'on paper mother,' which

is not really the mother, but it does not matter to Swedish law. (Man in same-sex couple using surrogacy in India)

The legal process itself was heavily questioned and seemed to cause a lot of stress for commissioning parents, as described by this woman:

It is not easy and not a positive experience, but an annoying struggle. When you have just become a parent, you should be happy – and then you need to deal with this! (Woman in mixed-sex couple using surrogacy in India)

Another legal process that was highly questioned by the commissioning parents was the step-child adoption process. The genetic father's spouse needed to go through a step-child adoption to become the legal parent. Until then, the surrogate was seen as the mother. The adoption process was conducted by a social worker. The purpose was to investigate the genetic father's spouse's suitability as a parent to the child. Commissioning parents highly questioned the judgement of their suitability as a parent to a child they considered to be their own, and who they had taken care of from birth. One woman expressed her anger over the adoption process, which she felt questioned her as the parent:

What right does anyone have to judge me? My children have been with me for a year and a half, and now someone comes and wants to judge me? I just felt, hell, that is offensive! (Woman in mixed-sex couple using surrogacy in India)

In the cases involving mixed-sex couples, a step-child adoption process was set in motion regardless of whether the commissioning mother was the genetic mother. This was perceived as being unexpected and strange by some commissioning mothers, but surprisingly not by the one who used her own eggs. Instead, she felt that the genetic connection itself gave her a secure relation to the child. However, legally, genetics was not of any importance. Furthermore, the genetic father needed to consent to the step-child adoption, even if his spouse was the genetic mother. Those commissioning parents in need of a step-child adoption process felt inferior in relation to their spouse, as they needed to wait much longer to become a legal parent. Before the step-child adoption process was conducted, the commissioning parents without the legal connection to the child felt questioned as parents in interactions with society. This made it difficult to act as a parent officially.

It is a bit tough. [It's like] you are always being questioned. It feels like being punched every day. I cannot go to the pharmacy to pick up medicine, and when I call the Social Insurance Office, I usually give my spouse's name to avoid hassles. (Man in same-sex couple using surrogacy in India)

Some worried about what would happen if any of them died or if they separated before both had been established as legal parents. The legal process for

the genetic father took between two weeks and one year and about six months to one-and-a-half years for his partner. This was often perceived as being a stressful and frustrating period, with worry for both their own situation towards the child and the child's legal security. Still, all reported that their children always got the healthcare they needed, even if neither in the couple were legal parents.

Views about the legal process from social workers' perspective (Paper II)

The social workers were frustrated over the lack of guidelines and non-applicable laws to handle legal parenthood after the use of surrogacy. This situation resulted in several ways for the social workers to handle the legal issues, which resulted in frustration. Some social workers started to prepare the documents before the commissioning parents returned home with the child, if they were approached by them in advance. The handling of documents for paternity and custody were then arranged at the Swedish embassy or consulate in India, and paternity and custody was established by the social workers or the district court when the commissioning parents returned with the child. However, most social workers had a contrasting approach to how they went about this. They did not think it legal to start a process with the documents before the child was registered in Sweden, and would only start working on the case after the child was registered by the tax agency. Other social workers did not think it at all possible to handle the "surrogacy cases" in accordance with the law, as expressed by this social worker:

We have tried as much as possible to equate surrogate cases to the form that exists. But in all the aspects of the surrogate case, we don't have enough guidance ... We can't do a proper investigation since we aren't able to meet all the parties involved in the custody agreement, so we believe that a social worker does not have the authority to approve of such agreements. We at this social welfare office believe that without any guidelines, this is not something we should be a part of. (Social worker)

Because the social worker quoted above was not able to meet the surrogate, she referred all handling of the case to the district court. However, at the time, not all social workers thought it was necessary to refer all handling to the district court, and some at least dealt with the establishment of fatherhood to secure the legal situation for the child. One social worker reasoned that, for the legal security of the child, they needed to handle the case:

One can question whether it is a morally correct way to have children, if it is a right to have children at any price, and that is a never-ending discussion. But

eventually, we reasoned that these cases exist and will continue to exist and the children have the right to get help with the legal aspects. (Social worker)

The child's best interest was expressed as the guiding principle in the social workers' handling of cases, regardless of how they handled the case. Some social workers believed that a referral to the district court to handle the situation was the most legally correct way to secure the child's legal situation. On the other hand, some other social workers believed that managing the case with the help of the Swedish consulate in India was the best way to hasten the process for the child's legal security.

Discussion

The point of departure for this thesis was the heated debate and the unregulated situation of surrogacy in Sweden and India. The overall aim of this thesis was to shed light on the consequences of this unregulated situation in both the Swedish and Indian contexts, and to provide a variety of different perspectives on surrogacy and the surrogate. This thesis highlights the many different views of surrogacy and the surrogate, which were found to be contingent on views on motherhood, the view of poor women, cultural background, the influence of the media, the context and circumstances around the surrogacy process, as well as experiences related to surrogacy. It also identifies some consequences of these different views. These are discussed under the main heading; *Consequences of views related to surrogacy*. Additionally, this thesis shows how there is a pragmatic view of kinship when surrogacy is used, and there is challenges of navigating the parental law, when surrogacy is unregulated. This issue is discussed under the main heading: *Parenthood within the context of surrogacy*.

Consequences of views related to surrogacy

The use or handling of surrogacy causes a need to navigate

The longing for a child and the struggle that people are prepared to endure to have a child are illustrated in the use of transnational surrogacy. Surrogacy is considered to be the last or only hope for people to become legal parents. Most informants in same-sex couples in this thesis, before turning to surrogacy, did not think that it would ever be possible for them to become parents. Similar views are found in other studies, where men in same-sex couples have expressed that surrogacy is the only option if they want to be “full-time dads” or “a real family,” without having to share parenting responsibilities with others (Nebeling Petersen 2016; Riggs 2016; Engh Førde 2018). The mixed-sex couples in this thesis, even before starting the surrogacy process, have often struggled to find solutions for involuntary childlessness and have usually been through many medical interventions. However, to be able to use transnational surrogacy, they need to navigate the exploitation discourse and take measures

to limit the possibility that they might be part of what could be seen as exploitation. In addition, they have to argue against the discourse to defend their choice of reproduction method.

The commissioning parents react against the condemnation of their reproduction method, which is seen to depend on other people's lack of understanding of the situation for poor women in India. Their narratives would reflect what Alison Bailey calls 'discursive colonialism'; when there is a western interpretation of people's lives in a non-western context (2011). In the case of the media view of surrogates in India, it puts commissioning parents in a situation where they have to defend their use of surrogacy in India in terms of a win-win arrangement, similar to the empowerment discourse. The commissioning parents' views reflect, to a large extent, the agencies' discourses, that surrogacy is more of a paid service conducted by the surrogate, than it is "mothering". Both surrogacy agencies and infertility doctors in India have argued that paid pregnancy empowers working-class Indian women, and gives them self-confidence and self-worth when they acquire a large amount of money (Rudrappa 2016). From the perspective of some commissioning parents, the surrogate's involvement is rather unproblematic; a business transaction they have both agreed on. Similar views have been presented by commissioning parents in other studies (Riggs 2016; Rudrappa 2016).

For Assamese informants, an "own child", a child with blood relation, is important, which is in line with cultural notions of parenthood in India (Bharadwaj 2003; Unnithan 2010). Having a "child of one's own blood" could be fulfilled by using surrogacy in particular. Even if motherhood and fatherhood in an Indian context is shaped through both a man's sperm and the pregnancy, the sperm is seen as the main contributor for the child's identity (Majumdar 2015). The use of the intended father's sperm in surrogacy would then, by definition, fulfill the norms of parenthood in this context. However, a woman needed to keep the arrangement a secret, to be able to give impression of infertility, and escape a stigmatized situation. This can be related to the view that motherhood is constructed through carrying and giving birth to a child, while providing an egg is of no significance (Majumdar 2015). Moreover, it would also be connected with adultery for a man to use a surrogate to carry his child, which additionally would be a reason for secrecy in the use of surrogacy.

People use transnational surrogacy to have a long-wanted child, although it both means great struggle and need of navigating the exploitation discourse or cultural norms of motherhood and reproduction. Similarly, in Assam, the possibility to escape the stigma of childlessness, especially for women, seems to make people prepared to use surrogacy and navigate the norms of reproduction and motherhood. This also explains why surrogacy is on the rise (Rozeé Gomez and Unisa 2015; Salama et al. 2018; Svt 2018). The experiences that it is difficult to adopt might also contribute to the rise in surrogacy. Although, other studies have found that the desire to have a genetic link to the

child would be a reason to use surrogacy, they have also, similar to this thesis, found that surrogacy is perceived to be a safer way today than adoption to guarantee getting a child (Kleinpeter 2002; Riggs 2016). Nevertheless, the exploitation discourse and the norms of motherhood makes this reproduction method complex and in need of navigating discourses and norms, both in a western setting, in Sweden, and a non-western setting, in Assam, India.

Social workers in Sweden also needed to navigate the exploitation discourse to be able to handle legal parenthood after transnational surrogacy. Although, they try to refrain themselves from the media narratives' presentation of the surrogate as exploited (Ekis Ekman 2010; Markens 2012), to prevent it from affecting their handling of surrogacy cases, it seemed that the discourses added to their concerns about the validity of the surrogate's consent to relinquish the child.³ This view can also be related to the traditional view of motherhood. Their concerns would result in uncertainty if or how they should handle cases of legal parenthood after transnational surrogacy. Similar concerns about the surrogate's consent was also found among social workers administering parental orders⁴ (parental order reporters) in the U.K., handling legal parenthood for commissioning parents (Crawshaw et al. 2012b; Purewal et al. 2012).

Commissioning parents' and social worker's views contrasted by views from non-western low-income setting

The perception of the surrogate as being poor would be the commissioning parents' and social workers' point of departure in their reasoning for the motivations of the surrogate, which also reflects the two contrasting discourses. The commissioning parents' and the social workers' views of the surrogate, to a large extent, mirror either the discourse at the agencies (being empowering for surrogates) or the main discourse presented in the media (being exploitation of surrogates). In contrast, neither the empowerment nor the exploitation discourse is directly visible among the views gathered from the Assamese informants. Although some Assamese informants would relate being a surrogate to poverty, it did not seem to be a viable reason for being a surrogate. This can also be reflected in the recruitment of surrogates, where poor women

³ Considering that there is a law in Sweden against making payment to the former legal parents when adoption is involved, regulated in Chapter 4, section 10 of the Parental Code (1949:381), it might be expected that the social workers would have questions about the legitimacy of the arrangements from the commercial aspect. However, they rarely mention the payment as being against the law, although it was mentioned when considering ethical aspects. Instead, one social worker even seemed to have doubts about whether the surrogate was paid enough. This can be compared with the parental order reporters' dilemma in handling legal parenthood related to transnational commercial surrogacy, as commercial surrogacy is forbidden by law (Crawshaw et al. 2012b). A court in Belgium refused a commissioning mother's request to adopt a child because a significant amount of money had been paid to the surrogate (traditional surrogacy was carried out) (Hague Conference on Private International Law 2014).

⁴ Parental orders irrevocably transfer parental rights from the surrogate and her spouse to the commissioning parents.

often turn down offers from agencies to become surrogates (Kirby 2014). The views of vulnerable poor women in the exploitation discourse is contrasted by the Assamese informants' views, and Rudrappa (2016) describe surrogates as strong agents, not just powerless victims. Even if the two discourses are found either at Indian agencies or among scholars, they do not seem to be visible among community members, who possibly also have not been affected by media or agencies' views on surrogacy. Even if there is room for many different views of the surrogate, in an Assamese community, some of them similar to the views presented by the commissioning parents, the surrogate is mainly pictured as stigmatized. Although the Assamese informants considered the relinquishment of a child to be emotionally difficult, the break against the cultural norms of motherhood depict her in an immoral light. The Assamese informants' negative view of the surrogate can mainly be traced to the violation of cultural notions of motherhood and reproduction, where motherhood plays a vital role in society (Unnithan 2010; Majumdar, 2015), and where 'women's fertility is critically linked to the moral aspects of their personhood such as being a good wife and mother' (Unnitham 2010:7). Within a traditional view of motherhood, the perception of an emotional bond requires a certain behavior from a birth-giving woman, and voluntary relinquishment of the child goes against these expectations (Dworkin 1983; Brembeck 1998; Smart 2003). In other studies, the act of being a surrogate is similarly found to be stigmatized, connecting their actions to sex work (Pande 2009; Karandikar et al. 2014a), a view that was also visible among Assamese informants in lower socio-economic groups. Stigmatization of a surrogate's behavior might be connected to living in a patriarchal society, where women are less valued and are blamed for what are considered unethical acts, such as sex work, regardless of their situation (Karandikar et al. 2014b). The view of the surrogate might additionally be due to ignorance about the reproduction method, conducted through IVF. However, even when informed about the ART used, the surrogate is seen as "selling her own child", and thus the financial benefit, while rejecting a presumed emotional bond, might be the main reason for stigmatization.

The stigmatized situation is known to the surrogates, who need to navigate the public views to be able to be surrogates. In Amrita Pande's (2009:161) study, a surrogate reflects: 'I don't think there is anything wrong with surrogacy. But of course people talk. They don't understand that we are doing this because we are compelled to do so. People who get enough to eat interpret everything in the wrong way'. The experiences of surrogates further complicate the view of the surrogates' situation; being stigmatized while trying to support her family and in need of defending her act. This is similarly found in a study on surrogacy in Russia, where the main concern of the Russian surrogates was that they were stigmatized when they became a surrogate (Weis 2019).

The stigmatized situation for surrogates is not visible in neither the exploitation discourse nor the empowerment discourse. These discourses have thus

not taken into account the local views of motherhood and women and how they can affect the surrogates.

Surrogacy in an altruistic light – gives less need to navigate

In a location where surrogates presumably have altruistic motivations and are not seen as poor, such as in the U.S., the view of exploitation is not mentioned by either social workers or commissioning parents. The perceived situation for surrogates in the U.S. is that they are equal in relation to the commissioning parents. This provides a rationale for the social workers to not be hesitant in their handling of these cases, and the commissioning parents do not navigate the exploitation discourse or act in ways to limit exploitation. However, they can be seen to implicitly argue against the exploitation discourse through their emphasis on the close contact with the surrogate, and her motive to help a childless couple, implicating that it is safeguarding against exploitation.

The views of both social workers and commissioning parents reflect the main view of surrogates in the U.S., as not being vulnerable poor women forced into acting as surrogates, but rather women who had made their own choice to help a childless couple (Markens 2012; Jacobson 2016; Smietana 2017). This view is also seen in the U.S. agencies' discourse on surrogacy (Smietana 2017). Altruistic motives are seen as a requirement in the U.S. for being a surrogate, as this would be seen as a guarantee for surrogates not being forced by poverty, and hence not exploited (Jacobson 2016). Even the surrogates in the U.S. express personal fulfillment as a motive for participating in the surrogacy process (*ibid.*).

From an Assamese point of view, the surrogate was perceived in completely different ways when the surrogate's motivation was connected with altruistic notions. The surrogates could be seen as praiseworthy, even perceived as conducting "a service of God", when helping a childless couple escape a stigmatized situation. This view is in great contrast to the previously displayed view of the surrogate as a "bad mother" and stigmatized. With the surrogate's act seen in an altruistic light, the notion of having an emotional bond, and yet giving the child away, is seen as a sacrifice instead of a violation of motherhood norms. In India, the surrogates themselves would also mention that they not only have financial motives, but also altruistic ones, which can be seen as an effort to morally justify being a surrogate, and to contrast the view that they are engaging in sex work (Pande 2009; Karandikar et al. 2014a; Majumdar 2015). This finding among Assamese informants of the surrogate being described in a more positive light has not, as far as I know, been made explicitly visible in other studies in India, on public views. This more accepting view of the surrogate might be connected to a more positive view of women in Assam when compared to an average national view of women in India. The view of the surrogate as being praiseworthy is also not explicitly seen in either the exploitation or the empowerment discourse. However, the

view of helping a childless couple has been reflected upon in surrogates' narratives, where they view themselves as being part of something significant in being able to give a gift to a childless couple (Vora 2010/2011; Pande 2011), and as performing much more meaningful work than when working in a garment factory (Rudrappa 2016).

When the act of the surrogate is seen in an altruistic light, other norms are maintained for women; being selfless in their actions and to sacrifice themselves for others (Anleu 1992; Malacrida and Boulton 2012), thus understandable and respected. It may then weigh up against an act that is considered to be in breach of the traditional concept of motherhood.

In this thesis, it is shown that it is possible to have many different views on surrogacy, and in particular of the surrogate. The findings in this thesis not only point to contrasting views about surrogates, but also to the complex realities for surrogates. The view on surrogates and their perceived ability to make a choice are complex and can be seen as being influenced by different social constructions of poor women and motherhood depending on the context.

The aspect of exploitation has been described as a complex and sensitive issue, and, although there can be seen to be a risk of compromising voluntary consent with a large financial benefit offered to poor women, it is not evident how the role of exploitation should be viewed in this situation. Even the European Society for Human Reproduction and Embryology (ESHRE) seems not to have taken a clear standpoint on how to view the impact when a large amount of money is offered to poor women for engaging as surrogates (Shenfield 2011). It has also been found that the commercial aspect makes it easier for the woman to detach from the fetus (Baslington 2002). Altruistic expectations might then even force women into certain behaviors. If altruism is expected, then the act might not be made through free choice. Paradoxically, there is then a risk of exploitation. If surrogates in India are expected to have altruistic motives, they are also put in a less favorable position in negotiating a fair amount of money for their act.

The surrogacy process

Hesitancy and ambivalence in relation to the surrogacy process

The handling of legal parenthood and the use of surrogacy is to some extent affected by the discourses on surrogacy. The commissioning parents argued against the exploitation discourse, but it might also have made them more observant about the situation for the surrogate in India, compared to how they related to the surrogate in the U.S. The social workers' hesitation in handling "surrogacy cases" was to a large extent due to the lack of transparency in the surrogacy process in India. For commissioning parents, the experiences of the surrogacy process made some of them ambivalent in their use of surrogacy.

Some commissioning parents' narratives indicate that the agency and the clinics in India have great control of the reproduction process and restrict their ability to have contact with the surrogate. This view was, however, not presented by all commissioning parents. The different views among them, to some extent, seem to depend on which agencies they used. König (2018) also mentions having found different practices depending on clinic and agency, even within the same setting. For some commissioning parents, their narratives indicate that their interests in conducting the surrogacy process in a way that does not compromise the surrogate's interests or well-being, were not completely met. This made some reflect on their use of surrogacy with some ambiguity. This uncertainty or worry for the surrogates' situation has not been as evident in other studies with commissioning parents (see Riggs and Due 2010), but were also found by Engh Førde (2016a), among Scandinavian commissioning parents. Engh Førde notes that Scandinavians were more sensitive to inequality; hence, the context of surrogacy in India, with its power-imbalance, clashed with what she describes as Scandinavian values. However, a study with German commissioning parents also found that they worried about the surrogate's well-being (König 2018). The commissioning parents' reflection about the agencies' role is reflected in other studies, which found that agencies and clinics in India prevent commissioning parents from finding out relevant information about the surrogate (Rudrappa and Collins 2015; Engh Førde 2016a). Reproductive ethics have been found to be compromised, as agencies in India are seen to prevent both commissioning parents and surrogates from being part of important decision-making regarding the surrogacy process (Tanderup et al. 2015a; Tanderup et al. 2015b; Deomampo 2016). In a current transnational surrogacy context, such as with the Ukraine, there are indications that both the parents' and the surrogates' interests are compromised (Symons 2018).

Social workers would additionally question the lack of transparency in the surrogacy process, as well as the lack of contact with the surrogate, which prevented them from investigating whether the surrogate's consent to relinquish the child was freely made, and made the social workers further doubt whether they really were able to make decisions relating to the legal matters of parenthood. In the absence of regulations, the solution to this dilemma depended on whether a social worker perceived that it was legally possible to obtain the surrogate's consent to relinquish parental rights. Ensuring that informed consent is given by the surrogate involved in transnational surrogacy is of global concern and has been recognized both by the U.K. courts (Baron et al. 2012) and among parental order reporters in the U.K. as the main difficulty with transnational surrogacy (Crawshaw et al. 2012b). The social workers' concerns about the surrogate were mainly visible if they also had concerns about circumstances regarding surrogacy. With the possibility of contact with the surrogate and transparency in the surrogacy process, and with a court decision on parenthood, as in the case with surrogates in the U.S., they did not

express any doubts about the relinquishment of the child or hesitation in handling these cases. Similarly, parental order reporters in the U.K. had less concerns about the handling of cases when the surrogate was situated in the U.K. and could easily be contacted (Purewal et al. 2012).

Regardless of the actual situation for surrogates, it is clear that there are differing views on surrogacy and surrogates, depending on both the views on the structural conditions and views on motherhood, which affect the use of surrogacy, the handling of legal parenthood, and the situation for surrogates.

Parenthood within the context of surrogacy

Complex views of kinship

For commissioning parents, kinship can be seen as being based on what is connected to the reason for the child's existence; the commissioning parents' engagement and genetic contribution in the reproduction method. This kinship view is also found in other studies (Kroløkke 2012; Melhuus 2012; Deomampo 2015; Hvidtfeldt Madsen 2015; Nebeling Petersen 2016). DNA-proof is argued to be the basis for fatherhood by a genetic father. For a commissioning mother, able to use her own eggs, DNA-proof is seen as a safety aspect for the relation to the child. A genetic connection is seen as proof that the child is hers, a rhetoric similar to those found in other studies (Melhuus 2012; Deomampo 2015; Riggs 2016). However, non-genetic mothers use socially grounded aspects of kinship as arguments for being recognized as legal parents, and an egg donor's provision of genetics would mainly be seen as being important when reasoning about the quality of fertility or possible resemblance to the commissioning parents. Genetics can then both be a reason to justify legal parenthood, but it can also be dismissed as unimportant as grounds for parentage, depending on whose genetics are involved (Riggs 2016).

Commissioning parents' views of kinship can also depend on the circumstances with those involved in the reproduction method. The contribution of the egg by a woman giving birth could allow this woman to be seen as the mother, as in the case of the same-sex male couple who used surrogacy in Northern Europe. The genetic connection seemed to be the reason for seeing her as the mother, but perhaps also the possibility of a close contact, as well as the fact that no other mother existed in the same-sex male couple. Still, although seen as the mother, they did not intend that she would be the legal mother.

Commissioning parents can be seen to have a pragmatic view of kinship, where love and devotion to the child can be seen as an equally important argument for being recognized as a parent as the contribution of genes (Nebeling Petersen 2016).

The Assamese informants' views regarding kinship might be seen in line with cultural notions of parenthood in India, where a woman giving birth is seen as the mother, which is similarly in accordance with the Indian legal system of determining motherhood (Majumdar 2015). However, in the surrogacy clinics, this view of kinship would be circumvented through the surrogacy agreement prior to giving birth. Here, both parties in a mixed-sex couple are recognized as the legal parents in the surrogacy context, regardless of whether the commissioning mother donated eggs in the reproduction process, and the birth-giving woman is then denied any parental rights. Majumdar (*ibid.*) suggests that the notion of parenthood in surrogacy clinics can be seen as a mix of the Euro-American biomedical view, and parenthood decided through contract. However, the same-sex male couples' views of kinship would not be given room in the surrogacy agreement, as the non-genetic father was not seen as a parent in the agreement. In contrast to these circumstances, the Assamese informants gave more importance to the biological link than the Swedish commissioning parents did, but when relating to surrogacy, they would themselves, in their narratives, partly circumvent the traditional view of motherhood, and it was most important to give the impression of having a biologically related child for the commissioning mother. Interestingly, the Swedish commissioning parents argued for both genetic and more socially grounded views of kinship, which is in contrast to Assamese informants, who mainly valued the biological link, which was possible to maintain through surrogacy. This situation reflects what Carsten (2004:167) mentions about ART, that parenthood can either be perceived as 'socially constructed or as natural relation assisted by technology'.

In practice, people seem to have more flexible ideas about kinship than found in parental laws. There is clearly a negotiation of kinship ties within the surrogacy context. This is more related to "doing" parenthood than being a 'fixed kind of kin as a cultural or natural fact of the matter' (Thompson 2005:146). Commissioning parents are circumventing the understandings of kinship in parental law, while Assamese informants can be seen to uphold the traditional views of kinship in their context, when they suggest that surrogacy should be performed in secret.

Consequences of the current parental regulations in Sweden

The unregulated situation results in an uncertain navigation of the parental legal system, for both commissioning parents and social workers, and raises some concerns about the legal process. Almost all the commissioning parents questioned the handling of legal parenthood, although all informants eventually became legal parents. Other studies with commissioning parents have also found that commissioning parents questioned the legal process to reach parenthood (Melhuus 2012; Kroløkke 2012; Deomampo 2015; Hvidtfeldt Madsen 2015).

An inadequate law presents a complex legal process

When presented with cases of surrogacy, social workers had to take into account the kinship rules grounded in parental law, and they perceived that they were left with an inadequate law in relation to transnational surrogacy. This contributed to an uncertainty in how to handle legal parenthood. The surrogacy agreement presented to them by the commissioning parents was seen as illegitimate, and the commissioning parents' pragmatic view on kinship is not given room in the parentage law. This discrepancy, and also perhaps some social workers' views about the reproduction method, gave cause for a clash between commissioning parents and social workers, where commissioning parents felt questioned as parents. Although social workers interviewed in this thesis did not view surrogacy conducted in the U.S. as problematic, the commissioning parents who went to the U.S. expressed having experienced complications and much diverse treatment related to the legal process. This might indicate that the lack of regulations and guidelines have more impact on handling than views on surrogacy or how surrogacy is conducted.

The social workers' navigation within the parental law resulted in differing processes, which commissioning parents felt led to unpredictable and stressful paths to legal parenthood. To become legal parents through surrogacy has been said to be a demanding process and is recognized as requiring rigorous planning (Hale 2013). Jenni Millbank (2015) has reflected on how having a child through transnational surrogacy means to expose yourself to much legal, clinical, and ethical uncertainty. It is evident from this thesis that using transnational surrogacy is demanding because of the unpredictable and unregulated situation, and due to all the bureaucracy. Similar experiences are found among commissioning parents in Karen Hvidtfeldt Madsen's (2015) study on the views on the surrogacy process.

The Swedish social workers' reasoning in how to deal with the cases were characterized by an uncertainty in how to balance what they perceived was the surrogate's rights, with what they perceived was the "best interests of the child". This has also been found among authorities' reasoning of legal parenthood in the U.K. (Crawshaw et al. 2012a). The right of the child to have a custodian in a timely manner stood against the concerns of the birth mother's rights according to the Family Law. The child's best interests in transnational surrogacy are also of great concern for the International Federation of Social Workers (2014). Views on surrogacy in other countries, however, have produced rulings that can be questioned over whether these rulings were made in the best interests of the child. There are cases with commissioning parents from for instance Germany who had difficulties in obtaining citizenship for the children and a passport, which made it not possible to bring the children home from India or Ukraine for long periods of time, in one case it took two years⁵ (Trimmings and Beaumont 2011; Crockin 2013; Brunet et al. 2013;

⁵ The Balaz Twins in 2010 (Crockin 2013).

Hale 2013; Hague Conference on Private International Law 2014; König 2018). The decision-making process in Sweden linked to transnational surrogacy might then be more oriented toward the child's best interest by securing the children's legal situation. This also indicates that commissioning parents in Sweden face less obstacles in their process to legal parenthood than some other Europeans. The unregulated situation in Sweden might give more room to navigate the parental legal system, and, although creating a complex legal process, all commissioning parents were eventually recognized as legal parents. Still, the process to legal parenthood might be seen to have unwanted consequences, as the stressful process might affect their parental wellbeing.

The recent revised law, from January 2019, that will permit social workers to handle paternity cases, even when the child is in a foreign country (Prop. 2017/18:155), might facilitate for the legal security of the child. However, there is no obligation to handle these cases, and some social workers might still refer the cases to the district court. The Government will provide guidelines for authorities on how to handle the legal issues in relation to surrogacy (Prop. 2017/18:155). However, because these will only be guidelines, and there is no law regulating surrogacy, there is still a risk of diverse handling. This will continue to present a risk of an uncertainty and complexity in navigating the legal process, which will affect both social workers and commissioning parents.

Reactions against an unequal legal relation to the child

The spouse of the genetic father felt particularly questioned throughout the legal process, as step-child adoption was applied to make them legal parents. With adoption, the genetic father's spouse does not become a legal parent because of their involvement in the reproduction method, but instead by being married to the genetic father and through his consent to the spouse's adoption of the child.⁶ Norwegian commissioning parents face a similar legal process, and has equally questioned this situation (Melhuus 2012; Deomampo 2015). When adoption is used in surrogacy it can be seen to be in contrast with the involved parties' initial intentions and actions, and an adoption process might not be suited for surrogacy, as also others have found (see Melhuus 2012: Hale 2013; van Zyl and Walker 2015). In this thesis, it is shown how this legal process, gives rise to feelings of being questioned as parents, and how an unequal legal relation to the child cause an insecure position toward the child, with also limitations in acting as a parent in relation to society. Similar reactions have been found among non-biological mothers in same-sex female couples, who also needed to use the step-child adoption process to be recognized

⁶ However, there are exceptions to the step-child adoption process. In one case, the provision of the egg was the basis for recognition of legal motherhood (Södertälje District Court 2014), similar to the legal process in some states in the U.S. (Deomampo 2015). There is also a court case in Sweden where the non-genetic father was legally recognized as the father, without a step-child adoption process (Svea Court of Appeal 2014).

as parents (McClellan 2001; Padavic and Butterfield 2011; Johansson 2014). Even if there is a revised law that will facilitate the determination of paternity, the step-child adoption process will stay the same. This will still contribute to the feelings of being questioned as parents, and a risk for the child, as not both parents will be able to act as the legal parents for some time.

Many have argued against the disqualification of the egg as being viable for recognition of parenthood (Melhuus 2012; Millbank 2013; Stoll 2013). Legal scholars, Maarit Jänterä-Jareborg and Eva Ryrstedt, in Sweden have criticized the situation for contributing to gender inequality, because a genetic mother needs consent from the genetic father to be able to adopt the child (SOU 2016:11). The dependence on the genetic father to be legally recognized as a parent would cause risk for his spouse not being recognized as a parent at all, as also discussed by D'Alton-Harrison (2014), and as demonstrated in a court case in Sweden (Supreme court 2016). In this case, a commissioning genetic mother was prevented from adopting the child by the genetic father; hence, there was no legal connection between the child and the genetic mother (Singer 2006/2007; Stoll 2013). However, the situation for the genetic mother might be considered similar to when the purpose is not surrogacy, and where the child has been conceived through intercourse when the genetic father is not married to the mother. He would then need the mother's consent to be recognized as the father. Although, in this case, a DNA-test might be enough for recognizing paternity, which is not the case for the commissioning genetic mother.

The current legal situation, with the risk for the child to not be legally connected to one of the parents, might violate the Convention of the Rights of the Child⁷ with regard to art. 16, where a child has a right to not be subjected to arbitrary or unlawful interference with his or her privacy and family life (Basan 2016). The European Court of Human Rights (ECHR) has also ruled in favor of establishing a legal relationship based on social realities between a child and the commissioning parents, even if there were no genetic bond between them (Singer 2006/2007; Rein Lescastereyres 2015).

With the current legal situation, where the genetic father's spouse might have difficulties to act as a parent towards society, policy makers would need to be mindful about the consequences for both children and commissioning parents, especially the genetic father's spouse. Additionally, if there is a struggle to be recognized as a parent and concerns about the lack of legal connection to the child, this might deprive commissioning parents to some extent from the happiness of finally having a child, which might have consequences for the well-being of the child as well (Luoma 2001; D'Alton Harrison 2014; Treanor 2016; Shafer et al. 2017). Thus, the authorities and courts may have

⁷ The Convention of the Right of the Child will be incorporated into Swedish legislation in 2020, see Prop. 2017/18:186.

the “best interest of the child in mind”, but the unequal legal relation to the child might cause harm, both to commissioning parents, and to their children.

Conclusion

This thesis provides insights on different perspectives and views on surrogacy and surrogates. Surrogacy can be seen as the last or only hope to become parents, while social workers, in a context where surrogacy is not allowed within the health care system, would perceive it as circumvention of the law. From the perspective of men and women in Assam, it would be a way to have “an own child”, and fulfill the norms of parenthood.

In the context of an unregulated and debated reproduction method, it creates much uncertainty and need of navigation and negotiation in terms of using surrogacy or handling legal parenthood after transnational surrogacy. Based on discourses prevalent in a western context, commissioning parents end up in a situation where they need to defend their engagement in surrogacy. The exploitation discourse makes social workers hesitant to handle surrogacy cases, and they have to refrain themselves from the views in media to be able to handle these cases.

The view of surrogates is contingent on the view of motherhood and perceived situation and motivation for the surrogate, but it can result in many different views, depending on perspective and cultural background. This study indicates that although the view of motherhood, and different discourses on surrogacy influence the commissioning parents’ and social workers’ views of the surrogate, values such as equality and obeying the law might be of more importance for the view of surrogacy and the surrogate. When transnational surrogacy is conducted in India this has then resulted in ambiguity in relation to the use of surrogacy for some commissioning parents, and hesitation from the social workers to handle legal parenthood after transnational surrogacy in India.

Assamese informants’ views on the surrogate, although there are diverse views, they are in contrast to the commissioning parents’ and social workers’ views, and instead much linked to the traditional view of motherhood. With the main view picturing the surrogate as stigmatized, a surrogate would need to defend her engagement in surrogacy.

This study also indicates that, when surrogates are seen to have altruistic motives to be surrogates, there is more consensus in the views among all informants, and less need to judge or question the surrogate’s motive, or to take the surrogate’s situation into consideration. It seems that when a surrogate is upholding certain norms of motherhood, as being selfless and her actions are connected to altruistic notions, the break of other norms of motherhood, as

giving birth and give away the child, give less cause for stigma and worry for the surrogate. It indicates that a financial motive needs to be explained, judged or questioned in some way, seemingly because it breaks the traditional norm of motherhood and the norms of reproduction.

This thesis further indicates that the commissioning parents' pragmatic view of kinship, where both genetic and social grounds are given more importance than in the parentage law, results in a complex road to legal parenthood where commissioning parents feel questioned as parents. Even though surrogacy eventually makes people parents, particularly those who otherwise would have little possibility to achieve this, the unregulated situation of surrogacy, in addition to contrasting discourses, creates much uncertainty in the process of obtaining legal parenthood, affecting both commissioning parents and social workers. The social workers' uncertainty causes them to handle cases in different ways, which in turn creates an unpredictable path to legal parenthood. The current legal situation causes harm to commissioning parents and limits the scope for them to act as parents, which comes with a risk to the children, who will have parents who have no legal parental rights, at least for some period of time.

Nevertheless, the unregulated situation has given some room for commissioning parents to navigate the existing laws to reach parenthood through surrogacy, and for social workers to navigate the legislation in ways they perceive to be in the best interest of the child. This indicates that the situation in Sweden results in fewer legal problems for commissioning parents, than in other European countries, particularly where surrogacy is illegal, and where commissioning parents have encountered difficulties in being recognized as legal parents. Still, this study indicates that the road to legal parenthood results in legal hazards, but does not seem to have any impact on the possibility for the surrogate to keep a child, or to protect the surrogates' interests.

Since the studies in this thesis were conducted, some measures have been taken by the Swedish Government to regulate legal parenthood for the purpose of protecting the child's legal security. This might have addressed some of the previous concerns from both commissioning parents and social workers. However, the continuing use of the step-child adoption process indicates that there is still no room for the commissioning parents' kinship view, and the handling of legal parenthood after transnational surrogacy will still risk causing harm to commissioning parents and children.

Recommendations in light of reproductive justice

The commissioning parents interviewed in this thesis expressed that surrogacy should be regulated and allowed in Sweden. This option, however, will still not be available for some time, even if there are both politicians (Bratt Lejring 2017) and physicians working within reproductive care who are in favor of allowing altruistic surrogacy in Sweden (Stenfelt et al. 2018). The Government has decided that surrogacy should be kept unregulated and not allowed within the Swedish healthcare system (Prop. 2017/18:155). Transnational surrogacy would then most likely continue to increase, and even if surrogacy were to be allowed in Sweden, transnational surrogacy would most likely also continue. Even when altruistic surrogacy is allowed in the home country, people turn to transnational surrogacy because the provision of surrogacy in the home country is not sufficient (Millbank 2013). Walker and van Zyl (2017:43) argue that ‘governments *should* know that people will not simply abandon their plans to form a family through surrogacy, even when transnational surrogacy is banned’.

The right to have a child has been discussed, and many would say that there is no such right. However, when it becomes a possibility to use ART for some but not for others in their home country, it might be necessary to discuss the consequences with an unregulated or barely regulated situation in the home country and in the country used for surrogacy. To be able to have the option of surrogacy might be viewed as being aligned with reproductive justice, but the findings drawn from this thesis, in addition to those of other studies, show that the process in which surrogacy is conducted cannot be seen to align with this framework. If commissioning parents and surrogates are not in control of their own reproduction and reproductive capacities, this is not in accordance with the reproductive justice framework (Gaard 2010).

Regulations needed to give more reproductive control for involved parties

When transnational surrogacy seems unlikely to cease, and when surrogates themselves would like to preserve this opportunity to earn money, but under circumstances where their rights are better protected (Rudrappa 2016; Huber

et al. 2018), it is worth examining alternatives to the current situation in light of reproductive justice. This might address some of the concerns from commissioning parents and social workers regarding the surrogacy process and can give more control to commissioning parents' and surrogates' reproduction and reproductive capacities.

The Indian state still seems not to have regulations in place to protect the rights of the women who choose to become surrogates, which is also the case in Georgia, a country to which many commissioning parents turn to today (Khurtsidze 2016; Reddy et al. 2018). With no regulations, either in the commissioning parents' home country or in the country where surrogacy is conducted, the surrogacy process is ruled by the market forces, with much control and financial benefit given to intermediaries (Saravanan 2016). Some IVF doctors would say that the real problem of surrogacy would be that some clinics and agencies do not follow a medically ethical practice (Reddy et al. 2018).

International regulations have been suggested by the EU (Brunet et al. 2013), and by Trimmings and Beaumont (2011). The Hague Convention on International Surrogacy has tried to design appropriate regulations (Hale 2013). For instance, the Hague Convention, which has an ongoing project called the *Parentage/Surrogacy Project*, suggested that measures would be made to secure assurance that the surrogate has made an informed decision in giving her consent (Hague Conference on Private International Law 2019). Such convention would be able to secure the surrogate's rights and make the process more transparent (Ramskold and Posner 2013). In order to reach reproductive justice, there is a need for a more transparent process on more equal terms, where the interests of all parties in having control over their reproduction and reproductive capacities are taken into account (Luna and Luker 2013). This situation might also reduce some of the questions and worries expressed by both the commissioning parents and the social workers about the surrogate's treatment and how her interests have been considered. However, other studies have found that commissioning parents would rather not have contact with the surrogate and seem to have limited interest in her situation (Riggs and Due 2010). Placing an emphasis on the surrogate's interests might make some commissioning parents deterred from using surrogacy under these circumstances and to instead seek surrogacy underground, which is accompanied by less protection for all involved.

Surrogacy treated as care work

Several researchers and scholars have come to the conclusion that it would be better to treat surrogacy as "work" and to enforce labor rights onto surrogacy arrangements to protect the surrogates' rights, including their right to fair remuneration (Humbyrd 2009; Pande 2014; Cory 2015). This might also fulfill the requirements for reproductive justice. Even though there are benefits in

treating the surrogates' acts as conducting work, it might result in other problems for surrogates in society, particularly as they would further risk being seen as engaging in sex work (Karandikar et al. 2014a) or "selling their children", as found in our study. To prevent stigmatization, it has been suggested that social workers should work to increase awareness of surrogacy, to possibly limit the risk of stigma and seclusion from society (Karandikar et al. 2014a).

Because the view of a phenomenon depends on how it is framed (Abrams 2015), if surrogacy is framed as care work, as some scholars suggest (Pande 2014; Stoeckle 2018), it might reduce the risk of stigma. Altruistic notions place surrogates in a more positive light, as seen in this thesis. However, having altruistic surrogacy as the only possibility for surrogacy, would present a risk for women in India, who have limited decision making power, to be forced by relatives to bear their children. If surrogacy is seen as care work and involves closer contact with commissioning parents on more equal terms, it would strengthen the position for the surrogates, both towards the society and the agency. With a reproductive justice approach used in the regulation of surrogacy, this thesis shows that what has previously been found to benefit surrogates' well-being and rights might also decrease the ambivalence and uncertainties found among commissioning parents and those handling legal parenthood.

Regulations needed to create less uncertainty in the legal process

In our study, all commissioning parents were granted legal parenthood, and eventually surrogacy made it possible for both people in a couple to become legal parents, even within same-sex male couples. This would be in accordance with reproductive justice, which requires that people should be free to have children, and not be limited from becoming parents due to the biogenetically based notion of a family (Lewis 2018), or by reproductive expectations inherited from the gender registered at birth or by sexual identity (Cory 2015). However, regulations are needed to create a less uncertain legal process for commissioning parents and social workers.

In policy making and lawmaking, it is necessary to take into account the harmful effects of an unregulated situation: uncertainty in handling legal parenthood, an unpredictable road to parenthood, and feelings of being questioned as parents, as well as the risk of children and commissioning parents not being legally connected. Still, it is understandable that it is not an easy task to regulate how to handle legal parenthood after transnational surrogacy, as different contexts can be involved depending on where the transnational surrogacy is conducted, and with legal changes in other countries, it might be

difficult to predict what obstacles commissioning parents and social workers might encounter. Still, through the lens of reproductive justice, a regulation on parentage would need to take into account how parenthood can be reached with dignity (Luna and Luker 2013). Policy makers conducting guidelines for social workers might bear this in mind. Placing higher value on the intent to seek legal parenthood might then be investigated. This could limit the risk of parents not being able to act as parents to the child for some length of time. Although the law is changing and is adjusting to the different kinds of assisted reproduction methods, the law still takes its point of departure from heterosexual marital non-artificial reproduction. The many new forms of family formation, accompanied by an increase in families comprising same-sex couples having children, might call for a need to adjust the view of kinship in parental law, to better match the practice of kinship.

The current legal situation has challenging implications in surrogacy, especially for the genetic father's spouse. The dependence of the genetic father to be able to act as a parent would give unequal power relations in reproduction and does not align with reproductive justice (Luna and Luker 2013).⁸ The genetic mother in this situation can be seen as lacking control over her own reproductive capacities, which would go against reproductive justice (Gaard 2010).

With new reproduction methods emerging continuously, it has been said that intention to be a parent might be the only aspect that would remain valid (Anderson 2009). In surrogacy, the child would not have existed if it were not for the motivation and actions of the intended parents. It has been suggested that their intention to take care of the child should be recognized as being valid for legal parenthood status (Horseley 2010). Still, there might be several involved parties in the reproduction method, each with interests in becoming a parent, or none, which would make intention difficult to use as the sole suitable aspect for determining parenthood. Nevertheless, a higher value of intent for legal parenthood might be investigated to limit the risk of parents feeling questioned, or not being able to act as parents to the child, and would also value the intention of the surrogate. To reach reproductive justice, the one giving birth would need to both have the freedom to be a parent or not be a

⁸ With surrogacy, in Sweden, the creation of kinship is based on genetic fatherhood, rather than biological motherhood. In comparison to the current system in Sweden, the Greek and English/Welsh laws construct parenthood in different ways, but both offer more gender equal establishment of parenthood. The Greek law states that the commissioning mother is the legal mother from the birth of the child, and the commissioning father becomes the father by the relation to the mother (Stoll 2013). Even if this situation is in favor of the commissioning mother, much like in the "traditional" reproduction method, it establishes parenthood at the same time for both in a mixed-sex couple. The law in England and Wales, on the other hand, states that the surrogate and her husband are the parents from the birth of the child, treating both the commissioning parents as donors, with an equal position in becoming legal parents through seeking parental order (*ibid.*).

parent (Lewis 2018),⁹ which is also in line with intent-based parenthood. To achieve reproductive justice, there is a need to regulate legal parenthood after the use of transnational surrogacy in a way that better takes into account the intentions in the reproduction method, and better secures the legal connection between parents and children.

⁹ This would be similar to the argument for why abortion should be allowed, to provide the possibility to both have the baby but also not have the baby one is carrying.

Future research

The change in locations for transnational surrogacy, from India to part of Eastern Europe, provides a rationale to further explore the views and experiences of people in these countries in relation to conducting transnational surrogacy.

It has not been the scope of this thesis to study the consequences for the children born through surrogacy; while the legal consequences are considered, their situation needs to be further explored. The lack of knowledge about the consequences for children would also be the reason for why there are hesitations in regulating this reproduction method.

In relation to Assam, it would be interesting to explore possible changes in this state; will surrogacy be conducted on a larger scale in this area, and will their views on this reproduction method and the surrogate change?

Summary in English

Surrogacy might be the most controversial reproduction method because it breaks the traditional norms of motherhood; the assumption that the woman giving birth is the mother. With surrogacy, the woman who gives birth has already made an agreement before conception to carry the child for another couple or single person. Thus, it has been called a contract pregnancy, which additionally breaks the norms around reproduction, especially if the one carrying the child, “the surrogate”, financially benefits from this act. This reproduction method has particularly created a debate in media when it is conducted through transnational commercial surrogacy in low-income settings. It has been described as the exploitation of poor women, and as the commodification of babies and women’s bodies.

Surrogacy is inconsistently regulated globally. In certain countries surrogacy is illegal, in other countries altruistic surrogacy is allowed, while in some countries such as Georgia, Ukraine, Russia, and some states in the U.S., commercial surrogacy is allowed. Until recently, commercial surrogacy was also allowed in India and Thailand. In Sweden, however, surrogacy can be seen as unregulated, as it is either clearly stated as allowed or illegal in any law. However, it is unlawful to help with assisted reproduction for the purpose of surrogacy, but the use of surrogacy *per se* and to be a surrogate is not illegal. When surrogacy is not possible or limited in the home country, people turn to other countries for surrogacy.

Transnational surrogacy is becoming an increasingly used reproduction method. Until December 2015, foreigners were allowed to travel to India for surrogacy, which many did, also people from Sweden, and India was seen as the “hub of surrogacy”. However, with transnational surrogacy, variations in the handling of parentage in the two countries can clash and create obstacles in becoming legal parents after the use of this reproduction method. Many obstacles have arisen where people from countries where surrogacy is illegal wanted to bring home their children after transnational surrogacy.

This thesis takes its standpoint from the unregulated situation of surrogacy, and from the heated debate about surrogacy, where the common view is that transnational surrogacy in especially low-income settings is exploitative. The studies presented here have explored the view of surrogacy and surrogates from many perspectives, and explored the experiences of using transnational surrogacy. The aim was to provide a multifaceted view of this reproduction method and to explore the consequences of using transnational surrogacy in

an unregulated situation. Qualitative methods were used for all studies included in this thesis. Interviews were conducted with commissioning parents using transnational surrogacy, where their views on using surrogacy were explored as well as how they experienced the process toward legal parenthood. Social workers were interviewed about their views and experiences of cases regarding decision-making on legal parenthood after the use of transnational surrogacy. In order to gain a multifaceted view, and to provide a non-western perspective from a low-income setting, a study in Assam, India, was conducted to explore the public view on surrogacy. Interviews and focus group discussions were conducted with women and men in Assam.

Those commissioning parents who were interviewed for this thesis had mainly went to India, but also to the U.S., for the use of surrogacy, and the social workers' experience of handling cases of transnational surrogacy were mostly of those from India, but also the U.S. Although it is not possible to use transnational surrogacy in India any longer, many of the findings from this thesis are relevant to the wider discussion on transnational surrogacy, and might to some extent be applicable to the use of this reproduction method in other countries, such as Georgia, where Swedish people turn to today.

Findings from part of Study I, presented in Paper I, show that, for commissioning parents, transnational surrogacy was seen as the last hope for the mixed-sex couples to become parents, and seen as the only hope for the same-sex male couples to both become legal parents. In their use of transnational surrogacy in India, they argued against the exploitation discourse, and instead portray this reproduction method as a win-win situation. The surrogate was pictured as a woman who wanted to be a surrogate to make a large sum of money to improve her financially poor situation. Still, some commissioning parents were worried about the surrogate's well-being and her situation during pregnancy. This was because they were made aware of the surrogate having felt unwell during the pregnancy, but also to some extent because of the lack of contact with the surrogate. Concerns about the surrogate resulted in an ambiguous view of their use of surrogacy. This perception was however not present for those who used surrogacy in the U.S., because they had much contact with the surrogate and expressed that she had altruistic reasons to be a surrogate.

Findings from Study II, presented in Paper II, show that social workers perceived transnational surrogacy as a way to circumvent the law and that the parental law was inadequate for handling legal parenthood after the use of surrogacy, which made them hesitate to handle these cases. The parentage law finds the birth-giving woman to be the mother, in this case the surrogate. However, in cases of surrogacy in India, the social workers expressed uncertainties about the surrogate's consent to relinquish the child, which might be seen as being influenced by the media's view of the surrogates as being exploited. Because the social workers were not able to meet the surrogate to confirm her consent to relinquishing the child, it made them further hesitant to deal with

these cases. They tried to balance how to ensure what they perceived as the birth-giving woman's interests and the child's need to have legal parents. However, the cases from the U.S. caused less hesitation in handling, because they for example would be able to have contact with the surrogate, which they did not perceive as poor and exploited. However, the overall uncertainty of how to handle these cases without any guidelines, gave reason to different handling from social workers, resulting in many diverse processes for legal parenthood after transnational surrogacy.

The findings from Study III is presented in Paper III. Here, the views of surrogacy and the surrogate are presented from an Assamese perspective. This study show that many Assamese informants did not have much knowledge of IVF surrogacy. However, they perceived that this reproduction method fulfilled their need to have a child of "their own blood". A child of "their own" would be important, as there is a stigma to being infertile and childless, especially for women. Moreover, having one's "own child" was also considered to better security for being taken care of in old age. Nonetheless, the surrogate was mainly seen as breaking the traditional norm of motherhood, and was considered "a bad mother" when preferring money instead of her own child. Although this was the most common view among people from low socio-economic backgrounds, the surrogate could also be seen as someone doing a noble act when helping others to escape the stigma of childlessness. In any case, the surrogate was not mentioned as being exploited; rather, she was judged based on how her choices either broke or fulfilled the traditional norm of motherhood.

The findings from part of Study I, presented in Paper IV, show that commissioning parents experienced a complex and unpredictable path to legal parenthood where they felt questioned as parents. They questioned that there were no adequate rules to handle surrogacy and that it then became up to each administrator to decide how to handle these cases. They also questioned how parenthood was based on the presumption of parenthood, and that the genetic father's DNA-proof was not initially enough for being seen as the legal parent; instead, the presumption of fatherhood made the surrogate's husband the father. The genetic father was eventually seen as the father, after confirmation from the surrogate that he is the father, and a denial of paternity from her husband. However, the genetic father's partner could not be recognized as a parent based on their involvement in the reproduction method, this included a genetic mother. Instead, a step-child adoption process, with consent from the genetic father, was required to be acknowledged as the legal parent. Consequently, particularly the commissioning parents who needed to go through a step-child adoption process felt questioned as parents, which was heightened by the fact that they could not act as parents in relation to society, until they were recognized as parents.

This thesis shows many different constructions of surrogacy and of the surrogate, depending on perspective. The view of motherhood, the view of poor

women, cultural background, the influence of the media, the context and circumstances around the surrogacy process, as well as the experiences related to surrogacy are all aspects that influence the view on this reproduction method and the surrogates.

Although both commissioning parents and social workers refer to the exploitation discourse, only social workers embrace it, and this makes them doubtful about this reproduction method. However, both commissioning parents and social workers have concerns about the situation for the surrogate, which might be connected to the circumstances and contexts of the surrogacy process in India. This is also clear in comparison with the view of the surrogate in the U.S., where the exploitation discourse was not mentioned by the commissioning parents and social workers. The concern of ensuring consent given by surrogates, is not mentioned by social workers in this context, indicating that the traditional concept of motherhood, with the view that a birth-giving woman would not voluntarily relinquish the child, has less importance in the American context for the view of surrogacy and the surrogate. This indicates that the aspects of context and circumstances around the surrogacy process would be more important for the view of surrogacy and the surrogate from the commissioning parents' and social workers' perspective than the view of motherhood, this in contrast to the Assamese informants. Their views of the surrogate are instead linked to how the surrogate meets the expectations of motherhood. Although both Assamese informants and commissioning parents construct surrogacy as something positive, providing a much longed-for child, the construction of the surrogate from the Assamese perspective would make the view of surrogacy complex. The construction of the surrogate as a "bad mother" for "selling her child" not only shows that it is the traditional view of motherhood that prevails, but would indicate that they perceive the women as having a choice despite poverty, and they are viewed as choosing money before "their child".

The social workers' views of the Indian surrogates, indicate that the media view can play a role in their view; seen as poor, with uncertainty if they have a choice to keep the child instead of the money, which would contribute to the social workers' views of exploitation. While both Assamese informants and commissioning parents perceive that the women have made a choice to make money, the commissioning parents, unlike the Assamese informants, do not think of it as problematic for the surrogate to relinquish the child, as, to them, it is not the surrogate's child, but that of the commissioning parents.

This thesis, not only shows that there are multiple ways to construct surrogacy and the surrogate, but also that surrogacy can be conducted in many ways, and this has consequences not only for the surrogate but also for commissioning parents and those handling legal parenthood after transnational surrogacy. It further shows the complexities inherent in this reproduction method.

The findings from this thesis indicate that the unregulated situation of surrogacy in Sweden can provide negative consequences to commissioning parents and possibly the children, when their views on kinship are not considered in parentage law. Surrogacy gives rise to many different constructions of parenthood, where intent would be the common factor. This pragmatic view, related to the use of surrogacy, is also evident among the Assamese informants. However, the clash between the reproduction method and the parentage law, contributed to uncertainty and to diverse decision-making practices among social workers, when handling legal parenthood after the use of surrogacy. Even if guidelines for handling legal parenthood after transnational surrogacy are introduced, there is still no law regulating parenthood this reproduction method. This might continue to result in complex and varied processes to attaining legal parenthood with the accompanying results of feeling questioned as parents and not being able to act as a legal parent towards society, at least for a period of time, which might have negative effects for the child.

Within the lens of reproductive justice, a more transparent process of surrogacy is suggested in the country where it is conducted, where the interests of both commissioning parents and surrogates are better taken into account, which might address some of the commissioning parents' and the social workers' concerns around the surrogacy process. This might make the process to attain legal parenthood less complicated, if social workers were able to better confirm that the surrogate's interests had been taken into account. The recent legal changes in Sweden that serves to facilitate the determination of paternity for children born abroad, might render less difficulties for commissioning parents and social workers in the legal process. However, the parentage law still does not take into account the commissioning parents' reproduction method, with the result of the need for a step-child adoption process, which can cause harm to commissioning parents and possibly the child. This issue still needs to be addressed to secure the relation between parents and children. A regulation is also needed to limit the risk of too much diversity in the handling of these cases.

Sammanfattning på svenska (Summary in Swedish)

Surrogatarrangemang (surrogatmoderskap) kan ses som den mest kontroversiella reproduktionsmetoden, eftersom den bryter mot traditionella normer för moderskapet; att den som föder barnet är mamman. Vid surrogatarrangemang har kvinnan som föder barnet redan före befruktningen gjort en överenskommelse om att bära barnet för en annan person eller ett annat par. Det har då kunnat kallas för en "kontrakt graviditet", och bryter också mot normerna kring reproduktion, särskilt om den som bär barnet, "surrogatmamman", gör en ekonomisk vinst. Den här reproduktionsmetoden har särskilt skapat debatt i media när den utförts genom transnationellt kommersiellt surrogatarrangemang i fattiga kontexter. Det har beskrivits som exploatering av fattiga kvinnor, och som kommersialisering av barn och kvinnokroppar.

Surrogatarrangemang kan regleras på många olika sätt i världen. I vissa länder är surrogatarrangemang olagligt, i andra länder är altruistiskt surrogatarrangemang tillåtet, medan i några länder som Georgien, Ukraina, Ryssland och vissa stater i USA är kommersiellt surrogatarrangemang tillåtet. Kommersiellt surrogatarrangemang var även tillåtet i Indien och Thailand tidigare, men har nyligen förbjudits. I Sverige kan dock surrogatarrangemang ses som oreglerat, eftersom det inte i lag varken anges som förbjudet eller tillåtet. Dock är det olagligt att hjälpa till med assisterad befruktning om syftet är surrogatarrangemang, men att använda surrogatarrangemang och att vara en surrogatamma utan inblandning av assisterad befruktning via svensk sjukvård, är inte olagligt. När surrogatarrangemang inte är möjligt eller begränsat i hemlandet, vänder sig människor till andra länder för denna reproduktionsmetod.

Transnationellt surrogatarrangemang blir en alltmer använd reproduktionsmetod. Fram till december 2015 var det tillåtet för utlänningar att resa till Indien för surrogatarrangemang, vilket många gjorde, även svenskar, och Indien betraktades som "a hub of surrogacy". Men användandet av transnationellt surrogatarrangemang kan skapa hinder för att bli juridiska föräldrar. De två inblandade länderna har ofta olika regler för bestämmande av föräldraskap vid surrogatarrangemang. När människor från länder där surrogatarrangemang är olagligt, har använt transnationellt surrogatarrangemang, har de fått svårigheter att få hem barnen.

Denna avhandling tar sin utgångspunkt från den oreglerade situationen gällande surrogatarrangemang och från den heta debatten om denna reproduktionsmetod, där den vanliga uppfattningen är att transnationellt surrogatarrangemang, speciellt i fattiga kontexter är exploaterande. De studier som presenteras i denna avhandling har undersökt synen på surrogatarrangemang och surrogatmamman, från flera perspektiv och studerat erfarenheter av att använda transnationellt surrogatarrangemang. Syftet var att ge en mångfacetterad syn på denna reproduktionsmetod och utforska konsekvenserna av att använda transnationellt surrogatarrangemang i en oreglerad situation. Kvalitativa metoder har använts för alla studier som ingår i denna avhandling. Intervjuer har genomförts med föräldrar som använt transnationellt surrogatarrangemang där deras syn på användande av surrogatarrangemang har utforskats liksom hur de upplevt processen för att bli juridiska föräldrar. Familjerättssekreterare intervjuades om deras synpunkter och erfarenheter av handläggning av juridiskt föräldraskap efter transnationellt surrogatarrangemang. För att få en mångfacetterad uppfattning och för att ge ett icke-västerländskt perspektiv från en fattig kontext, genomfördes en studie i Assam, Indien, för att utforska den allmänna uppfattningen om surrogatarrangemang bland människor. Intervjuer och fokusgruppdiskussioner genomfördes med kvinnor och män i Assam.

De föräldrar som intervjuades för denna avhandling, hade främst åkt till Indien, men även till USA för surrogatarrangemang, och familjerättssekreterarnas erfarenhet av att hantera ärenden av transnationellt surrogatarrangemang var mestadels från Indien, men även USA. Även om det inte längre är möjligt att använda transnationellt surrogatarrangemang i Indien, är många av resultaten från denna avhandling relevanta för en vidare diskussion om transnationellt surrogatarrangemang och kan vara relevant för hur det delvis fungerar med denna reproduktionsmetod i andra länder, som exempelvis Georgien, som svenskar vänder sig till idag.

Resultatet från delar av studie I, som presenteras i artikel I, visar att transnationellt surrogatarrangemang sågs som det sista hoppet för de olikkönade paren att kunna bli föräldrar, och sågs som det enda hoppet för samkönade par, om båda skulle kunna bli juridiska föräldrar. I deras användning av transnationellt surrogatarrangemang i Indien argumenterade de mot exploateringsdiskursen och beskrev istället surrogatarrangemang som en vinna-vinna-situation. Surrogatmamman beskrevs som en kvinna som lever under fattiga förhållanden och som valt att vara surrogatmamma för att kunna tjäna en stor summa pengar och förbättra sin ekonomiska situation. Dock var vissa föräldrar oroliga över surrogatmammans välbefinnande och hennes situation under graviditeten. Detta berodde på att de fick kännedom om att surrogatmamman inte mått bra under graviditeten, men det berodde också till viss del på bristen på kontakt med surrogatmamman. Oro för surrogatmamman resulterade i en ambivalent syn på användandet av surrogatarrangemang. Denna uppfattning

fanns dock inte för de som åkte till USA, då de hade mycket kontakt med surrogatmamman och menade att hon där agerade utifrån altruistiska skäl.

Resultatet från studie II som presenteras i artikel II visar att familjerättssekreterarna uppfattar transnationellt surrogatarrangemang som ett sätt att kringgå lagen och att föräldrabalken var otillräcklig för att hantera juridiskt föräldraskap efter användning av transnationellt surrogatarrangemang, vilket gjorde att de var tveksamma inför att hantera dessa ärenden. I föräldrabalken anges den födande kvinnan som modern, det innebär i detta fall surrogatmamman. Vid surrogatarrangemang i Indien uttryckte familjerättssekreterarna osäkerhet om surrogatmamman verkligen hade samtyckt till att lämna ifrån sig barnet. Denna osäkerhet kan ses som påverkat av medias syn på surrogatmamman som exploaterad, men även eftersom familjerättssekreterarna inte kunde träffa surrogatmamman för att få bekräftelse på samtycket att lämna barnet. Detta bidrog också till tveksamheter till att hantera dessa ärenden. De försökte balansera vad de såg som surrogatmammans intressen och barnets behov av juridiska föräldrar. De hade dock mindre osäkerhet vid handläggningen av ärenden relaterade till USA, eftersom de exempelvis kunde ha kontakt med surrogatmamman som de inte såg som fattig eller exploaterad. Men den allmänna osäkerheten på hur de skulle hantera ärendena utan några riktlinjer, gjorde att familjerättssekreterarna tog olika beslut i dessa ärenden, vilket resulterade i många olika processer för juridiskt föräldraskap efter transnationellt surrogatarrangemang.

Resultaten från studie III presenteras i artikel III. Här presenteras synen på surrogatarrangemang och surrogatmamman från informanterna i Assam. Studien visar att många av informanterna i Assam inte hade mycket kunskap om surrogatarrangemang som en reproduktionsmetod utförd med provrörsbefruktning (IVF). Men de uppfattade att denna reproduktionsmetod uppfyllde deras behov av att få ett barn av "sitt eget blod". Ett få ett "eget barn" var viktigt, eftersom det är stigmatiserat att vara infertil och barnlös, speciellt för en kvinna. Dessutom ansågs det att ett "eget barn" gav större chans att bli omhändertagen när de blev äldre. Ändå ansågs surrogatmamman bryta mot den traditionella moderskapsnormen och en kvinna betraktades som "en dålig mamma" om hon föredrog pengar istället för sitt eget barn. Även om detta var den vanligaste uppfattningen bland personer med låg socioekonomisk bakgrund, kunde surrogatmamman också ses som någon som gör en hedervärd handling när hon hjälper barnlösa att undkomma en stigmatiserad situation. Surrogatmamman nämndes däremot aldrig som exploaterad; snarare dömdes hon utifrån hur hennes agerande antingen bröt eller uppfyllde den traditionella normen för moderskapet.

Resultaten från delar av studie I, som presenteras i artikel IV, visar att föräldrarna upplevde att det var en komplex och oförutsägbar väg till juridiskt föräldraskap där de kände sig ifrågasatta som föräldrar. De ifrågasatte att det inte fanns några adekvata regler för att hantera surrogatarrangemang och att det då var upp till varje handläggare att bestämma hur man skulle hantera

dessa ärenden. De ifrågasatte också hur föräldraskapet var baserat på föräldraskapspresumtionen, och att den genetiska pappans DNA inte initialt var tillräckligt bevis för att han skulle ses som den juridiska föräldern. I stället gjorde faderskapspresumtionen att surrogatmammans make sågs som fadern. Den genetiska fadern sågs så småningom som fadern efter bekräftelse från surrogatmammans att han är fadern samt att hennes man intygat att han inte är far till barnet. Men den genetiska faderns partner kunde inte erkännas som förälder baserat på sin inblandning i reproduktionsmetoden, detta gällde även den genetiska mamman. Istället krävdes att en styvbarnsadoptionsprocess genomfördes för att den genetiska faderns partner skulle erkännas som den juridiska föräldern, med samtycke från den genetiska pappan. Särskilt de som behövde genomgå en styvbarnsadoption kände sig ifrågasatta som föräldrar, vilket förstärktes av det faktum att de inte kunde agera som föräldrar i förhållande till samhället, förrän de var erkända som juridiska föräldrar.

Avhandlingen visar många olika synsätt på surrogatarrangemang och surrogatmammans, beroende på perspektiv. Det finns många olika aspekter som påverkar uppfattningen om denna reproduktionsmetod och surrogatmammans: uppfattning om moderskap, uppfattning om fattiga kvinnor, mediernas inflytande, kontext och omständigheterna kring surrogatarrangemanget samt erfarenheter relaterade till surrogatarrangemang.

Även om både föräldrar och familjerättssekreterare refererar till exploateringsdiskursen, är det bara familjerättssekreterarna som anammar denna uppfattning. Både föräldrar och familjerättssekreterare har dock oro över situationen för surrogatmammans, vilket kan vara kopplat till de uppfattade omständigheterna och kontexten för surrogatarrangemanget i Indien. Detta är också tydligt i jämförelse med synen på surrogatarrangemang i USA, där exploatering inte nämndes av varken föräldrar eller familjerättssekreterare. Tveksamheten inför att kunna säkerställa samtycke från surrogatmammans, nämns inte av familjerättssekreterarna i det här sammanhanget, vilket tyder på att den traditionella synen på moderskap, att en kvinna som föder ett barn inte frivilligt skulle lämna barnet, har mindre betydelse för uppfattningen om surrogatarrangemang och surrogatmammans i det amerikanska sammanhanget. Detta indikerar att sammanhang och omständigheter kring surrogatarrangemanget skulle vara av större betydelse för synen på surrogatarrangemang och surrogatmammans från föräldrars och familjerättssekreterares perspektiv än synen på moderskap, detta i motsats till de assamesiska informanterna. Deras syn på surrogatmammans är istället kopplad till hur hon uppfyller förväntningar på moderskapet. Även om både informanterna från Assam och föräldrarna har en positiv syn på surrogatarrangemang som reproduktionsmetod, då det ger ett efterlängtat barn, innebär uppfattningen om surrogatmammans från de assamesiska informanterna att synen på surrogatarrangemang blir komplex. Konstruktionen av surrogatmammans som en "dålig mor" då hon anses "sälja sitt barn" visar inte bara på att det är en traditionell syn på moderskap som råder,

utan indikerar också på att de uppfattar att kvinnorna gjort ett fritt val trots fattigdom och de uppfattas välja pengar före "sitt barn".

Familjerättssekreterarnas syn på de indiska kvinnorna, indikerar att media kan ha betydelse för deras uppfattning av surrogatmammorna; att de ses som fattiga, med en osäkerhet om de kan välja att behålla barnet istället för pengarna, vilket skulle bidra till familjerättssekreterarnas uppfattning om exploatering. Medan både de assamesiska informanterna och föräldrarna uppfattar att kvinnorna har valt att tjäna pengar, anser, till skillnad från de assamesiska informanterna, inte föräldrarna att det är problematiskt för surrogatmammans att lämna barnet. De uppfattar inte att det är surrogatmammans barn, utan det är deras barn, de som har initierat dess tillkomst.

Denna avhandling visar inte bara på att det finns en mångfald olika möjliga konstruktioner av surrogatarrangemang och surrogatmamma, men också att denna reproduktionsmetod kan ske på många olika sätt och att det får konsekvenser inte bara för surrogatmammans utan även för de tilltänkta föräldrarna och de som ska handlägga föräldraskapet. Det visar också ytterligare på komplexiteten som är förknippad med denna reproduktionsmetod.

Resultaten i denna avhandling visar också att den oreglerade situationen för surrogatarrangemang i Sverige kan leda till negativa konsekvenser för föräldrar och möjligen barnen, när deras syn på föräldraskap inte beaktas i föräldrabalken. Surrogatarrangemang ger upphov till många olika konstruktioner av föräldraskap, där intentionen för föräldraskap skulle vara den gemensamma faktorn. Denna pragmatiska syn vid surrogatarrangemang är också uppenbar bland de assamesiska informanterna. Men "krocken" mellan reproduktionsmetoden och förädrabalkens syn på föräldraskap bidrar till osäkerhet och olika handläggning bland familjerättssekreterarna när de hanterar juridiskt föräldraskap. Även om riktlinjer införs för hantering av juridiskt föräldraskap efter transnationellt surrogatarrangemang, finns det fortfarande ingen lag som reglerar föräldraskap vid denna reproduktionsmetod. Detta kan fortsätta att resultera i komplexa och varierade processer för att uppnå juridiskt föräldraskap med risk för att känna sig ifrågasatta som föräldrar och att inte kunna agera som föräldrar gentemot samhället under åtminstone en period, vilket kan ha negativa konsekvenser för barnet.

Med utgångspunkt i Reproductive justice (reproduktiv rättvisa) föreslås en mer transparent process av surrogatarrangemang, där bättre hänsyn tas till både de tilltänkta föräldrarnas och surrogatmammans intressen i landet där det utförs, vilket skulle kunna reducera några av föräldrarnas och familjerättssekreterarnas tveksamheter relaterat till surrogatprocessen. Detta kan också göra att processen för att uppnå juridiskt föräldraskap mindre komplicerad, om familjerättssekreterare kunde få bekräftat att surrogatmammans intressen beaktats. De nyligen gjorde juridiska förändringarna i Sverige, som ska underlätta för fastställande av faderskap för barn födda utomlands, kan leda till färre svårigheter för föräldrar och familjerättssekreterare i den juridiska processen.

Föräldrabalken tar emellertid fortfarande inte hänsyn till föräldrarnas reproduktionsmetod, vilket resulterar i behovet av en styvbarnsadoptionsprocess, vilket kan få negativa effekter för föräldrar och möjligen barnet. Denna fråga behöver fortfarande beaktas för att säkra den juridiska relationen mellan förälder och barn. Det behövs också en reglering för att begränsa risken för alltför stor variation vid hanteringen av dessa ärenden.

সাৰাংশ (Summary in Assamese)

ছাৰোগেচী বা গৰ্ভ ভাৰাত দিয়াটো আটাইতকৈ বিতৰ্কমূলক প্ৰজনন পদ্ধতি হ'ব পাৰে যিহেতু ই মাতৃস্বৰ পৰম্পৰাগত নিয়ম, "পঁয়গৰাকী মহিলাই জন্ম দিয়ে তেওঁৰেই মাতৃ" - এই নিয়ম ভংগ কৰে। ছাৰোগেচীত, পঁয়গৰাকী মহিলাই জন্ম দিয়ে গৰ্ভধাৰণৰ পূৰ্বে তেওঁ আন এহাল দল্লতীৰ কাৰণে শিশুটো তেওঁৰ গৰ্ভত কাঢ়ুওৱাৰ বাবে চুটিওন্দৰ হয়। এইদৰে, এনে গৰ্ভধাৰণক চুটিওন্দৰ গৰ্ভধাৰণ বুলিও জনা যায়, যিয়ে ইয়াৰ লগতে প্ৰজননৰ লগত জড়িত নিয়মসমূহ ভংগ কৰে, বিশেষকৈ যদি কোনোবাই শিশুটো গৰ্ভত কাঢ়িয়াইছে, "ছাৰোগেট বা গৰ্ভ ভাৰাত দিয়াজনে", এই কাৰ্য্যৰ পৰা আৰ্থিকভাৱে লাভবান হ'ব। বিশেষকৈ, দীৰ্ঘতাৰ প্ৰসংগত আন্তৰ্জাতিক বাণিজ্যিক ছাৰোগেচীত এই প্ৰজনন পদ্ধতিত বিতৰ্কমূলক দৃষ্টিভংগী সংযোগ কৰে। ই দীৰ্ঘ মহিলাকসকলক শোষণ কৰা বুলি আৰু শিশু আৰু মহিলাৰ শৰীৰক পণ্যসামগ্ৰীত পৰিণত কৰা বুলি বৰ্ণনা কৰা হৈছে আৰু মিডিয়া, বিদ্যালোক আৰু ৰাজনীতিকৰ মাজত এই বিষয়ত উত্তপ্ত বিতৰ্ক হৈছে। ছাৰোগেচী সংগঠিতহীনভাৱে বিশ্বব্যাপী নিয়ন্ত্ৰিত হৈছে। ফ্ৰান্স, জাৰ্মেনী আৰু ইটালীত ছাৰোগেচী আইন বিৰুদ্ধ; সংযুক্ত যুক্তৰাজ্য(United Kingdom), অষ্ট্ৰেলিয়া, আৰু নেডাৰলেণ্ডত কল্যাণময় ছাৰোগেচী(altruistic surrogacy)ৰ অনুমতি দিয়া হৈছে। এই দেশবোৰত, ছাৰোগেত যোগান ধৰা সংস্থাসমূহ আৰু ছাৰোগেতসকলক মুনাফা লাভ কৰিবলৈ অনুমতি দিয়া নহয়। জৰ্জিয়া, ইউক্ৰেইন, ৰাছিয়া আৰু মাৰ্কিন যুক্তৰাষ্ট্ৰৰ কেইখনমান ৰাষ্ট্ৰত ব্যৱসায়িক ছাৰোগেচীৰ বাবে অনুমতি দিয়া হয় আৰু ছাৰোগেত হিচাপে মুনাফা লোৱা আইনসংগত। এতিয়ালৈকে ভাৰতবৰ্ষ আৰু থাইলেণ্ডত ব্যৱসায়িক ছাৰোগেচীৰ অনুমতি আছিল। যিনহওক, চুইডেনত দেখা গৈছে ছাৰোগেচীৰ বিধিব্যৱস্থা নাই, যিহেতু ছাৰোগেচীৰ উদ্দেশ্যত সহায়কাৰী প্ৰজননৰ সহায়ৰ অনুমতি দিয়া নহয়, কিন্তু ছাৰোগেচীৰ ব্যৱহাৰ আৰু ছাৰোগেত হোৱাটো বেআইনী নহয়। যোঁতয়া নিজৰ দেশত ছাৰোগেচী সম্ভৱ নহয় বা সীমিত হয়, বহুলোকে আন দেশলৈ ছাৰোগেচীৰ বাবে যোৱা দেখা যায়। আন্তৰ্জাতিক ছাৰোগেচী প্ৰজনন পদ্ধতি হিচাপে ক্ৰমবৰ্ধমানভাৱে ব্যৱহৃত হ'বলৈ ধৰিছে। ২০১৫ চনৰ ডিচেম্বৰলৈ, বিদেশীলোকক ছাৰোগেচীৰ বাবে ভাৰতবৰ্ষলৈ আহিবলৈ অনুমতি দিয়া হৈছিল, বহুলোকে আহিছিল, আৰু ভাৰতবৰ্ষ " ছাৰোগেচীৰ হাব" হিচাপে পৰিগণিত হৈছিল। যিনহওক, আৰ্জাতিক ছাৰোগেচীত, এই প্ৰজনন পদ্ধতি ব্যৱহাৰৰ পিছত, বংশপৰিচয়ৰ ক্ষেত্ৰত, আইনগত পিতৃ-মাতৃ কোন হ'ব এই বিষয়ত দুয়োখন দেশে বাধাৰ সৃষ্টি কৰিব পাৰে। যোঁতয়া ছাৰোগেচী আইনসংগত নোহোৱা কোনো দেশৰ পৰা অহা লোকে আন্তৰ্জাতিক ছাৰোগেচীৰ পিছত তেওঁলোকৰ সন্তান নিজ দেশলৈ লৈ যাব বিচাৰে তেঁতয়া বহুটো বাধাৰ সৃষ্টি হ'ব পাৰে।

এই গৱেষণাপত্ৰ বা থিচিচখনে অনিয়ন্ত্ৰিত ছাৰোগেচীৰ অৱস্থা আৰু ছাৰোগেচীৰ বিষয়ে উত্তপ্ত বিতৰ্কৰ ওপৰত ইয়াৰ দৃষ্টিভংগী দাঙি ধৰে, য'ত সাধাৰণ দৃষ্টিত ছাৰোগেচী শোষণকাৰী। এই অধ্যয়নটোৱে বিবিধ দৃষ্টিভংগীৰ পৰা ছাৰোগেচী আৰু ছাৰোগেটসকলৰ দৃষ্টিকোণ আৰু আন্তৰ্জাতিক ছাৰোগেচী ব্যৱহাৰৰ অভিজ্ঞতা অন্বেষণ কৰিছে। ইয়াৰ উদ্দেশ্য আছিল এই প্ৰজনন পদ্ধতিটোৰ বহুমুখী ছবি এখন দাঙি ধৰা আৰু অনিয়ন্ত্ৰিত অৱস্থাত আন্তৰ্জাতিক ছাৰোগেচী ব্যৱহাৰৰ প্ৰভাৱ অন্বেষণ কৰা। এই গৱেষণাপত্ৰখনত অন্তৰ্ভুক্ত সকলো অধ্যয়নৰ বাবে গুণগত পদ্ধতি ব্যৱহাৰ কৰা হৈছে। আন্তৰ্জাতিক ছাৰোগেচী ব্যৱহাৰ কৰা ছাৰোগেট নিয়োগকৰ্তা পিতৃ-মাতৃৰ সৈতে সাক্ষাৎকাৰ পাৰিচালনা কৰা হয় আৰু এই সাক্ষাৎকাৰত ছাৰোগেচী ব্যৱহাৰৰ ক্ষেত্ৰত তেওঁলোকৰ মতামত জানিবলৈ বিচাৰাৰ লগতে আইনগত পিতৃ-মাতৃ হোৱাৰ প্ৰিঅন্যাটোৰ অভিজ্ঞতা জানিবলৈ চেষ্টা

কৰা হৈছে। ইয়াৰ উপৰিও আন্তৰ্জাতিক ছাৰোগেটী ব্যৱহাৰ কৰাৰ পিছত আইনগত মাতৃস্ব আৰু পিতৃস্বৰ সিদ্ধান্তৰ কেচবোৰৰ অভিজ্ঞতাৰ ওপৰত সমাজকৰ্মীসকলে সাক্ষাৎকাৰ লোৱা হয়। বহুমুখী ছবি এখন দাঙি ধৰিবলৈ আৰু দৰিদ্ৰতাৰ ফালৰ পৰা অপশিচমীয়া দৃষ্টিভংগী দিবলৈ, ছাৰোগেটীৰ ওপৰত ৰাইজৰ মতামত জানিবলৈ অসমত অধ্যয়ন এটা কৰা হৈছে। ভাৰতবৰ্ষৰ অসমত মহিলা আৰু পুৰুষৰ সৈতে সাক্ষাৎকাৰ আৰু এই বিষয়ত দলগত আলোচনা(যেগুচুস গৰুপ দডসচুসসডওনস) পৰিচালনা কৰা হৈছে।

ছাৰোগেটীৰ ব্যৱহাৰৰ বাবে বেছিভাগ ছাৰোগেট নিয়োগকৰ্তা পিতৃ-মাতৃয়েই ভাৰতবৰ্ষলৈ গৈছিল, আৰু সমাজকৰ্মীসকলেও আন্তৰ্জাতিক ছাৰোগেটীৰ কেচবোৰৰ পৰা বহু অভিজ্ঞতা ভাৰতবৰ্ষত আহৰণ কৰিছে। যদিও এতিয়া আৰু ভাৰতবৰ্ষত আন্তৰ্জাতিক ছাৰোগেটী ব্যৱহাৰ সম্ভৱ নহয়, এই গৱেষণাপত্ৰখনে আবিষ্কাৰ কৰা বহুটো বিষয় আন্তৰ্জাতিক ছাৰোগেটীৰ ওপৰত বহলভাৱে আলোচনা কৰাৰ বাবে প্ৰাসংগিক হব পাৰে, আৰু এই প্ৰজনন পদ্ধতিৰ ব্যৱহাৰ, আন কোনো দেশ যেনে জৰ্জিয়াত প্ৰযোজ্য হব পাৰে, য'ত বৰ্তমান চুইডেনৰ লোক আহে।

১ম কাকতত উপস্থাপন কৰা, অধ্যয়ন ১ৰ পৰা পোৱা তথ্যসমূহে, ছাৰোগেট নিয়োগকৰ্তা পিতৃ-মাতৃসকলৰ বাবে দেখুৱায় যে, মিশ্ৰিত লিংগৰ দম্ভতীৰ কাৰণে আন্তৰ্জাতিক ছাৰোগেটী পিতৃ-মাতৃ হোৱাৰ বাবে শেষ আশা, আৰু একে লিংগৰ পুৰুষ দম্ভতীৰ বাবে আইনগত পিতৃ-মাতৃ হোৱাৰ একমাত্ৰ আশা। ভাৰতবৰ্ষত তেওঁলোকে ব্যৱহাৰ কৰা আন্তৰ্জাতিক ছাৰোগেটীত, তেওঁলোকে শোষণৰ চৰ্চাৰ বিপৰীতে যুক্তি দিয়ে, এই প্ৰজনন পদ্ধতিটো এটা জয়ৰ অৱস্থা বুলি প্ৰতিফলিত কৰে। ছাৰোগেট এগৰাকীক এনেদৰে দেখুৱা হৈছে যে এগৰাকী মহিলা যিগৰাকীয়ে তেওঁৰ লাভৰ বাবে ধন ঘটিবলৈ ছাৰোগেট হবলৈ বিচাৰে যাতে তেওঁ এটা ভাল জীৱন কটাব পাৰে। তথাপিও, ছাৰোগেট নিয়োগ কৰা কিছুমান পিতৃ-মাতৃয়ে ছাৰোগেট গৰাকীৰ গৰ্ভাৱস্থাৰ সময়ত থিকে আছেন নাই জানিবলৈ বিচাৰে। কিয়নো, গৰ্ভাৱস্থাৰ সময়ত ছাৰোগেট গৰাকী অসুস্থ হ'লে তেওঁলোকক জনোৱা হয় আৰু হয়টো কিছু পৰিমাণে ছাৰোগেট গৰাকীৰ লগত যোগাযোগৰ অভাৱৰ কাৰণে। ছাৰোগেটীৰ একাধিক ব্যৱহাৰ ছাৰোগেটৰ বিষয়ে চিন্তাৰ কাৰণ।

২য় কাকতত উপস্থাপন কৰা, অধ্যয়ন ২ ৰ পৰা পোৱা তথ্যসমূহে দেখুৱায় যে সমাজকৰ্মীসকলে উপলব্ধি কৰিছে যে আন্তৰ্জাতিক ছাৰোগেটী আইনৰ পৰা দূৰত ৰখাৰ এটা উপায় আৰু ছাৰোগেটী ব্যৱহাৰৰ পিছত আইনী পিতৃস্ব আৰু মাতৃস্ব নিৰ্ণয়ৰ বাবে বংশ পৰিচয়ৰ আইন একেবাৰে কম, যিটো কাৰণত তেওঁলোকে এনেধৰণৰ কেচবোৰ চাবলৈ সংকোচবোধ কৰে। এনে বংশ পৰিচয়ৰ আইনে জন্মদাত্ৰী মহিলাগৰাকীক মাতৃ হিচাপে দেখুৱায়, এনেক্ষেত্ৰত ছাৰোগেট গৰাকী মাতৃ হব। যিকনহওক, ভাৰতবৰ্ষত ছাৰোগেটীৰ কেচসমূহত, সমাজকৰ্মীসকলে ছাৰোগেটগৰাকীয়ে শিশুটোৰ ওপৰত তেওঁৰ অধিকাৰ হস্তান্তৰ কৰাৰ সন্মতিৰ ওপৰত অনিশ্চয়তা প্ৰকাশ কৰিছে, যিটো হয়টো ছাৰোগেটসকলক শোষণ কৰা বুলি মিডিয়াৰ দৃষ্টিভংগীৰ দ্বাৰা প্ৰভাৱিত হব পাৰে। যিহেতু সমাজকৰ্মীসকলে ছাৰোগেট এগৰাকীক শিশুটোৰ ওপৰত তেওঁৰ অধিকাৰ হস্তান্তৰ কৰাৰ সন্মতিৰ বিষয়ে নিশ্চিত হবলৈ ছাৰোগেট গৰাকীক লগ ধৰাটো সম্ভৱ নাছিল, ই তেওঁলোকক এনেকুৱা কেচবোৰ চাবলৈ সংকোচবোধ কৰিছিল। তেওঁলোকে নিশ্চিত কৰিবলৈ বিচাৰিছিল যে জন্মদাত্ৰী মহিলাগৰাকীৰ ইচ্ছা আৰু শিশুটোৰ আইনগত পিতৃ-মাতৃৰ প্ৰয়োজন সমতাপূৰ্ণ হয়। যিহেতু তেওঁলোকে কোনো নিৰ্দেশনা নথকাৰ অভাৱত এনেকুৱা পৰিস্থিতি কেনেকৈ সম্ভালিব সেয়া অ-নিশ্চিত, সমাজকৰ্মীসকলে এনেকুৱা কেচবোৰত নানান ধৰণৰ সিদ্ধান্তত উপনীত হয়, যাৰ ফলত আন্তৰ্জাতিক ছাৰোগেটীৰ পাছত আইনী পিতৃস্ব বা মাতৃস্বৰ বাবে বহুটো বেলেগ বেলেগ প্ৰক্ৰিয়া ব্যৱহাৰ কৰা দেখা যায়।

৩য় কাকতত উপস্থাপন কৰা, অধ্যয়ন ৩ ৰ পৰা পোৱা তথ্যসমূহে দেখুৱায় যে বহুতো অসমীয়া তথ্যদাতাৰ আই ভি এক্ ছাৰোগেটীৰ ওপৰত বিশেষ জ্ঞান নাই। যি কি নহওক, তেওঁলোকে ধাৰণা কৰি লয় যে এই প্ৰজনন পদ্ধতিয়ে “তেওঁলোকৰ নিজৰ তেজ-মহৰ” সন্তান এটিৰ প্ৰয়োজন পূৰণ কৰিছে। “তেওঁলোকৰ নিজৰ” এটি সন্তান হোৱাটো গুৰুত্বপূৰ্ণ, যিহেতু সন্তানহীন হোৱাটো কলংক, আৰু বিশেষকৈ মহিলাসকলৰ বাবে প্ৰজননক্ষম বুলি দেখুৱাটো প্ৰয়োজন। ইয়াৰ উপৰিও, কাৰোবাৰ

“পাঁজৰ সন্তান” থকাটো বৃদ্ধাবস্থাত যতন কৰাৰ বাবে ভাল নিৰাপত্তা বুলি ধৰা হয়। ইয়াৰ উপৰিও, ছাৰোগেটসকলক মাতৃস্বৰ পাৰস্পৰিক মান ভংগ কৰা বুলি চোৱা হয়, আৰু “ এগৰাকী বেয়া মাতৃ ” হিচাপে ধৰা হয় যোঁতয়া নিজৰ সন্তানৰ পাৰিবৰ্তে টকাক প্ৰাধান্য দিয়ে। যদিও নিম্ন সামাজিক-অৰ্থনৈতিক পটভূমিত এয়া মানুহৰ মাজত একেবাৰে সাধাৰণ ধাৰণা, ছাৰোগেট এগৰাকীক এনেকুৱাকৈও চাব পৰা যায় যে কোনোবাই আন কাৰোবাৰ সন্তানহীনতাৰ কলংক নোহোৱা কৰিবলৈ এটা ভাল কাম কৰিছে। যিকোনো ক্ষেত্ৰতে, ছাৰোগেট এগৰাকীক শোষিত বুলি চোৱা নাযায়, বৰং, কেনেকৈ তেওঁৰ সিদ্ধান্তই মাতৃস্বৰ পাৰস্পৰিক মান ভংগ কৰিছে তাৰ ওপৰত ভিত্তি কৰি তেওঁক বিচাৰ কৰা হৈছে।

৪ৰ্থ কাকতত উপস্থাপন কৰা, অধ্যয়ন ১ ৰ পৰা পোৱা তথ্যসমূহে দেখুৱায় যে ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃসকলৰ আইনগত পিতৃস্ব বা মাতৃস্ব লাভৰ ক্ষেত্ৰত এটা কঠিন আৰু আনিশ্চিত পথৰ অভিজ্ঞতা হয় য’ত তেওঁলোকে পিতৃ-মাতৃ হিচাপে প্ৰশ্নৰ সন্মুখীন হোৱা যেন অনুভৱ কৰে। তেওঁলোকে প্ৰশ্ন কৰে যে ছাৰোগেটীৰ ক্ষেত্ৰত পৰ্যাপ্ত নিয়ম অভাৱ আৰু ইয়াৰ ফলত প্ৰতিজন প্ৰশাসকৰ ওপৰত নিৰ্ভৰ কৰে এই কেচ বা বিষয়বোৰ কেনেকৈ পৰিচালনা কৰিব। তেওঁলোকে আকৌ প্ৰশ্ন কৰে কেনেকৈ পিতৃস্ব বা মাতৃস্ব, পিতৃস্ব বা মাতৃস্বৰ ধাৰণাৰ ওপৰত ভিত্তি কৰি হব পাৰে, আৰু আইনগত পিতৃ-মাতৃ হিচাপে চাবলৈ আনুবংশিক পিতৃৰ ডি এন্ এ কিয় আৰম্ভনিত যথেষ্ট নহয়, বৰং, আনুমানিক পিতৃস্বৰ ধাৰণাই ছাৰোগেট গৰাকীৰ পিতৃক পিতৃ বনায়। যদিও আনুবংশিক পিতৃক অৱশেষত পিতৃ হিচাপে চোৱা হয়, প্ৰজনন প্ৰক্ৰিয়াটোত তেওঁৰ ভূমিকাৰ ওপৰত ভিত্তি কৰি আৰু ডি এন্ এৰ মনুনা লোৱাৰ পিছত আনুবংশিক পিতৃৰ সংগীক প্ৰজনন পদ্ধতিত তেওঁৰ অংশগ্ৰহণৰ ওপৰত ভিত্তি কৰি তেওঁক মাতৃ হিচাপে চিনাক্ত নকৰে। ইয়াৰ পাৰিবৰ্তে, সিতৰৈ সন্তানৰ দত্তক গ্ৰহণৰ ক্ষেত্ৰত আইনগত পিতৃ-মাতৃ হিচাপে চিনাক্ত কৰাটো প্ৰয়োজন হয়। ইয়াৰ ফলস্বৰূপে, ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃসকলে পিতৃ-মাতৃ হিচাপে প্ৰশ্নৰ সন্মুখীন হোৱা যেন অনুভৱ কৰিছে, এই অনুভৱক তেওঁলোকে পিতৃ-মাতৃ হিচাপে সমাজৰ সন্মৰ্কত কাৰ্য কৰিব পৰা নাই, এই সত্যটোৰ দ্বাৰা আৰু বেছি তীব্ৰ কৰিছে।

এই গৱেষণাপত্ৰখনে দেখুৱায় যে ছাৰোগেটী আৰু ছাৰোগেটৰ বিভিন্ন ধৰণৰ গঠন দৃষ্টিভংগীৰ ওপৰত নিৰ্ভৰ কৰে। ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃ আৰু সমাজকৰ্মীৰ, ছাৰোগেটী আৰু ছাৰোগেটৰ বিষয়ে তেওঁলোকৰ যুক্তিৰ ওপৰত মিডিয়াৰ স্পষ্ট প্ৰভাৱ আছে। যিনহওক, তেওঁলোক বেলেগে এটা সিদ্ধান্তত উপনীত হয়। যদিও, দুয়ো এয়া শোষণ বুলি চৰ্চা কৰে, অকল সমাজকৰ্মীসকলে ইয়াক গ্ৰহণ কৰে আৰু এই প্ৰজনন পদ্ধতিৰ বিষয়ে সন্দেহশীল হয়। ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃ আৰু সমাজকৰ্মীসকলৰ মতে ভাৰতবৰ্ষত মহিলাসকল ছাৰোগেট হোৱাৰ কাৰণ হৈছে দিৰ্ঘতা। কিন্তু ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃসকলৰ মতে ই ছাৰোগেটগৰাকীক লাভাবান্ধি কৰে; ছাৰোগেটী প্ৰক্ৰিয়াত নিযুক্ত হৈ তেওঁ পূৰ্বতকৈ উন্নত অৰ্থনৈতিক অৱস্থা লাভ কৰিব পাৰে। এই তথ্যদাতাসকলৰ মাজত এটা গুৰুত্বপূৰ্ণ বৈষম্য হৈছে, ই তেওঁলোকৰ ভিন্ন ধাৰণাবোৰ বৰ্ণনা কৰে, মাতৃস্বৰ ধাৰণাৰ ওপৰত, য’ত ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃসকলে ছাৰোগেটগৰাকীয়ে জন্ম দিয়া হেতুকে মাতৃ হব এই কথাষাৰ মানি লব নিবিচাৰে। যিনহওক, ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃসকল আৰু সমাজকৰ্মীসকলে ছাৰোগেটগৰাকীৰ অৱস্থাৰ বিষয়ে চিন্তিত হয়, যিটো হয়টো কোনো পৰিষ্কাৰিত আৰু প্ৰসঙ্গৰ লগত জড়িত হব পাৰে। এয়া যুক্তবাস্তৱ ছাৰোগেটৰ ধাৰণাৰ লগত তুলনা কৰিলে স্পষ্ট দেখা যায় যে তাত তেওঁলোকৰ প্ৰতি কোনো চিন্তা কৰা দেখা নাযায়। তেনেক্ষেত্ৰত আমোৰকাৰ প্ৰসঙ্গত মাতৃস্বৰ ধাৰণাৰ গুৰুত্ব কম। ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃ আৰু সমাজকৰ্মীসকলৰ দৃষ্টিভংগীৰ পৰা ছাৰোগেটী আৰু ছাৰোগেটতৰ ধাৰণাৰ আটাইতকৈ গুৰুত্বপূৰ্ণ কথাটো দেখা গৈছে যে এই প্ৰক্ৰিয়াটো এনেকৈ পৰিচালনা কৰা হৈছে যে ছাৰোগেটৰ হিতৰ কথা বিবেচনা কৰা হৈছে। এনেকি, যদিও অসমীয়া তথ্যদাতাসকল আৰু ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃসকলে ছাৰোগেটীক হিতবাহক ৰূপত দেখুৱাইছে, বৰ্হাদিনৰ্থীৰ বিচৰা সন্তানৰ ক্ষেত্ৰত, অসমীয়াৰ দৃষ্টিভংগীত ছাৰোগেটক দেখুৱাৰ ধৰণে, ছাৰোগেটীৰ ব্যৱহাৰ জটিল কৰিছে। তেওঁলোকৰ ছাৰোগেটৰ বিষয়ে থকা ধাৰণা

ছাৰোগেটগৰাকীয়ে কেনেকৈ তেওঁৰ মাতৃস্বৰ ইচ্ছাৰ সন্মুখীন হয় তাৰ লগত জড়িত। ছাৰোগেট-সকলক ” নিজৰ সন্তানক বিক্ৰম ” কৰাৰ বাবে ”বেয়া মাতৃ ” বুলি দেখুৱাটো অকল মাতৃস্বৰ পাৰম্পৰিক ধাৰণায়ে নুবুজায়, লগতে এইটোও দেখুৱায় যে, দীৰ্ঘতা সন্বেও, মহিলাসকলৰ নিজৰ পছন্দ বাছি লোৱাৰ অধিকাৰ আছে, আৰু তেওঁলোকক ”তেওঁলোকৰ সন্তান”ৰ সলনি টকা বাছি লোৱা দেখা যায়। ভাৰতীয় মহিলাসকল, দীৰ্ঘ হোৱাৰ বাবে, টকাৰ পৰিবৰ্তে সন্তানটো নিজৰ লগত ৰখাৰ কোনো বিকল্প নথকাৰ বিষয়ে সমাজকৰ্মীসকলৰ ধাৰণাৰ ওপৰত মিডিয়াৰ ধাৰণাইও প্ৰভাৱ পেলাব পাৰে, যিটোৱে তেওঁলোকৰ শোষণৰ ধাৰণাত অৰিহণা যোগাব পাৰে। যেতিয়া, অসমীয়া তথ্যদাতা আৰু ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃসকলে অনুভৱ কৰে যে মহিলাসকলে টকা কৰাটো বিকল্প হিচাপে লয়; ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃসকলে ছাৰোগেটসকলৰ বাবে সন্তানটো ত্যাগ কৰা সমস্যাৰ কাৰণ নহয় বুলি ভাবে যিহেতু সন্তানটো ছাৰোগেটগৰাকীৰ সন্তান নহয়, ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃসকলৰহে। তেনেক্ষেত্ৰত, ছাৰোগেট আৰু ছাৰোগেটী নিৰ্মান বিবিধ ধৰণৰ দৃষ্টিকোণৰ দ্বাৰা প্ৰভাৱিত হব পাৰে য’ত মিডিয়া, মাতৃস্বৰ ধাৰণা, দীৰ্ঘ মহিলাৰ ধাৰণাৰ লগতে ছাৰোগেটী প্ৰক্ৰিয়াটোৰ লগত জড়িত সন্দৰ্ভ আৰু পৰিস্থিতি এইবোৰ কাৰক যিয়ে ছাৰোগেট আৰু এই প্ৰজনন পদ্ধতিৰ ধাৰণাৰ সৈতে পৰস্পৰে ক্ৰিয়া কৰে। এয়া হয়টো আশ্চৰ্য নহব পাৰে, কিন্তু গৱেষণাপত্ৰখনৰ জড়িয়েতে, ই দেখুৱাইছে কেনেকৈ এই দিশবোৰ সাঙোৰ খাই আছে আৰু বিবিধ দিশবোৰৰ ধাৰণাৰ ওপৰত নিৰ্ভৰ কৰি বিবিধ দৃষ্টৰ উদ্ভৱ হয়, যিয়ে আগলৈ এই প্ৰজনন পদ্ধতিত জটিলতা দেখুৱায়।

চুইডেনত ছাৰোগেটীৰ বিধিব্যৱস্থা নথকা অৱস্থাই ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃসকল আৰু সম্ভৱত শিশুটোৰ ক্ষতি কৰে, যেতিয়া তেওঁলোকৰ প্ৰজনন পদ্ধতিৰ ফলত তেওঁলোক আইনী পিতৃ-মাতৃ নহয় আৰু তেওঁলোকৰ আত্মীয়তাৰ ধাৰণা আনুৰণিক আইনত বিবেচনা কৰা নহয়। বিবিধ ধৰণৰ পিতৃস্ব বা মাতৃস্ব গঠনৰ ক্ষেত্ৰত ছাৰোগেটীয়ে যুক্তি প্ৰদান কৰে, য’ত সাধাৰণ কাৰক ইয়াৰ উদ্দেশ্য হব। অসমীয়া তথ্যদাতাসকলৰ ভিতৰতো এনে ব্যস্তৰধৰ্মী ধাৰণা বিদ্যমান। সমাজকৰ্মীসকলৰ বাবে, ছাৰোগেটী ব্যহাৰৰ পিছত আইনগত পিতৃস্ব বা মাতৃস্ব চোৱাৰ ক্ষেত্ৰত, আত্মীয়তাৰ ওপৰত ছাৰোগেট নিয়োগ কৰা পিতৃ-মাতৃসকলৰ ধাৰণা আৰু আনুৰণিক আইনৰ মাজত সংঘৰ্ষই তেওঁলোকৰ কাম অনিশ্চিত কৰে আৰু ভিন্ন ধৰণৰ সিদ্ধান্ত লোৱাত সহায় কৰে। আন্তৰ্জাতিক ছাৰোগেটীৰ পিছত যদিও আইনগত পিতৃস্ব বা মাতৃস্ব চোৱাৰ নিৰ্দেশনা হব, এতিয়ালৈ ছাৰোগেটী নিয়ন্ত্ৰনৰ আইন নাই, যাৰ ফলত আইনগত পিতৃস্ব বা মাতৃস্বৰ জটিল আৰু ভিন্ন প্ৰক্ৰিয়া চলি থকাৰ লগতে পিতৃ বা মাতৃ হিচাপে প্ৰশ্নৰ সন্মুখীন হোৱা আৰু সন্তানটোৰ আইনী নিৰাপত্তাৰ সঙ্কট আহি পৰিছে।

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Appendix

Vignette

Infertility is a growing problem; many people nowadays have difficulties in having children. And I'm now going to talk about this couple, Anjali and Mokul. They got married 5 years ago and have been trying to have a child since then, but they have not succeeded. After two years of trying, they both went to a doctor to check if something was wrong, but the doctor did not find anything wrong with either of them. So, they continued trying to have a child for another three years but without success. So, we wonder, what do you think about their situation, and what do you think about what their options are, in perhaps solving their childlessness?

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