

In no-man's land: citizens and kin in transnational commercial surrogacy in India

Anindita Majumdar

To cite this article: Anindita Majumdar (2015): In no-man's land: citizens and kin in transnational commercial surrogacy in India, Contemporary South Asia, DOI: [10.1080/09584935.2015.1092500](https://doi.org/10.1080/09584935.2015.1092500)

To link to this article: <http://dx.doi.org/10.1080/09584935.2015.1092500>



Published online: 29 Oct 2015.



Submit your article to this journal [↗](#)



Article views: 7



View related articles [↗](#)



View Crossmark data [↗](#)

In no-man's land: citizens and kin in transnational commercial surrogacy in India

Anindita Majumdar*

Manipal Centre for Philosophy and Humanities, Manipal University, India

Every year, large numbers of aspiring parents from all over the world come to India to fulfil their dreams of parenthood. They hire an Indian surrogate and with the help of state-of-the-art medical technology, they are able to conceive children they can call their 'own'. Since 2005, commercial gestational surrogacy in India has become a lucrative industry thanks to the cheap gestational labour, and cheaper medical services. However, this largely unregulated industry is facing roadblocks in international bureaucratic processes. The child born from the arrangement is often caught between conflicting international laws and deemed 'stateless'. I wish to look at how the state and international laws tend to define persons and relationships by regulating entry and exit, especially through verification and authentication of kin. The world of transparent and visible boundaries – and their policing – is seen through the transnational processes of identifying the stateless children born through the arrangement.

Keywords: surrogacy; transnational adoption; kinship; citizenship; India

Surrogacy in the form that is currently popular, or commercial gestational surrogacy, has contributed to large amounts of foreign exchange in India. Its popularity has led to it being dubbed the sensational 'rent-a-womb industry',¹ and India as the new reproductive tourism hotspot. Gestational surrogacy, 'arises when the embryo is transferred into the uterus of the surrogate mother and is then carried by her' (Udgaonkar 2010, 82). Here, the surrogate only contributes her womb and not her eggs/oocyte, which is unlike genetic surrogacy. Needless to say, the use of assisted reproductive technologies (ARTs; such as in-vitro fertilization (IVF), intracytoplasmic injection, ICSI, and intrauterine injection, IUI) is the primary mode of having children in a surrogacy arrangement. A couple wanting to have a child through surrogacy has the choice of ARTs they may choose from, or the one that the doctor prescribes for them, along with a choice of the surrogate and egg donor. The egg donor is a necessary option that many gay couples exercise in the arrangement. The surrogate, however, has to be an Indian, married and with at least two children of her own as per an Indian draft law (ICMR 2010). India now boasts of being a 'hub for surrogacy', marketing it aggressively through its reproductive tourism industry. Infertility clinics in most of the big cities in India advertise extensively online and also have representatives abroad.²

*Email: andymajumdar@gmail.com

In this paper, I examine the dilemmas that the transnational commercial gestational surrogacy arrangement (henceforth TCGSA) creates for bureaucratic processes of identifying citizens and kin. The paper looks at the process of granting citizenship and analyses the ways in which the nation-state links the idea of being a citizen with parentage and kinship – especially in its differential identification of the mother and father in TCGSA.

Getting citizenship for a child born of TCGSA involves three key documents and knowledge of transnational bureaucratic processes. The birth certificate, the passport and the exit visa engage different international laws and notaries such as the Apostille (French: certification)³ in the process of extending identity to a newborn stateless child. The process itself requires authentication of the child's parentage and his/her rights to citizenship by appearing before the embassies and high commissions, as well as Indian offices that grant the exit visa for the newborn.

The focus in this paper is on the verification and authenticity of the commercial surrogacy arrangement, of which the child is a product. Here, the differential representation of the parents – the surrogate mother and the infertility clinic that 'created' the arrangement as much as the baby – becomes important nodes of analysis. In such an enterprise, I suggest that the idea of the 'stateless citizen' is like a 'disputed person'. In ascertaining the identity of this person, the Indian nation-state drafts a script wherein the notion of biology and parenthood is crafted on lines that obliterates the surrogate mother. This is in keeping with the requirements of Western nation-states, to which many of the intended couples belong, that are willing to grant identity and membership provided that part of the racial mixture in the child is ignored or suppressed. This double act of omission–suppression and recognition is done through the process of verification and authentication of the birth certificate and the DNA test by the Indian state and the foreign nation.

Between 2008 and 2010, three infants born through two different surrogacy arrangements in India were caught in legal wrangles over citizenship and exit. Baby Manji, with a Japanese father, and the Balaz Twins, with a German father, were not allowed citizenship of their respective parents' countries due to the complicated status that surrogacy had in both these countries. In Japan, the medical fraternity forbade the practice of surrogacy while the state itself was ambiguous in its legal stance toward it; and in Germany surrogacy in any form (commercial or altruistic) is a punishable act, thereby deeming the Balaz Twins as not suitable for citizenship. The Indian government on its part was unable to grant the children Indian citizenship as they were not born to Indian parents.⁴ The cases went to the Supreme Court of India and were finally settled through diplomatic channels.⁵ Subsequent cases of 'stranded' children and their parents led to the government and the Indian Council of Medical Research (ICMR) including a new clause in their Draft Bill seeking to regulate the entry of foreign couples for surrogacy:

Foreigners or NRIs coming to India to rent a womb will soon have to submit two documents – one confirming that their country of residence recognizes surrogacy as legal and secondly that it will give citizenship to the child born through agreement from an Indian mother. (Sinha 2010)

These regulations were enacted by the Indian state due to the increasing pressure exerted from many countries in Europe that either banned surrogacy or allowed only altruistic surrogacy. Unable to control the 'traffic' of couples and 'new citizenry' born of an 'illegal' practice, these states began to direct missives to the Indian government to bring in legislative control of commercial surrogacy (Roy 2010). Here, legitimacy and membership to the nation-state become linked to the twin movements of entry–exit that mark migration and traffic across the world.

The issues of borders, national identity, and their linkages with reproduction and kinship are explored through an analysis of the fieldwork data collected from clinics, surrogates and couples (65 individuals, 2 IVF clinics and 1 surrogacy agency) who had children through TCGSA in the North Indian city of Delhi between 2010 and 2012. Out of the 12 foreign couples/single individuals (15 couples/single individuals were interviewed in entirety) who informed the ethnography, the majority were from Australia (7), followed by 2 each from Spain and UK and 1 from Israel. The multi-sited ethnography used snowball sampling to get in touch with respondents, tapping networks of IVF clinics, surrogacy agencies and those of intended parents. Fieldwork notes are interspersed with reference to the two cases cited above, when babies belonging to parents of Japanese and German nationalities were 'stranded' in India soon after their birth and received much media attention.

Surrogacy comes to occupy this in-between space amongst nations dealing with their anxieties regarding their citizenry: wanting the children born, but rejecting/selectively accepting their antecedents. The disjuncture between motherhood and fatherhood is played out at the level of the state and between different states. Despite recognizing and granting identity to the newborn through the father, the mother remains like the 'other' who cannot be ignored. In these conflicts of nations, citizens and kin, the TCGSA story begins to unravel. In the sections that follow, the state(s) is seen in its diverse enactments and demands – and the negotiations with it reveal how biology, children, parents and kin are identified.

Nations, citizens and kin

While globalization⁶ marks TCGSA not only in the movement of people, but also in the movement of finance, capital, eggs and sperm, the reality of the legitimate/illegitimate citizen challenges the fluidity of global processes and spaces by grounding it within territory, space and identity. Akin to the processes of transnational adoption where children travel between nations through mediated, identified bureaucratic channels, TCGSA involves similar negotiations. Yet, unlike transnational adoption, where adopted children are 'legitimated' through complicated procedures of 'biologization' and cultural idioms of kinship (Dorow 2006; Howell 2003; Yngvesson 2010), the child born through surrogacy finds itself cast as 'illegitimate' and in no-man's land, especially when the Indian state and the country whose citizenship is sought concomitantly disown him/her.

Such a stance of illegitimacy is telling when seen from the perspective of illegal migration from the global South to the global North, and the ways in which legitimacy is withheld in such cases. Here, too, migrants find themselves abandoned by both sets of nation-states (Castaneda 2008; Ticktin 2011; Yngvesson and Coutin 2006) and thrust into a state of liminality that they have to battle against. This liminality is overcome through processes that often involve extreme hardships: such as the positionality of the self as 'diseased' (Ticktin 2011), or through concealment (Mody 2008), or through the construction of fictions around one's identity and relationships (Castaneda 2008).

In a fascinating reading of a French case of a 'lost-and-found' child belonging to a legal Algerian immigrant mother, Fassin (2011, 246) notes:

[T]he politics of reproduction must be understood and construed both as a global phenomenon carried out by international institutions and trivialized ideologies and as a local reality ... but these politics are also shaped by national narratives; that is, they are set in territories limited

by borders, and subjected to the authorities. In other words, the global is not more powerful at erasing these limits than the local is at unveiling them.

Here, reproduction is a form of gendered, ethnicized construct that positions immigrant desire for children in the biological realm, while ‘socializing’ the desire for adopted children by citizens of the ‘right’ race and class. Thus, the status of the Algerian mother is ‘suspect’ according to French authorities, because she adopted him. The child’s biological antecedents suddenly become more important, and the child is forcibly taken away by the authorities from the mother, citing amongst other things, her ‘incapability to mother’ (she had left the child with a nanny whose illegal status in France she was unaware of), and of having borne children through ‘multiple fathers’. Such a ‘national narrative’ is present across a Europe that is presently battling declining birth rates (Castaneda 2008; Krause and Marchesi 2007), but this evidently gendered and ethnicized narrative nevertheless identified the ‘mother’ as the undesirable citizen.

In a case that has uncanny resemblance to the one discussed by Fassin, two young children belonging to Indian immigrants to Norway were forcibly taken away by the Norwegian child services on suspicions of domestic abuse (Rashid and Amin 2012). Here the mother, a homemaker, had supposedly fed the children by hand and abused them, one of whom was a toddler (NDTV 2012). Before long, the children were placed in foster care by Norwegian child services, and only after long-protracted negotiations with the Indian government, over the space of many months, were the children released back to their parents. During the course of the negotiations between the two governments of India and Norway, the Indian mother continued to dominate the mass media discourse as ‘unfit’, later fuelled by reports from the father of the child that the mother was psychologically unstable (Naravane 2012). There were examples of how the children ate with their hands and were punished in ways unacceptable for the Norwegian Child Services, and as per Indian media reports, to Norwegian culture (Gerges 2012). Here, the clash of cultures was played out in the conflict over the nurturance and care of the young children where Indian culture was seen as ‘other’ – positioned through the reported hand feeding and through the actions of the mother (Naravane 2012). And despite the presence of the father, he was never identified as the problem (Naravane 2012). Similarly, in another case involving a Norwegian mother of twins born through surrogacy in India, the Norwegian state had to relent and grant citizenship to the children, legitimizing the ties of nurturance that the single mother provided to the two children, in the absence of any genetic link (the babies were born from donated eggs and sperm in the womb of a commercial gestational surrogate) (Krolokke 2012). The ‘fear’ that the stateless children would end up in overcrowded, dirty Indian orphanages if not ‘claimed’ by the Norwegian state influenced the decision regarding the granting of citizenship, the debate around which was again played out through the figure of the mother.

The woman as mother has long been an object of popular fascination, largely due to her power to reproduce (Das 1995), and it is through the body of the woman as mother that these contemporary confrontations are often fought. Women have for many years been biological citizens par excellence (Cohen 2005; Rose and Novas 2005; Yuval-Davis 1996), at the mercy of global and national mechanisms of control, whether in the form of global care workers whose salaries enrich their country’s economy (Parrenas 2001), as trafficked women (Kaur 2010; Sassen 2002), as the object of fertility control, as organs on sale (Cohen 2005), or as surrogate mothers. But they also come to occupy the space of the exotic ‘other’ whose reproductive self is meant to be usurped – including her children.

TCGSA represents the conflicting desire of wanting to incorporate new citizens in the form of children, and the anxiety fuelled by undesirable aliens, in the form of the 'gestate', identified through her race and her affiliations to the global South. 'Consequently, the national must be apprehended as what is left of a world past and simultaneously transformed, and the transnational must be understood in terms of circulations, but also in terms of confrontations' (Fassin 2011, 241). Thus, the two processes of becoming citizens – by birth and through naturalization – are based on the predominant importance of biological kin. The nation draws itself into the imaginings of a larger community of kin. Kinship in this sense exists both as metaphor and the 'real' in narratives of the nation (Carsten 2004).

The anxieties of race, class and ethnicity are complicit in this plot of national kinship. Of late, this is seen in the increasing xenophobia exhibited in state practices amongst many countries in Europe. The fear of 'demographic theft', 'that is, a continuing decline in the native birth rate coupled with a simultaneous increase among foreigners' (Castaneda 2008, 341), has led many countries to enact strict laws regarding immigration and citizenship. The perceived threat of the 'other', mostly illegal immigrants from the South, has led to the enactment of pronatalist policies that are used to call upon citizens to fulfil their national duty to spawn healthy progeny (Krause and Marchesi 2007). The state is deeply implicated in its desire to regulate the lives of its citizens and 'aliens' through its changing notions of kinship and normativities – primarily through the bodies of women as repositories of reproduction (Yuval-Davis 1996). For instance, between 1852 and 1900, the US government allowed male Asian migrants entry, largely in order to work on sugar plantations and railroads. But Asian women were not granted entry for fear of a rise in the Asian populace (Constable 2003, 177). In contemporary practices of seeking citizenship, the USA takes longer to process visas of Asian women marrying American men in comparison to those of Western European women marrying American men (Constable 2003). Race and kinship are brought together in a pre-written script by the nation-state.

Seeking origins: the process of verification and authentication

The process of gaining citizenship in the TCGSA traverses the terrains of verification, identity and authentication. Bureaucratic personnel and machinery ascertain the authenticity of the claim of transferring citizenship to a newborn by seeking the veracity of the genetic tie (through the intended father), and by checking socio-legal relinquishment of the child (by the surrogate mother). The examination of the terms of the pregnancy and the heredity of the child sets the tone for the process of granting citizenship in TCGSA.

Though the intricacies of the process differ from one country to another, an overview of the bureaucratic process gathered from interviews with respondents includes the following primary steps. One, proving descent of the child through a DNA test conducted by the high commission, consul or embassy of the concerned country; two, getting citizenship in the form of the passport for the newborn(s); and three, processing the Exit Visa from the Ministry of External Affairs, Government of India and the FRRO (Foreign Regional Registration Office, Government of India).

Prior to getting the passport, the DNA test becomes the litmus test for ascertaining that the child belongs to the applicant-father and is therefore of the nationality that they have applied for. To process such a test, the Indian municipality and the IVF clinic must furnish the birth certificate, a notarized document that states that the surrogate has relinquished the child, and professionally taken 'family photographs'.

The process

Chen and Roger, an Australian gay couple who had a baby boy and a baby girl in 2011, simplified the complicated process of taking our babies back home in ‘five easy steps’: prove descent, obtain citizenship, obtain exit visa, trip to FRRO and fly back by hiring touts and agents to carry out the visits to the government offices which ‘were shady buildings housing shady officials’ (Chen, 24 December 2010). They had made the necessary payments upfront (including bribes and fees) to make the entire process ‘hassle free’ (Chen, 24 December 2010). Here, I have outlined the ‘five easy steps’ (Figure 1) into three broad stages that mark the process of getting citizenship in transnational commercial surrogacy in India.

Puneet, a person of Indian origin and a British citizen in her late 50s who had a baby boy through surrogacy after three decades of relentless infertility treatment described the process as follows:

We have been told that the UK citizenship process will take six weeks – it takes time to process papers after the birth certificate comes through. In any case it takes two to four weeks to get the birth certificate itself, and the consulate doesn’t process any papers without it. After that the DNA test is absolutely essential without which the paperwork will not progress. We also have to give a family photo taken in a studio to the UK home office. (Puneet Kaur, 21 July 2011)

The process of citizenship differs between different countries, while the Indian side of the engagement remains uniform for differing countries: including the birth certificate and the FRRO verification of the surrogate’s role in the arrangement and the granting of the exit visa to the child.

Transnational bureaucratic processes – whether in the case of cross-border brides, transnational adoption, immigration, or TCGSA – are navigated at one level where the state seems omnipresent; and at another level by couples, immigrants, parents.⁷ Often the state is felt and circumvented through minor forms of corruption. But the temporal and geographic/spatial delays that the process induces are extremely relevant to the understanding of its navigation. The two nodes of this navigation in the case of TCGSA are the birth certificate and the paternity test – as they collide and combine in the complicated processual narrative of exit, entry and identity in the TCGSA.

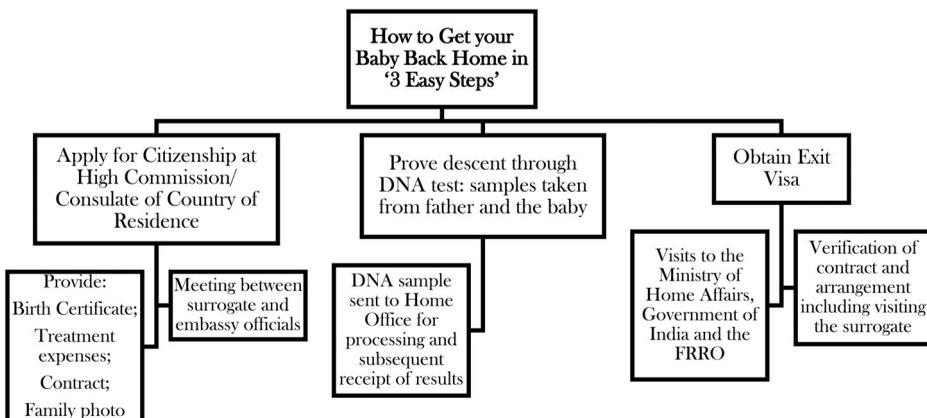


Figure 1. How to get your baby back in three stages.

The birth certificate

The birth certificate is issued by the municipal authority of the Indian city in which the child is born. In the cases discussed in the research the Municipal Corporation of Delhi (MCD) issued the birth certificates to the infants born. The birth certificate is used to qualify the birth and the identity of the child for its future processing into a passport and exit visa.

The birth certificate, as an Indian document issued by Indian authorities, does much more than just recording the birth of the child on Indian soil. Its role in identifying the parents of the child becomes an important proof of the child's antecedents and precedents. Until recently, the municipal corporation did not take cognizance of children born of commercial gestational surrogacy arrangements as in any way special. The mother's name was often listed as that of the surrogate. However, this led to unforeseen problems: for instance, in the case of the Balaz Twins, the recognition of the Indian surrogate as their mother by the High Court initially helped the twins get Indian citizenship. However, the Supreme Court overturned this order at the behest of the Indian government when they were reminded that the 'mother' had relinquished her rights over the children as part of the surrogacy contract.

Such problems as these led to many of the foreign respondents interviewed asking the Municipal Authority of Delhi to enter the name of the mother only as 'surrogate'. This was an issue that directly impacted the process of getting citizenship papers as well as extending parental identity to the surrogate.

In Spain, surrogacy is illegal. In order for the babies to get Spanish citizenship, it was important to put the name of the surrogate mother – the name of the woman who gave birth. I recently went to the tribunal in Spain in order to *strike off the name of the surrogate mother* from the babies' passport. I had to show the contract, notary documents relinquishing rights over the babies [Xavier, 40, father of twin girls, 23 September 2012 *author's emphasis*]

[*Field notes, 30 May 2011*] The MCD [Municipal Corporation of Delhi] certificate had 'Naseem surrogate' as the entry against 'Mother's name'. Puneet [mentioned earlier] was unhappy about it, but was cajoled by the hospital director into accepting it by citing reasons such as this was a mandatory requirement in all MCD birth certificates for babies born through surrogacy. Also, the doctor suggested that after all Puneet's husband's name had made it to the certificate! Puneet had grudgingly accepted the situation

More recently, it appears that the MCD has been trying to accommodate the concerns of the commissioning parents when issuing the birth certificate. Thus, a Delhi-based lawyer who dealt in international surrogacy cases noted how, 'the MCD birth certificate which earlier listed "SURROGATE" in place of "Mother's name" can now have the intended mother's name. All one needs to do is point that out before the birth certificate comes in' (Himanshu, 17 August 2011).

The striking out and omission of the surrogate mother from important identification documents at home and abroad becomes a significant aspect of the process of giving identity to the child, and to its parents as parents. However, this exclusion has to come simultaneously with the recognition of the surrogate as well, with the surrogate is interviewed many times over to ascertain the legality of the arrangement.

The veracity of the birth certificate was subject to multiple processes of verification involving face-to-face interactions with the surrogate and extensive paperwork. At stake was the identity of the mother, which was why the verification process was undertaken.

Verification

An important part of the citizenship process is the verification of the role of the Indian surrogate mother in the arrangement. She is interviewed by the embassy of the country to which intended parents belonged to ascertain whether she had ‘willingly’ relinquished the child or not. This was invariably a matter of great anxiety for the intended parents.

I had to go to the embassy with the surrogate mother and her husband. She had to provide a PAN card and the proof of marriage. The surrogate and her husband didn’t have a marriage certificate – it seemed they had some Hindu ritual marriage and not a legal one. So they went to a notary again and got their marriage registered. The surrogate mother had to sign a document saying she had been free to do the arrangement – and there had been no coercion. She was also relinquishing the rights over the child. At the Spanish embassy, she was legally the mother [Xavier, 40, Spanish national, father of twin girls, 23 September 2012].

Xavier notes that the surrogate also had to give consent to his taking the babies out of the country as the embassy recognized her as the mother. This ambiguity in the child’s identity in being a full citizen is reflected in the conditional acceptance of the surrogate as the mother of the children. Thus, in order to leave India, the Indian authorities also had to ascertain that the baby born was willingly relinquished by the surrogate. Her ‘free will’ in the entire arrangement was absolutely necessary to make sure that she had not been coerced into the arrangement and into giving up the child. The FRRO was in charge of ‘verifying’ this aspect of free will and issuing the exit visa.

The verification usually happened at the applicant’s residence/hotel and involved the thorough examination of the documents supplied and an interview with the surrogate separately. Vishal, friend of Moshe, an Israeli national, who had a son through surrogacy was worried about how the verification process will go.

Vishal (V): Yes ... so we have to show the documents which will certify ... including the passport, birth certificate ... but I am also tense about the requirement of bringing the lady {surrogate} ... that day I got the lady here ... she has to sign ... I hope that is not required ... whatever ... if they are satisfied then they will give a letter saying OK ... and then with that letter we have to go to FRRO office in RK Puram ... and then take the exit visa and go ... but if they say that an inquiry is required then they will do it ... then they will bother me ... although we are not afraid of anything ... We have all the papers and our doctor will support us ... but if they have to do an inquiry they will do it nonetheless ... nothing we can do about it.

Researcher (R): So does an inquiry mean a verification?

V: Yes ... exactly ... meeting this and that person ... unnecessary talk ... that is why I am so tense about how to proceed ... (10 July 2011)

So, until the surrogate’s role was fully complete in the entire process she was not paid the entire amount. This was contrary to what many of the IVF specialists would say about the contract ending with the birth of the child and its relinquishment to the commissioning parents. Most importantly, in the verification process the surrogate’s fees had to be hidden under the garb of ‘medical expenses’. The euphemization of the commercial transaction was to deal with the collision of seemingly ‘hostile worlds’ (Zelizer 2007) of

commerce and intimacy. ‘The idea is to present the papers in such a way that the surrogate’s fees are blanked out, especially for those countries that insist that the surrogacy arrangement should be non-commercial’ (surrogacy lawyer, 21 May 2012).

Authentication: the paternity test

The biogenetic identification of paternity was an important part of claiming national ownership. It also meant that regardless of what the birth certificate stated the real parent was the one who was related through DNA. Despite Smerdon’s (2012, 355) suggestion that all children born of TCGSA in India should be immediately granted a birth certificate that clarifies the nature of the involvement of all the parties concerned, for the sake of the children born from the arrangement, the inter-country, inter-governmental impasse takes centre stage. A variety of conflicting practices form part of the process of granting citizenship. The paternity test, however, takes precedence for many consulates in overcoming the primary conflict encountered in the existence of more than one woman as mother.

Here, the role of the IVF clinic in facilitating the citizenship process was important. They had to not only make sure that the paperwork on their part was clear and unambiguous, but also that the IVF procedure was carried out in a sound, irrefutable manner, in order to ensure that the DNA test would be incontrovertible. A legal counsel for a couple who had a baby through surrogacy recounted the particulars of the case, which was based on a medical malpractice suit.

In a case of medical negligence wherein a Canadian couple who used ARTs to have a baby through surrogacy at an infertility clinic. Canada allows surrogacy, but the DNA test for the passport revealed that the child was not the couples’ – and thus ineligible for Canadian citizenship. Clearly, the doctors at the clinic mixed up the sperm samples. The child is now stateless – it is a double bind case of medical misconduct and citizenship. (Anshu Aggarwal, Supreme Court lawyer, 12 April 2010)

As opposed to relying on the birth certificate, most embassies conduct their own DNA tests. The Israeli embassy, for instance, collected the saliva samples of the baby and the father and sent them to Tel-Aviv for testing, as did the Australian embassy. The test results were mailed to the regional consulate. In Moshe’s case, the saliva sample of the baby had been lost in transit to Israel, leading to a delay and the resubmission of the sample. The wait had been further extended because the saliva could be collected only in special tubes supplied from Israel.

Researcher (R): So what do they do in the DNA test?
 Moshe: They take out saliva from the mouth and put it in water.
 R: And then they put it in a container and ship it to Israel?
 Moshe: They put the liquid in a tube. But the DNA [tube] broke, so we gave it again ... but he is my son! He looks like me! And they can do it in New Delhi, but they are sending it away in my case ... I don’t know what’s the problem. The doctor would never do anything to jeopardize me or my baby. He would have to use my sperm very carefully. They cannot make any mistakes – because if they do then the baby stays in India ... he is an orphan! (10 July 2011)

The authenticity of the child’s genetic origins is traced through the DNA test. Moshe is helpless if the paternity test fails. Resemblance, faith in the doctor and other aspects are

resurrected to claim the authenticity of his tie to his son. The DNA test firmly grounds parenthood within a genetic definition, and yet is a sign of the discomfort that receiving nations feel about the convoluted mixture of genes and gametes in the transnational surrogate child. The conflicted combination of the birth certificate and the DNA test to ascertain the legitimacy of the ‘other’ thus becomes even more pronounced in TCGSA.

Discussion

Citizenship within TCGSA is concerned with identifying the biological origins of the ‘stateless citizen’ born of the arrangement. The convoluted biological arrangement, especially in relation to the status of the mother, means that the state finds itself in conflicted terrain. ‘While citizenship operates to make certain bodies members of a nation-state, simultaneously excluding nonlegible bodies, the construction of motherhood makes some bodies “real” mothers while scrutinizing and questioning whether other bodies legitimately belong to the category’ (Krolokke 2012, 310–311). The parallel process of citizenship and identification of motherhood is certainly the primary aspect of the citizenship process within TCGSA – thus, ‘transnational surrogacy ignites legal, ethical, and cross-border political battles in which babies become troublesome citizens in more ways than one and maternal intent becomes a way to renaturalize (techno) motherhood’ (Krolokke 2012, 308). However, I suggest that the Indian nation-state displaces the focus from the mother to that of the father in identifying the stateless child, by deliberately positioning the surrogate mother within a particular rhetoric that invisibilizes her, and turns her into a ‘womb’. I suggest that the state(s) creates a singular narrative of fatherhood through DNA testing and the birth certificate.

In fact, the multiple mothers help strengthen the claim to genetic fatherhood. Issuing identity papers on the basis of proven paternity also involves a tacit agreement to subdue motherhood. Here, one must remember that motherhood is a ‘disputed’ category; the commercial surrogate mother is taking compensation to relinquish rights to the child. This acts against her in terms of the legal understanding of ‘ownership’, often conflated with nurturance and the ability to do so through financial responsibility for the child’s upbringing. Also, the chances of there being a second anonymous mother in the form of the egg donor further complicates the tie of motherhood and its rightful identification.

Embassies and the government of India recognize the surrogate mother as the *de facto* mother largely due to the tie of *nurturance through the womb*. It is also because she is ‘known’ and visible, as opposed to the anonymous ‘fleeting’ egg donor, that the surrogate is recognized as the mother in the arrangement by bureaucratic authorities. Unlike Krolokke’s suggestion that the tie of nurturance and intent is privileged to grant the status of motherhood to the intended parent, as opposed to the ‘cyborg-like’ surrogate or egg donor, the Indian state uses the ‘cyborgian’ principle as the defining character in order to transfer nurturance and ownership to the intended father, more than the adoptive mother.

The surrogate mother is not alone, however; she has her husband as a signatory to the contract of relinquishment. Here, the surrogate’s husband has also relinquished his claim as father. As the husband of the ‘recognized’ mother, he has claims as the father of the child. The marital tie in many contexts – in most contexts – often identifies the husband as the father of his wife’s children legally.

Here, the ‘masculine state’ reenacts the social contract between fathers to give identity to the child born from the surrogacy arrangement. ‘[T]he law was instituted to shape the

nation as a *masculine* nation, so that the social contract became a contract between men conceived as heads of households' (Das 2006, 25, *emphasis in original*). Drawing from Veena Das's assertion, the surrogate mother and the child born from the arrangement come to embody a category similar to the 'abducted person' identified by the state during the India–Pakistan Partition in 1946–1947.

[O]nce the problem of abducted women moved from the order of the family to the order of the state (as in the demand for legislation), it sanctified a sexual contract as the counterpart of the social contract by creating a new legal category of 'abducted person' (applicable, however, to only women and children) who came within the regulatory power of the state. (Das 2006, 25)

However, the difference in case of TCGSA is the tacit involvement of the state in facilitating the transfer of women's reproductive resources between men of different nationalities to sustain the desires of other masculine nation-states – rather than withholding it for the sake of national honour.

This points towards the ways in which the state recognizes the TCGSA contract as that between men – the intended father, and the husband of the surrogate mother. Here, 'national honour' is negotiated in keeping with an implicit understanding between nations to protect the nation-state as fatherland.

Thus, 'practical kinship' here is not a contrary script from the one mobilized for the sake of national honour (Das 1995), but one that draws from the process of claiming citizenship for the stateless child. It is for the sake of the latter – similar to the abducted child during the partition – that a 'creation narrative' is drafted for the benefit of the state and father (Majumdar 2013). In this case, the process of granting citizenship in TCGSA is informed by similar considerations, as noted by Das in the case of placing children born to women abducted from either side of the religious–territorial divide during Partition.

[H]ow were rights over a child to be distributed between the male and female in terms of their relative contributions to the process of procreation? ... what legal recognition was to be given to children whose parents were not considered to be legally married ...? ... if only one parent was entitled in these cases to transmit filiation as a basis for establishing citizenship, was it the relationship with the mother or the father that was to be considered relevant for creating the necessary credentials for citizenship? (Das 2006, 30)

It is the father who is chosen as the rightful parent, not necessarily because it is a biologically stable identity in TCGSA, but in keeping with tenets of the masculine nation that identifies children as belonging to fathers, more than mothers.

Conclusion

This paper outlines the process involved in granting and claiming citizenship in the TCGSA. The newborn represents the contradictions and conflicts that nation-states are faced with in recognizing its unique birth through an Indian gestate and foreign intended parents. The paper finds that the process of identifying citizenship invokes biology and the social identification of the same through the DNA test and the birth certificate to ultimately differentiate between fatherhood and motherhood. In this process, the surrogate is both recognized and de-recognized as the mother, and at the same time the father is identified as the primary parent. Here, I suggest that nation-states come together to enact a larger script that recognizes the father as the primary identity-giver by devaluing the role of the mother.

Acknowledgements

This paper was presented at the Annual Meeting of the American Anthropological Association held in November 2012 in San Francisco. The data and research in the paper are drawn from my doctoral thesis on interpersonal relationships in the transnational commercial gestational surrogacy arrangement in India from the Department of Humanities and Social Sciences, Indian Institute of Technology-Delhi. I would like to thank my supervisor Professor Ravinder Kaur for her continued encouragement and critical feedback. I would also like to thank Elizabeth Briody, Benjamin Chesluk and Heide Castaneda for reading and commenting on the paper. Thank you to the anonymous reviewers for their detailed and insightful comments.

Notes

1. Such a moniker has been coined in mass media reportage on the issue: Abigail Haworth, 'Surrogate mothers: Womb for rent', *Marie Claire*, n.d.; Judith Warner, 'Outsourced wombs', *The New York Times*, January 3, 2008; Hilary Brenhouse, 'India's rent-a-womb industry faces new restrictions', *Time*, June 5, 2010.
2. One of the most advertised features is the variable cost of having a baby in India through surrogacy and ARTs, which is cheaper in comparison to the USA or UK. At less than one-fourth the expenses incurred in the USA for a surrogacy arrangement, it is literally a 'bargain'. The cost of an IVF cycle in India is approximately 2000 USD as compared to 20,000 USD in the USA. A surrogacy arrangement costs 11,000 USD and above in India (including IVF), whereas in the USA it costs 15,000 USD and above (Sarojini, Marwah and Sheno 2011). Surrogate's fees are much cheaper in India compared to the USA, being anywhere between 6000 and 9000 USD.
3. According to the Apostille Treaty drafted by The Hague Conference on Private International Law, a document issued in one of the signatory countries can be ratified for legal purposes in all other signatory countries. The Apostille acts as international notarization of documents used amongst signatory countries such as India.
4. The Citizenship Act 1955 identifies five criteria that make an individual eligible for Indian citizenship. These are by birth, descent, registration, naturalization and incorporation of territory (Rodrigues 2005: 215). After the 2005 Amendment to the Citizenship Act 1955, the law states that

... on or after the commencement of the Citizenship (Amendment) Act, 2003 where – (1) Both of his parents are citizens of India; or (2) One of whose parents is a citizen of India and the other is not an illegal migrant at the time of his birth, Shall be a citizen of India by birth. [Sec 3, Citizenship Act, 1955]

Essentially, therefore, citizenship is extended to all citizens born in India to Indian parents. Even if only one of the parents is an Indian, the person has the right to apply for Indian citizenship.

5. In the Balaz Twins and Baby Manji cases, international negotiations oscillated between rescuing innocent stateless children to giving recognition to a practice that creates commodities of children. The Indian Supreme Court in its hearing of the Balaz case expressed concern by asking if '[A]n Indian baby is a commodity?' (Rajagopal 2009). 'Do we treat children born out of surrogacy as a commodity? In the end we have to ask if this is a country where people are going to enter a contract to buy or sell children' (Rajagopal 2009). The debate on statelessness seemed to blend in with the ethical question of 'creating' children through the exchange of money. However, in the entire debate, no questions were raised in relation to regulating the medical technology and the arrangement. The focus was on the surrogate who was 'paid to relinquish' her rights over the child, and the status of surrogacy in different countries and cultural contexts.
6. The term globalization is part of an extensive body of research in many disciplines. The preference for 'transnational' instead of globalization in this paper is to stress upon the importance of the boundaries and non-boundaries operating between nations, especially in the context of TCGSA.
7. Such a convoluted process (which seems simple here, but is not) is similar to the one described in the case of transnational marriages. Transnational marriages between couples of different

nationalities (Constable 2003) or amongst the diaspora of the same nationality (Maunaguru 2013), including especially brides from the global South, such as the infamous ‘mail order brides’, have to go through similar processes of bureaucratic scrutiny. In many ways similar to the TCGSA, American men are seen to negotiate with month-long procedural delays to be able to get their Asian wives/fiancées to join them in the USA. The process involves long durations of waiting, stress and anxiety on the part of both the husband and wife, as well as their families. Deomampo (2013) similarly notes that foreigners coming to India to have babies through surrogacy suffer from long periods of immobility and liminality while waiting for their babies’ passports to come through. They are stranded in a foreign country and find navigating this period of uncertainty very difficult.

References

- Carsten, Janet. 2004. *After kinship*. Cambridge: Cambridge University Press.
- Castaneda, Heide. 2008. “Paternity for Sale: Anxieties over “Demographic Theft” and Undocumented Migrant Reproduction in Germany.” *Medical Anthropology Quarterly* 22 (4): 340–359.
- Cohen, Lawrence. 2005. “Operability, Bioavailability and Exception.” In *Global Assemblages: Technology, Politics and Ethics as Anthropological Problems*, edited by Aihwa Ong and Stephen J. Collier, 79–90. London: Blackwell Publishing.
- Constable, Nicole. 2003. *Romance on a Global Stage: Pen Pals, Virtual Ethnography and “Mail Order” Marriages*. Berkeley: University of California Press.
- Das, Veena. 1995. “National Honor and Practical Kinship: Unwanted Women and Children.” In *Conceiving the New World Order: The Global Politics of Reproduction*, edited by Faye D. Ginsburg and Rayna Rapp, 212–233. Berkeley: University of California Press.
- Das, Veena. 2006. *Life and Words: Violence and the Descent into the Ordinary*. Berkeley: University of California Press.
- Deomampo, Daisy. 2013. “Gendered Geographies of Reproductive Tourism.” *Gender and Society* 27 (4): 514–537.
- Dorow, Sara K. 2006. *Transnational Adoption: A Cultural Economy of Race, Gender and Kinship*. New York: NYU Press.
- Fassin, Didier. 2011. “The Mystery Child and the Politics of Reproduction: Between National Imaginaries and Transnational Confrontations.” In *Reproduction, Globalization and the State: New Theoretical and Ethnographic Perspectives*, edited by Carole H. Browner and Carolyn F. Sargeant, 239–248. Durham: Duke University Press.
- Gerges, David. 2012. “Indian Couple have Children Taken away by Norwegian Social Workers because they Fed them with their Hands.” *Mail Online*. January 19, 2012. Accessed September 6, 2015. <http://www.dailymail.co.uk/news/article-2088337/Norwegian-authorities-away-children-Indian-couple-eating-hands.html>
- Howell, S. 2003. “Kinning: The Creation of Life Trajectories in Transnational Adoptive Families.” *Journal of the Royal Anthropological Institute* 9: 465–484.
- ICMR (Indian Council of Medical Research). 2010. *The Draft Assisted Reproductive Technologies (Regulation) Bill*. New Delhi: Ministry of Health and Family Welfare, Govt of India.
- Kaur, Ravinder. 2010. “Bengali Bridal Diaspora: Marriage as a Livelihood Strategy.” *Economic and Political Weekly* XLV (5): 16–18.
- Krause, Elizabeth, and M. Marchesi. 2007. “Fertility Politics as ‘Social Viagra’: Reproducing Boundaries, Social Cohesion, and Modernity in Italy.” *American Anthropologist* 109 (2): 350–362.
- Krolokke, Charlotte. 2012. “From India with Love: Troublesome Citizens of Fertility Travel.” *Cultural Politics* 8 (2): 307–325.
- Majumdar, Anindita. 2013. “Reclaiming Fatherhood: The Masculine Ideal in the Transnational Commercial Surrogacy Arrangement in India”. Paper presented at *Transnationalism, Masculinities and Gender Hierarchies in Asia* conference organized by the Asia Research Institute, National University of Singapore at Singapore, March 13–14.
- Maunaguru, Sidharthan. 2013. “Transnational Marriages: Documents, Wedding Photos, Photographers and Jaffna Tamil Marriages.” In *Marrying in South Asia*, edited by Ravinder Kaur and Rajni Palriwala, 253–270. Delhi: Orient Blackswan.
- Mody, Pervez. 2008. *The Intimate State: Love-marriage and the Law in Delhi*. New Delhi: Routledge.

- Naravane, Vaiju. 2012. "Norway Child Custody Row: Parents' Fight Comes Out in the Open." *The Hindu*, May 24, 2012. Accessed 6 September 2013. <http://www.thehindu.com/news/national/norway-child-custody-row-parents-fight-comes-out-into-the-open/article3013872.ece> on.
- NDTV. 2012. "Nightmare in Norway: Indian Couple Fights to get Children Back." *New Delhi Television*, January 21, 2012. Accessed 6 September 2015. <http://www.ndtv.com/india-news/nightmare-in-norway-indian-couple-fights-to-get-children-back-568348>.
- Parreñas, R. S. 2001. "Mothering from a Distance: Emotions, Gender, and Intergenerational Relations in Filipino Transnational Families." *Feminist Studies* 27 (2): 361–390.
- Rajagopal, K. 2009. "SC Enters Surrogacy Debate, Asks if an Indian Baby is a 'Commodity'." *The Indian Express*, December 16.
- Rashid, Javaid, and Aalya Amin. 2012. "Norwegian Child Services: A Tale of Ethnocentric Hegemony." *Economic and Political Weekly* XLVII (19): 19–23.
- Rodrigues, V. 2005. "Citizenship and the Indian Constitution." In *Civil Society, Public Sphere and Citizenship: Dialogues and Perceptions*, edited by Rajeev Bhargava and Helmut Reifeld, 209–235. New Delhi: Sage.
- Rose, Nikolas, and Carlos Novas. 2005. "Biological Citizenship." In *Global Assemblages: Technology, Politics and Ethics as Anthropological Problems*, edited by Aihwa Ong and Stephen J. Collier, 439–464. New York: Blackwell Publishing.
- Roy, Sumitra Deb. 2010. "Don't serve Euro Citizens, Surrogacy Clinics Told." *The Times of India*, July 14. http://epaper.timesofindia.com/Repository/getFiles.asp?Style=OliveXLib:LowLevelEntityToPrint_TOINEW&Type=text/html&Locale=english-skin-custom&Path=CAP/2010/07/14&ID=Ar00901
- Sarojini, Nadimpally, Vrinda Marwah, and Anjali Sheno. 2011. "Globalisation of Birth Markets: A Case Study of Assisted Reproductive Technologies in India." *Globalization and Health* 7(1): 27–30.
- Sassen, Saskia. 2002. "Women's Burden: Counter-Geographies of Globalization and the Feminization of Survival." *Nordic Journal of International Law* 71: 255–274.
- Sinha, Kounteya. 2010. "Soon, Rent-a-Womb Couples may Have to get Home Country Nod." *The Times of India*, May 22. <http://timesofindia.indiatimes.com/india/Soon-rent-a-womb-couples-may-have-to-get-home-country-nod/articleshow/5960349.cms>
- Smerdon, UR. 2012. "Birth Registration and Citizenship Rights of Surrogate Babies born in India." *Contemporary South Asia* 20 (3): 341–358.
- Ticktin, Miriam. 2011. *Casualties of Care: Immigration and the Politics of Humanitarianism in France*. Berkeley: University of California Press.
- Udgaonkar, Sangeeta. 2010. "Oocyte Donation and Surrogate Motherhood in India." In *Making Babies: Birth Markets and Assisted Reproductive Technologies in India*, edited by Sandhya Srinivasan, 74–93. New Delhi: Zubaan.
- Yngvesson, Barbara. 2010. *Belonging in an Adopted World: Race, Identity and Transnational Adoption*. Chicago and London: The University of Chicago Press.
- Yngvesson, Barbara, and Susan Bibler Coutin. 2006. "Backed by Papers: Undoing Persons, Histories, and Return." *American Ethnologist* 33 (2): 177–190.
- Yuval-Davis, Nira. 1996. "Women and the Biological Reproduction of 'the Nation'." *Women's Studies International Forum* 19 (1/2): 17–24.
- Zelizer, Viviana. 2007. *The Purchase of Intimacy*. Princeton: Princeton University Press.