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ARTICLE

Animating the *Affect–Care–Labor Link* in the Wake of "The Surrogacy (Regulation) Bill": Care Ethics and Policymaking on Indian Surrogacy

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Abstract

Starting from the early 2000s, India was one of the most sought-after destinations for commercial surrogacy. However, in 2015 the government decided to ban transnational commercial surrogacy, and recently "The Surrogacy (Regulation) Act, 2021," which bans commercial surrogacy altogether and confines it to its altruistic form, has been enacted. Our article makes a philosophical intervention into the policy debate around this move by analyzing various draft versions of "The Surrogacy (Regulation) Bill" which culminated in the ban. We argue that the Bill fails to realize its ethical potential since it is vitiated by a number of conceptual fallacies. We expose the conceptual fallacies by unpacking the concept of care in gestational surrogacy through the lens of care ethics. The robust conceptualization of care serves as a critical vantage point for analyzing the Bill's distorted understanding of care (and especially the affect–care–labor link) in gestational surrogacy. Consequently, we conclude that regulation of commercial surrogacy with fair compensation and due consideration for the agency of surrogates holds far greater ethical potential than a blanket ban on commercial surrogacy and mandating that it be practiced only in its altruistic form.

Transnational commercial gestational surrogacy has been one of the significant sites in contemporary India where women's bodies and reproductive technologies have interacted in a neoliberal marketplace. Starting from the early 2000s, India was one of the most sought-after destinations for commercial surrogacy services. However, in 2015 the government decided to ban transnational surrogacy and restrict commercial surrogacy services to Indian citizens (Government of India, Ministry of Home Affairs (Foreigners Division) 2015). Recently, a law, "The Surrogacy (Regulation) Act, 2021," was passed that bans commercial surrogacy altogether and allows only altruistic surrogacy (Gazette of India 2021). This act is a culmination of various draft bills that were presented in the parliament from 2016 through 2019 with the title "The Surrogacy (Regulation) Bill" aiming to ban commercial surrogacy. The stated objective of this legislation as articulated in the first version, "The Surrogacy (Regulation) Bill, 2016," was to

enact a law to regulate surrogacy services in the country, to prohibit the potential exploitation of surrogate mothers, and to protect the rights of children born through surrogacy (Government of India 2016). To meet this objective, "The Surrogacy (Regulation) Bill" through its various drafts proposed to ban commercial surrogacy (thereby making this practice punishable by law) and allow only for altruistic surrogacy with certain limitations. Our article makes a philosophical intervention into the policy debate on Indian surrogacy with reference to different versions of "The Surrogacy (Regulation) Bill" and with special emphasis on its 2019 version. "The Surrogacy (Regulation) Bill, 2019" (Government of India 2019) was the most recent version that was available in the public domain at the time of our work. "The Surrogacy (Regulation) Act, 2021" has very recently become available in the public domain after its publication in *The Gazette of India*, on December 25, 2021. We claim that several conceptual fallacies vitiate the Bill, because of which the Bill fails to realize its stated ethical objective. Our critique of the Bill is developed through unpacking the concept of care in gestational surrogacy through the lens of feminist care ethics.[1] Our analysis sheds light on some of the mistaken assumptions of the Bill, especially its misunderstanding of care, that guide its misdirected rejection of commercial surrogacy.

We argue that the conceptual fallacies in the Bill arise from its naive understanding of care in surrogacy. To expose the misplaced definition of care in the Bill, we first develop in section I an elaborate philosophical conception of care (with an emphasis on care's link to affect and labor) in gestational surrogacy from the lens of care ethics. The robust conceptualization of care serves as a critical vantage point for analyzing the distorted understanding of care in the Bill in section II. We argue in that section that the Bill operates with a simplified understanding of care and ends up distorting the affect–care–labor link, which gives rise to these conceptual fallacies. The fallacies, in turn, undermine the Bill's ethical objective of preventing the exploitation of surrogates.

The Bill, in fact, presumes that altruistic surrogacy is an ethical alternative to commercial surrogacy, which is by default taken to be exploitative. Therefore, one of the primary ways it seeks to prevent exploitation is by banning commercial surrogacy. However, our analysis of surrogacy through the lens of care ethics shows that both this presumption, along with the distinction between commercial and altruistic surrogacy in the way the Bill envisions it, are flawed. The presumption and distinction are both outcomes of misunderstanding care-based labor in surrogacy in general, and especially so in altruistic surrogacy. A ban on commercial and a turn toward altruistic surrogacy is, therefore, not going to resolve the issue of exploitation in surrogacy; rather it can lead to more exploitative situations when the possibility of being compensated for her labor is removed for the surrogate. Our philosophical intervention on the Bill points to the fact that regulation of commercial surrogacy with fair compensation and due consideration to the points highlighted pertaining to the agency of surrogates holds far greater ethical potential than a blanket ban on commercial surrogacy in India and restricting it only to its altruistic form.

I. Conceptualizing Care in Gestational Surrogacy through the Lens of Care Ethics

To unpack the concept of care with sufficient rigor, we focus on the works of Sara Ruddick and Joan C. Tronto from the care ethics tradition (Ruddick 1989/1995; Tronto 1993; 2013; 2015). These care ethicists, however, deal with neither surrogacy nor care in the context of reproductive technologies. By engaging with the broader understanding of care emerging from their work, we develop a robust framework for

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conceptualizing the affect–care–labor link in the context of gestational surrogacy and disaggregation of motherhood, which is made possible through reproductive technologies. We push for an understanding of care as (ongoing) practice and, through the concept of care, emphasize that labor is embedded in it, irrespective of whether surrogacy remains commercial or is altruistic (that is, irrespective of its paid or unpaid form). The Surrogacy Bill seems to have altogether missed the fact that altruistic surrogacy is care-based labor, a point that will become clear in the next section. We also move the conceptualization several steps further to outline the unique epistemologies (care as a rational activity) and moral standpoint inherent within surrogacy as a practice of care as well as a disposition to care. In our work, we situate care as a higher-order concept compared to affect, and also bring out dimensions of what we think constitutes epistemic labor within it. Unfortunately, aspects of affect in care are at times naturalized and biologized, and often care is reduced to mere instinct, which devalues the labor inherent within care, and this is precisely what the Bill does. A nuanced understanding of care in gestational surrogacy, therefore, makes it possible to conceptualize surrogates in the fused roles of caregivers, workers, care-receivers, as well as epistemic agents (as generating unique rationalities of care) and as moral agents (as generating a particular axiology of values of care), dimensions that the Bill fails to see. In emphasizing the epistemology of care, our philosophical framing of surrogacy also contributes toward a novel approach to reclaiming the agency of surrogates in the face of exploitation.

Both Ruddick's and Tronto's works are useful for setting us on the path to destabilizing an understanding of care as pure sentiment or affect and stipulating its role in the emergence of unique epistemologies. Ruddick defines care as

> a general designation covering many activities—maintaining a shelter in which children, among others, are safe (housework); sustaining a circle of connections —of kin and friends—on whom children, among others, depend (kin work); securing, preparing, and serving food to a household or community, including its children; attending to the needs of the vulnerable, children as well as elderly; and teaching the very young or the previously untaught. (Ruddick 1989/1995, 46)

She takes the work of mothering to be a central instance and symbol of care. Ruddick argues that caring labor gives rise to a "rationality of care" (46), and maternal thinking is a central expression of this rationality, claims through which she challenges the dominant Western conceptions of rationality. She argues that all thinking arises in and is shaped by practices—a position that she designates as a "practicalist conception of reason" (xi). Ruddick argues that concepts are defined by shared aims and means to achieve those aims and, although one might consider thinking a solitary activity, it is actually defined and governed by public criteria of meaning and truth. The relationship between mothering and thinking can be fleshed out under this conception, whereby mothers can be seen as reasoners and knowers and not simply as caregivers. This is in stark contrast to dominant patriarchal understandings of care as mere affect, as rooted in bodily impulses, and as opposed to thought (which is considered to be disembodied and dispassionate). Ruddick's argument is that maternal practice gives rise to maternal thinking, thus establishing that care work leads to emergent epistemologies, which will be integral to our conceptualization of surrogates as epistemic and moral agents. The fact that unpaid care work still remains labor is implicit in this larger analysis. Tronto's formulation complements Ruddick's as she too argues that care as a practice involves more than good intentions (Tronto 1993, 136)—care involves thought and

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action and is goal-directed. Care implies reaching out to something other than the self, that is, taking the other's need as a starting point and then responding to it (102). It involves accepting some sort of burden. Writes Tronto, "Caring is both a practice and a disposition" (104). Those who engage in caring must make judgments about conflicting needs, strategies for achieving ends, responsiveness of care receivers, and so on.

Ruddick defines mothers as individuals who meet the demands of maternal work. The three major demands that constitute maternal work according to her are preservation, fostering growth, and social acceptability of the child. To be a mother is to be committed to meeting these demands by carrying out the work of preservative love, nurturance, and training (Ruddick 1989/1995, 17). Caring begins with the perception of vulnerability (in the child), to which the caregiver responds. Worth noting is the optional character of this perception of vulnerability and responding with care, which means that it does not come naturally. This framework enables us to see care as a practice that involves specific kinds of labor (even when it is unpaid) and challenges the myth of maternal love. Ruddick mentions that this does not mean that mothers are devoid of affects. However, the framing of mothering as work points to what mothers attempt to do and not simply to what or how they feel (xi). Defining mothering through a set of activities also helps to debiologize care in the context of reproductive labor and to denaturalize its peculiarly gendered undertones. On the other hand, it also allows for the possibility on the part of a woman to decide not to raise a child she has birthed.

The above serve as some of the fruitful points of departure from which we can begin to destabilize the idea of care as reducible to affect, despite including it. Affect thought through a scheme of maternal instinct remains biologized, a formulation that Ruddick critiques. However, even when affect is understood as feeling, and social dimensions of affect are emphasized, Ruddick's point is that mothering as a form of care involves more about doing than just feeling. Ruddick's insistence on the reliance of mothering on birthing is another valuable resource for situating surrogates as agents and valuable stakeholders. Although in Ruddick's analysis mothering is genderless, still she emphasizes that if we ignore the complexities of human birth and the emotional and physical turmoil of a woman going through pregnancy, we will be denying a dimension on which the entire process of mothering and human life depends. There is a philosophical tradition, Ruddick says, that honors "mind over body, idea over matter, the word over the bloody, shitty, mortal flesh—a tradition that feeds off fear and contempt for female procreative bodies" (49). Ruddick argues that it is not difficult to see why birth itself and female bodies who engage in it are viewed suspiciously. By birthing labor, Ruddick means everything a woman does to protect and sustain the fetus and further elaborates that the culminating moment and defining hope of the work is the act of giving birth (50). As no life can survive without mothering, the defining hope of birth is to create a life-to-be-mothered (51). Giving birth is fraught with complex social and moral relationships, and birth is not merely a physical event. Ruddick states that the birth-giver's work is not compromised if she carefully transfers the responsibility for the infant she birthed to others. Similarly, Ruddick continues, "there are many ways in which adoptive mothers who have not given birth can respect the autonomy and intentions of birth-givers and the work of birth on which all mothering depends" (51).

It must be noted that in high-tech reproduction, as is the case with gestational surrogacy, the unified process of birthing and mothering becomes highly fragmented. There can be an egg donor, the surrogate, and the social mother (who may or may not be the genetic mother). However, such disaggregation of motherhood also leads to differential valuation of the parties involved. The social mother is valued the most

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since her role is seen as the ultimate goal of the whole process; then comes the genetic mother—the egg donor—since a lot of care is taken in choosing egg donors, keeping race, caste, and so on in mind (Bailey 2011, 71920); and last comes the surrogate. Undoubtedly, people in all three categories have to go through emotional and physical suffering. There is tremendous social stigma, for instance, attached to infertility as well as with getting paid for egg donation. Again, there is social stigma in acting as a surrogate, which is crudely seen as renting one's womb and baby selling. Additionally, there is intense physical discomfort owing to a range of medical interventions involved in the in vitro fertilization (IVF) process. However, not only does the emotional and physical pain that a surrogate goes through get somewhat diluted, but she is usually accorded the least importance in the entire process in terms of social status, decision-making, and power. She remains in the most devalued and disposable position.[2] The framework offered here, by emphasizing the need to respect the autonomy and the work of birthing, can, however, reinstate the surrogate in the role of an agent in a process that usually devalues her position. Moreover, her decision to give up the child after birthing can be justified without vilifying her or questioning the moral appropriateness of her decision, as some perspectives (including some feminist approaches) end up doing.[3]

Gestational surrogacy, where surrogates gestate the baby but have no genetic connection with the child, is a deeply biological process, but at the same time, the interventions of IVF and the lack of genetic connection with the fetus also confound the biological in strikingly new ways, thus rendering it atypical as compared to the usual relationship between biology, birthing, and affect in traditional reproduction. If, as Ruddick argues, pregnant women often have a certain maternal attitude toward the fetus when they are looking forward to mothering the child (Ruddick 1989/1995), then one can speculate that the affective response in the process of caring for the fetus in gestational surrogacy is prone to being constructed in a very different way since the surrogate enters the arrangement even before gestation starts by relinquishing the right to mother the child when it is born. The relinquishing of the right (and, consequently, the hope to mother) even before gestation begins distinguishes gestational surrogacy as an atypical form of maternal practice. The differential construction of affect, for instance, can be understood through the various stances surrogates take in exerting their claims to the child. Amrita Pande's ethnography on commercial surrogacy in India includes interviews with several surrogates who argue for the importance of their blood and sweat (labor of gestation) over the genetic tie (based on the intended mother's eggs) to the child in the surrogacy process (Pande 2014). Building on Micaela di Leonardo's concept of "kin work" (the work required to maintain cross-household kin ties) (di Leonardo 1987), Pande uses the term "kin labor" to capture this. Pande says that she uses "kin labor" for the whole range of labor performed by the surrogates, including gestation, giving birth, maintaining ties with the intended mother after birth, and forming a supportive community with the other surrogates at the clinic and hostel (Pande 2014, 266). She further elaborates that in the narratives of surrogates, "the kin labor manifests as both '*khoon paseena*' (the metaphor sweat-blood often used for hard labor) of maintaining kin ties and, more specifically, *khoon aur paseena* (sweat and blood of giving birth)" (266–67, emphasis in original). Pande notes, "the surrogates not only claim that the fetus is nourished by its *gestational* mother's blood but also emphasize that this blood/substance tie imparts *identity* to the child (272, emphasis in original). Kalindi Vora, through her ethnographic study on transnational commercial surrogacy in India, suggests the frameworks of affective and biological labor to understand surrogacy, where the work of self-care and nurture done by a surrogate toward herself

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and the fetus is categorized under affective labor, whereas gestation is categorized as biological labor (Vora 2009, 267). Additionally, she points out that there is a certain Western medical construction of the pregnant body that helps surrogates to see surrogacy as work and themselves as service providers. This medicalized version of the surrogate's body depends on an acceptance of the separation of body and self, and on conceiving the body as a machine that works in parts, so that the uterus becomes just an empty space that can be rented out (272).

The philosophical point we would like to emphasize is that the framework of care ethics not only helps us to understand the labor component of surrogacy in the process of claiming and distancing from the child but can take us a step further in identifying an underlying epistemology (including aspects of epistemic labor) in gestational surrogacy with its unique structure of thinking. To explain: the affective linkages or the attitudes (for instance, the one stipulated through *khoon paseena*) can be taken as unique kinds of epistemological stances by surrogates in the context of the disaggregation of motherhood insofar as they try to rationalize the relation between themselves and the unborn child. In fact, only when we learn to see the affective response by centering the relationship between the surrogate and the unborn child are we able to appreciate that the affect itself is a form of what we might consider to be epistemic labor that the surrogate must perform in the context of caring for the child. It is the relation-centered ontology of care ethics that enables us to appreciate these affective responses as part and parcel of an epistemological standpoint at the same time. Within the epistemological stance of laying claim to the child through *khoon paseena*, as Pande discusses, and simultaneously creating distance from it by instituting a separation between body and self and so on, as Vora highlights (272–73), one sees the blending of the affective and the rational. The bridging of the dichotomy between reason and affect happens under the larger rubric of care, which, in turn, is rooted in the surrogate's ambiguous relation to the potential child that she is called to nurture, but to eventually relinquish to the intended parent(s). The epistemological stance as well as the emergent moral stance of care, therefore, involves making judgments about needs, assessing conflicting needs, disciplining one's emotions, assessing the ends of care, judging responsiveness of care receivers, and so on. Both the affective labor of self-care and nurture done by the surrogate toward herself and the fetus, and the biological labor of gestation as outlined by Vora, can now also be seen as aspects of the epistemology of care in surrogacy.

A surrogate does not act with a detached rationality, but rather with a rationality based on attachment, as care ethics emphasizes, like that of blood and sweat in Pande's example and through self-care and nurture of the fetus during gestation in Vora's (Vora 2009; Pande 2014). The surrogate understands the vulnerability of the child and responds to it responsibly, laboring through various affects that are generated in the process. Upon the birth of the child, she transfers the responsibility to care for the child to the intended parent(s). The epistemology of caring in gestational surrogacy emerges due to being involved in specific kinds of caring relations and practices, which a practicalist conception of reason such as Ruddick's enables us to see (Ruddick 1989/1995). Against this backdrop, surrogates can be conceptualized as epistemic agents, that is, as knowers who understand the potential ramifications of their decisions and not as ignorant and passive objects. The important point to note is that all these facets of care hold whether surrogacy remains commercial or is altruistic. In fact, Ruddick's framing is useful for destabilizing a conception of labor as something that is rooted only in the public and guided by market-based principles. It enables us to see labor within processes of care, which have historically been defined as pure affect

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and as opposed to the category of labor. When it comes to surrogacy, this is immensely useful since the kind of conceptualization of care we are developing highlights the persistence of these nonaffective, thought-intensive, and labor-heavy facets of care even in altruistic surrogacy (that is, even when surrogacy is taken outside of market relations). However, with the ban on commercial surrogacy, surrogacy can no longer be economically safeguarded with adequate pay, thereby becoming potentially more exploitative. In other words, making surrogacy unpaid does not take away the component of labor involved in the process. In fact, making it altruistic takes away from the surrogate the possibility of getting paid for her labor. Again, medicalized conceptions of the body with its characterization of the womb as an empty space to be inhabited by a guest fetus temporarily (Vora 2009, 271) can easily be imported into models of altruistic surrogacy. In this scenario, regulation of both forms of surrogacy but a ban on none appears to be the ethically viable option. Valuing the contribution of a surrogate is imperative from an ethical perspective rather than presuming that all surrogates would be interested in taking up surrogacy altruistically.

In sum, a nuanced consideration of rationality generated through maternal practice can be extended to practices of birthing and gestating, which in turn would enable us to inaugurate a conception of gestational surrogates as generators of a potentially distinct epistemology and a moral orientation to caring. The ways in which surrogates take deep responsibility for the well-being of the child during the gestational period, and also rationalize to themselves and others the process of giving up the baby, reveal the complex mutations that conceptions of care and affect undergo in the context of the disaggregation of motherhood in gestational surrogacy. Here reproductive technologies and the surrogate's body functioning as an "interstitial" or "in-between space" (Banerjee 2014, 120) collide to generate potentially new rationalities and epistemologies of care, which confound our traditional understandings of care, affect, and reason that are generated by conventional practices of birthing. This is precisely the space from which we can begin to envision the agency of surrogates in new ways.

Care ethics also provides a lens to think about care's dependence on various material and institutional factors. Tronto argues that thinking of care as a mere disposition makes it seem as if it were the possession or province of an individual and that it can be put neatly into a sentimentalized and emotional space (Tronto 1993). This overlooks care's dependence on various sociopolitical and cultural factors. In the case of surrogacy, we can think of the fuss over nutritional plans and health of the surrogates, constant monitoring in dormitories during the period of gestation, cleanliness concerns, restrictions imposed on their sexual lives, and so on (Bailey 2011, 721) as indications of creating the right conditions for the fetus to be properly cared for. However, these concerns may also be embedded in problematic sociocultural understandings of race and caste-based purity (Banerjee 2014, 124–25), against which definitions of good caring emerge.

Caring well occurs when the different phases of care work together. Tronto lays out four analytically separate but interconnected phases of care that she devised with Berenice Fisher in their 1991 work (Tronto 1993; 2013; 2015). The first phase is "caring about," which involves the recognition that care is necessary. Someone notices an unmet caring need that is shaped culturally, socially, and politically. The second phase is "taking caring of," which involves assuming responsibility to act toward the identified need and determining how to accomplish it. "Caregiving" is third and involves physical work, that is, the direct meeting of needs by encountering the object of care. The fourth phase, "care-receiving," recognizes that the object of care responds to

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the care received. Even if the person is not able to respond, the care is not complete until the need is met (Tronto 1993, 105–8). In her 2013 work, *Caring Democracy: Markets, Equality, and Justice,* Tronto introduces a fifth phase of caring called "caring with," especially in order to think about democratic care. She writes, "This final phase of care requires that caring needs and the ways in which they are met need to be consistent with democratic commitments to justice, equality, and freedom for all" (Tronto 2013, 23).

The phases serve as an ideal to describe an integrated and well-accomplished act of care. These are useful for conceptualizing surrogates in the fused roles of caregivers and workers, irrespective of whether they are paid for their services. The fused roles of caregivers and workers are highlighted as we consider how the phases of caring (caring as action) are performed by surrogates from the time their bodies begin to be prepped for surrogacy through the time they hand over the child, and how they negotiate various ambiguities such as internalizing the narrative of an "empty womb" in light of a highly medicalized understanding of the body but yet nurturing the fetus (Vora 2009), "destructuring" the normal clocks of their lives and "restructuring" their lives around the standardized "maternal clock" of the industry (Banerjee 2014), and so on. The destructuring and restructuring, which are part of the caregiving process, have affective, rational, and labor-intensive dimensions as was emphasized earlier. The care-receiving phase can be thought of as the successful birth of a child who is received by the intended parent(s). If all these phases of care are emphasized in the surrogacy process, then again care's simple relation to affect becomes complicated, and a conception of care as both thought and activity emerges. In fact, the dichotomy between reason and affect can be seen to be bridged here through the idea of care. We will argue later that the attempt to put gestational surrogacy back into the private sphere by making it altruistic actually renders invisible this kind of fused role of surrogates, which is implicit in a phenomenology of care in gestational surrogacy. The fifth phase may help indirectly insofar as keeping ideals of justice, equality, and freedom for all in mind may benefit the framing of policy on this kind of care work in a democratic system.

In her 1993 work, Tronto argues that the first four phases of care give rise to four ethical elements of care namely, "attentiveness" to the need of caring, "responsibility" to take an action in the face of need, "competence" to carry out caregiving, and "responsiveness" to acknowledge the provided care. These, she says, become the main elements of the ethic of caring (Tronto 1993, 127–36). Introducing the fifth phase of care in her 2013 work, Tronto mentions a fifth ethical quality. Going by the additional set of qualities identified by Selma Sevenhuijsen that are necessary for caring in a democratic society (Sevenhuijsen 1998), Tronto mentions "Plurality, communication, trust and respect; solidarity" as the ethical qualities parallel to this fifth phase (Tronto 2013, 35). She argues that these qualities identified by Sevenhuijsen help to explain what the critical moral qualities are that will make it possible for people to take collective responsibility, to think of citizens as both receivers and givers of care, and to think seriously about the nature of caring needs in society.

Surrogates should be situated not only as caregivers, but also as persons entitled to receiving care. When a surrogate is involved in caring for the fetus and herself, whether in commercial or altruistic surrogacy, she can be seen as a caregiver. The surrogate can also be seen as one who can make a claim to be cared-for. Situating her as an agent entitled to receiving care could reorient ethical praxes in multiple ways. Drawing from elements of care given by Tronto above (Tronto 1993; 2013), first, "attention" has to be paid to what a surrogate is actually going through and what her needs are;

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then "responsibility" should be taken to act toward addressing these needs with "competence"; and when a surrogate "responds" to care, the genuineness of the care given and fulfillment of care can be verified. If caring is an ongoing process, then caring for the surrogate (her physical and mental well-being) should extend, in one form or another, beyond the delivery of the child, and must be accounted for in the surrogacy contract. Understanding this aspect of the relation between care and surrogacy also provides an important argument for preserving agency and well-being of surrogates on a long-term basis, in a process that typically dehumanizes them. The dehumanization happens partly because, as Tronto observes, care work is devalued and care itself is devalued conceptually because of its connection to privacy, emotion, and need (Tronto 1993, 117). We would like to highlight that these aspects of dehumanization, along with exploitation predicated on the devaluation of care in all the ways mentioned, will persist even in the case of altruistic surrogacy. The dual understanding of the surrogate as caregiver and care-receiver can enrich policy formulations and situate her as a stakeholder in novel ways.[4] Lastly, the additional set of qualities, "Plurality, communication, trust and respect; solidarity" are necessary for caring in a democratic society and are to be taken into consideration especially while formulating a law or a policy. Given that a "reproductive caste system" (Banerjee 2014) may be implicit in the context of high-tech reproduction, and the vulnerability of surrogates often supersedes that of the other parties to the surrogacy contract, the moral qualities mentioned furnish an ideal for mitigating the exploitative character of surrogacy contracts and for upholding the agency of surrogates. Moreover, trust and respect also demand that policymaking on surrogacy consider surrogates as valuable stakeholders in the process and not assume that they are mere victims to be rescued from the clutches of exploitation, as the Bill seems to do.

Another point worth noting in Tronto's work is her discussion of relationality and altruism, which could have a bearing on the (mis)understanding of the connection between commercial and exploitative on the one hand, and altruistic and ethical on the other, in the context of the ban. Tronto maintains that a feminist democratic ethic of care looks at human beings as being in relationships as opposed to being autonomous, and that this ethic accounts for both the desires of autonomy and the reality of dependency by thinking of this practical problem as part of the central concerns of a democratic society (Tronto 2013, 30–32). She further suggests that the alternative way of thinking about human nature is "as being *relational*, not as being altruistic" (32, emphasis in original). She argues that this is an important difference as one can make arguments for more robust public support for care by describing people as altruistic. The problem, however, argues Tronto, is that altruism has its limitations insofar that it is presumed to start from the nonselfish motives of a self, rather than from a natural (if untrained) impulse among all humans to connect to one another by thinking about and helping meet the other's needs as in caring. She argues,

> From the standpoint of the relational nature of humans however, doctrines of selfishness are themselves inadequate accounts of what it means to be human; and the fact that some people "choose" to be selfish is not an acceptable account of how humans should act. In this way, altruism can be reduced to an "identity"—some have it and some do not. (32)

But this view, Tronto says, is in fact inaccurate. Instead, an elaborate set of social and political institutions are in place that support the selfishness of some and the altruism

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of others. Until these conditions are unpacked, focusing on altruism alone is not a sufficiently deep challenge to the inequitable and unfree ways in which caring responsibilities are distributed. Tronto says that politically, the feminist democratic ethic of care seeks to expose how social and political institutions permit some to bear the burdens of care and allow others to escape them (32–33). We find this useful to question the premise that making altruistic surrogacy the only permissible form will take care of the problem of exploitation, and to problematize the characterization of altruistic surrogacy as ethical by default in the next section (as one version of the Bill does).

Drawing up a complex conception of care, animating the affect–care–labor link in a robust way, and mapping it onto surrogacy, therefore, enables us to expose various aspects concerning the position of stakeholders (especially surrogates) and the practice itself. By looking at surrogacy as a caring relation in light of a rich understanding of care, the fused roles of surrogates as caregivers, workers, and care-receivers, as well as epistemic and moral agents, is established. Be it altruistic or commercial, a phenomenology of labor is inherent in a phenomenology of care. The pertinent question remains, can we be sure that making surrogacy altruistic is the only way to lessen exploitation and make it more empowering? Seeds of the analysis have been introduced in this section, and we continue to develop it further by turning to clauses of "The Surrogacy (Regulation) Bill" in light of the nuanced philosophical conception of care in surrogacy introduced in this section.

II. Conceptual Fallacies and Their Implications for the Ethical Project of "The Surrogacy (Regulation) Bill"

Through the lens of a complex philosophical conception of care in surrogacy developed in the previous section, we now turn to a critical analysis of "The Surrogacy (Regulation) Bill." We identify several conceptual fallacies at the heart of the bill, which result from the bill operating with a naïve understanding of care in surrogacy. We read the bill's attempt to push for altruistic surrogacy as an outcome of reducing care to pure affect, embracing a problematic understanding of affect, and negating the care–labor link in surrogacy, and in the process, greatly simplifying the epistemologies and ontologies of care. Consequently, the epistemic and moral agency of surrogates is also overruled. The fallacies not only undermine the ethical potential of the Bill, but also threaten to harness the power of reproductive technologies to facilitate the creation of normative femininity and motherhood, which may dangerously align with patriarchal and antifeminist articulations. In this scenario, we conclude that the regulation of commercial surrogacy holds far greater potential for making the practice ethical than a blanket ban on commercial surrogacy and/or a mandate that it can be practiced only nonexploitatively in an altruistic form, as the bill and ultimately the law decree.

Before considering the fallacies, however, it is important to briefly consider the trajectory of the bill to appreciate how the move toward a ban on commercial surrogacy emerged. In 2012 the Indian Ministry of Home affairs instituted a ban on foreign same-sex couples coming to India to avail themselves of surrogacy, and almost three years down the line, another ban was issued in 2015 preventing all foreigners from accessing surrogacy in India (Government of India, Ministry of Home Affairs (Foreigners Division) 2015), thus doing away with its transnational component altogether. In the following year, on November 21, 2016, the Indian government tabled "The Surrogacy (Regulation) Bill, 2016" in the lower house of the parliament *Lok Sabha* (House of the

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People) (Government of India 2016). The primary clause of the 2016 Surrogacy Bill completely banned commercial surrogacy and allowed altruistic surrogacy only to Indian couples married for at least five years. The surrogate was mandated to be a close relative, and no payment, whether in cash or kind, was allowed to be made to her for her surrogacy services except for the necessary medical expenses and insurance coverage. Followed by subsequent revisions, this bill marked a drastic policy shift since it proposed a ban as opposed to regulation, which had characterized prior attempts to introduce legislation on commercial surrogacy through draft bills such as "The Assisted Reproductive Technologies (Regulation) Bill- 2010" (Government of India 2010), and its revised version in 2014 (Government of India, Department of Health Research 2015).

The 2016 Bill was sent to a department-related Parliamentary Standing Committee on Health and Family Welfare by the chairperson of the upper house of the parliament *Rajya Sabha* (Council of States) in consultation with the speaker of the *Lok Sabha*, which recommended against the ban in its report tabled in both houses in August 2017 (Parliament of India 2017). The Government, however, stuck to its original stand, and with slight modifications (like specifying the insurance period for sixteen months covering postpartum complications), the Bill was reintroduced under the name "The Surrogacy (Regulation) Bill, 2018." This version was passed by *Lok Sabha* in December 2018 (Government of India 2018). Before it could be passed by *Rajya Sabha*, however, the Parliament was dissolved when India held general elections in April–May, 2019. After elections, the bill was reintroduced as "The Surrogacy (Regulation) Bill, 2019" in July 2019 in *Lok Sabha*, and was subsequently passed in this house in August 2019 (Government of India 2019). *Rajya Sabha*, however, referred the bill to a Select Committee in November 2019, which tabled its report in the House on February 5, 2020, and suggested some changes, like removal of the five-year waiting period after marriage; removal of the close-relative clause with regard to the surrogate; and allowing widows, divorcees, and couples of Indian origin to have children via surrogacy, among others, but approved a complete ban on commercial surrogacy (Parliament of India 2020). On February 26, 2020 the Union Cabinet announced the approval of "The Surrogacy (Regulation) Bill, 2020" after incorporating these recommendations of the Select Committee (Press Information Bureau 2020b). The bill was due to be tabled in parliament in the budget session of 2020, but it was delayed because of the disruption of the COVID-19 pandemic. It was finally passed by the *Rajya Sabha* on December 8, 2021 and by the *Lok Sabha* on December 17, 2021, and became "The Surrogacy (Regulation) Act, 2021" after receiving the assent of the President of India on December 25, 2021 (Gazette of India 2021). The 2019 version was the most recent one available in the public domain at the time of our work and until recently, when the Act came out in the Gazette. Therefore, we worked primarily with the 2019 Bill, while occasionally referring to the other versions as well as the 2021 Act.

While banning commercial surrogacy, the 2019 Bill states:

> no surrogacy or surrogacy procedures shall be conducted, undertaken, performed or availed of, except for the following purposes, namely:— (a) when either or both members of the couple is suffering from proven infertility; (b) when it is only for altruistic surrogacy purposes; (c) when it is not for commercial purposes or for commercialization of surrogacy or surrogacy procedures. . . . (Government of India 2019, chapter III, section 4, Clause (ii[a][b][c]), 4)

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It is clear from this clause that only altruistic surrogacy is allowed. It is also clear that only infertile couples are allowed to use surrogacy. Further conditions include that the couple has to be married for at least five years and should have no child (biological or adopted or through surrogacy) of their own (an exception is made in case of a child with life-threatening illness with no cure, or a disability) as laid out in chapter III of the 2019 Bill (section 4, clause (iii[c(II)(III)]), 6).

In the 2021 Act (Gazette of India 2021), as per the recommendations of the Select Committee (Parliament of India 2020), the five-year waiting period for the intended parents has been removed, and widows, divorcees, and couples of Indian origin have been included in the category of people who can use surrogacy. However, eligibility remains tied to one's marital status (which is recognized only in the case of heterosexual relationships in India), thus doing little to mitigate the bill's heterosexist tones.

In the 2019 bill, the sale and purchase of embryos and gametes (eggs and sperm) is also considered to be a part of "commercial surrogacy," which is defined as:

> commercialisation of surrogacy services or procedures or its component services or component procedures including selling or buying of human embryo or trading in the *sale or purchase of human embryo or gametes* [emphasis added] or selling or buying or trading the services of surrogate motherhood by way of giving payment, reward, benefit, fees, remuneration or monetary incentive in cash or kind, to the surrogate mother or her dependents or her representative, except the medical expenses incurred on the surrogate mother and the insurance coverage for the surrogate mother. (Government of India 2019, chapter I, section 2, clause (f), 2)

Section 2 clause (zf) (3) states that the child must be genetically related to the intending couple, thus ruling out even the possibility of free donor gametes, which, in turn, further restricts the domain of eligible couples. These points remain the same as per Select Committee recommendations.

Only an ever married "close relative" who has a child of her own can become a surrogate under the 2019 Bill, whereas the 2021 Act does not confine potential surrogates to close relatives but broadens the category to include any willing woman (Gazette of India 2021). The 2019 Bill, however, states:

> (I) no woman, other than an ever married woman having a child of her own and between the age of 25 to 35 years on the day of implantation, shall be a surrogate mother or help in surrogacy by donating her egg or oocyte or otherwise;
> (II) no person, other than a close relative of the intending couple, shall act as a surrogate mother and be permitted to undergo surrogacy procedures as per the provisions of this Act; (III) no woman shall act as a surrogate mother by providing her own gametes. . . . (Government of India 2019, chapter III, section 4, clause (iii [b(I)(II)(III)]), 5)

In the 2019 Bill, "altruistic surrogacy" means:

> the surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses incurred on surrogate mother and the insurance coverage for the surrogate mother, are given to the surrogate mother or her dependents or her representative. (Government of India 2019, section 2, clause (b), 2)

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A very interesting fact stands out pertaining to the use of the phrase "altruistic surrogacy" in the 2016 Bill. One of the points under its "Statement of Objects and Reasons" runs: "to allow *ethical altruistic surrogacy* [emphasis added] to the intending infertile Indian married couple between the age of 23–50 years and 26–55 years for female and male respectively . . ." (Government of India 2016, section 3(e), 19). It is puzzling to see that the 2016 Bill assumes that altruistic surrogacy is ethical—a connection that can be made sense of only if the naive understanding of care at the heart of the bill is uncovered. Although the 2019 bill does not mention the term "ethical" and simply retains "altruistic," it too takes itself as curbing exploitation of surrogates and of children born of surrogacy by removing the commercial component (specifically, payment to the surrogate). In this regard, a tacit conceptual juxtaposition of "exploitative" and "commercial" on the one hand, and "ethical" and "altruistic" on the other, may be said to persist, which has troubling implications for the definition of exploitation in policymaking on surrogacy. In fact, although per the Select Committee's recommendations, now the surrogate can be paid for some other contingencies like nutritious food, maternity wear, and so on listed as "such other prescribed expenses" in addition to the medical expenses (Parliament of India 2020, 23), it still bans surrogates from accepting payment for their labor. The above-mentioned connection is also explicitly endorsed in a press note of February 19, 2020, where the government announced the approval of the now passed "Assisted Reproductive Technology (Regulation) Bill 2020" and made a distinction between "commercial surrogacy" (to be banned) versus "ethical surrogacy" (to continue subject to limitations) (Press Information Bureau 2020a). "Ethical" here is used as a substitute for "noncommercial" or "altruistic" surrogacy, implying again the clear juxtaposition of "ethical" and "altruistic." We will reflect on this further as we systematically lay out the conceptual fallacies in the Bill due to its missing many of the complexities around the affect–care–labor link in gestational surrogacy as articulated in the previous section.

The first fallacy vitiating the bill is that it reduces care to affect, naturalizes affect, and thereby biologizes women's care work—all of which we have extensively critiqued in section I. We argue this based on the altruism clause in the bill, which makes it clear that payment of any nature cannot be given to the surrogate except for medical and other prescribed expenses she incurs during the surrogacy process. The underlying assumption is, therefore, that a woman will be prepared to give birth to a child for someone else and go through all the trials and tribulations of surrogacy without expecting any incentive, and out of sheer love and compassion. It implicitly takes birthing a child to be a selfless (read altruistic) act on the part of the surrogate insofar as she as a woman, and a mother is bound to do it without expecting any monetary benefit in return. In other words, the monetary component is what seems to corrupt the process by making it exploitative per the bill. Moreover, as discussed in the previous section, when altruism is mistakenly taken to be an identity, it camouflages the fact that inequitable and unjust institutional conditions are in place that skew the distribution of caregiving responsibilities by supporting the selfishness of some and the altruism of others. Naturalization of care across gendered, racial, and caste lines can only be understood in light of the institutional structures that create a skewed distribution of caregiving responsibilities. Therefore, we believe that the bill's presumed altruism of surrogates is anchored in a naturalized approach to care, that is, in thinking of reproductive labor as essentially being women's work and tied to things such as maternal love or instinct of the kind we have critiqued. The bill clearly indicates that expecting payment for reproductive labor is immoral, which leads to the problematic entailment that it is the

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commercialization of the transaction that is somehow directly responsible for the exploitation. A phrase such as "ethical altruistic surrogacy" in the 2016 bill and the use of "ethical" in place of "altruistic" in the press note of 2020 can be understood in this light.

A biologized conception of the affective and subsequent simplification of the care–affect link on the part of the bill potentially facilitates a naturalized understanding of femininity itself and, in so doing, prepares the ground for the emergence of a docile feminine subject in line with patriarchal constructions. In other words, the bill makes possible certain kinds of ideal subjects and norms of femininity and motherhood while rendering nonnormative forms invisible in terms of who is allowed to enter as well as exit high-tech reproduction (including surrogates and clients). For instance, the implicit assumption of the bill that only altruistic surrogacy is ethical is predicated on an idea that only when a woman becomes a gestational surrogate without expecting monetary benefit, that is, only when she births a child for someone else selflessly, will the surrogacy be ethical. This selfless/no-expectations image of the surrogate mother can be made sense of in the context of the normative patriarchal image of motherhood that sees mothers as and demands them to be quintessentially self-sacrificing. Again, given the requirement of a woman having a demonstrated history of successful births to be a surrogate, coupled with the social realities where having a child out of wedlock is hugely stigmatized, a surrogate is inevitably an ever-married woman, and the same is reflected in the bill. The addition of widows and divorced women to the category of eligible persons who can use altruistic surrogacy, but exclusion of single women, also alludes to the ever-married identity of the mother. The bill excludes many nonnormative forms of kinship; single men, unmarried women, live-in partners, same-sex couples, and so on fall outside the eligible category. Even among heterosexual couples, only infertile couples are allowed to use surrogacy. However, if either of the partners does not have viable gametes of their own, which can be a possible reason for infertility, they lack access to surrogacy. This is because the sale/purchase of donor gametes is prohibited and the child must be genetically related to the intending couple, which then leaves out freely given donor gametes. Although the 2021 Act allows widows and divorced women to use surrogacy, the other exclusions continue. The ableist undertones of the bill are also disturbing—the presence of a disabled child is one of the scenarios in which heterosexual married couples are permitted to access surrogacy. Through all these strategies, particular affects and ideal subjects seem to be in the making through technology, as we highlighted in the previous section; but the law also actively participates in constructing ideals of motherhood, femininity, family, and so on. What we emphasize through our analysis is how the simplification of the affect–care link is partly responsible for who gets pulled in and who gets left out, and directly contributes to the regulatory strategies of the bill. While rendering other (nonnormative) forms invisible, both in terms of who is allowed to enter and who is allowed to legitimately exit the technology, the bill itself not only ends up regulating the use of technology, but in the process, becomes a technology of statecraft that potentially makes and unmakes specific lived experiences, affects, and social relations—a suggestion that, because of space constraints, we can only introduce here.

The second fallacy of the bill is its failure to recognize that a phenomenology of labor (including epistemic labor) is already inherent in a phenomenology of care in surrogacy, irrespective of whether surrogacy is paid for or not. Given that the bill fails to appreciate that care is work independent of whether it is paid for or not, it ends up treating care and labor as mutually exclusive categories. We have extensively argued for surrogacy to

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be seen as an active form of work and have highlighted various forms of epistemic labor in the caring process that will persist, even if it were to be pushed into the private domain and economic compensation is removed. Surrogates have been conceptualized as caregivers and workers, as well as care-receivers. However, as has been mentioned, keeping reproductive labor out of the purview of the public sphere (as the bill intends to do) may be tied to deep patriarchal anxieties around women's bodies and embodied labor during reproduction, which in turn threaten to expose the vulnerability of the flesh and distinctive feminine capacities in reproduction. This is exactly the tradition that Ruddick thinks "feeds off fear and contempt for female procreative bodies" (Ruddick 1989/1995, 49) and holds them in contempt due to their potential to disrupt narratives of absolute autonomy. We read the bill as again subsuming labor within a narrative of maternal instinct, women's roles, and feminine affects, which renders invisible the nonaffective and labor-intensive dimensions of caring in surrogacy, including the emergent rationality of care. Since the point about how the practice of care in surrogacy gives rise to unique forms of thinking is overlooked, the epistemic and moral agency of surrogates is also overruled. If being paid for surrogacy is considered to be unethical, then the labor aspect of surrogacy is simplistically taken to be what corrupts the process and creates exploitation to begin with. Moreover, the understanding of the labor aspect is erroneous since the labor component is simply understood in terms of its tie to the market, rather than in all its complexity as laid out in the previous section. Finally, a neat line of separation is instituted between the two domains of care and labor in which either one (and never both together) can and should operate in the context of surrogacy. Hence, the move on the part of the bill to remove exploitation by not recognizing the work component of surrogacy, a move that may end up serving quite the opposite purpose.

The third fallacy is that as reproductive labor is pushed back into the private domain, not only is the labor dimension of surrogacy rendered invisible, but issues of violence and patriarchy in this sphere are also sidelined. The grossly misplaced assumption in the 2016 bill of altruistic surrogacy being ethical by default is predicated on another faulty assumption in this bill, namely, that by pushing surrogacy into the domain of family and by permitting only a "close relative" (chapter III, section 4, clause (iii [b (II)]), 5) to act as an unpaid surrogate, less exploitation can be guaranteed. It forgets that people can coerce poorer family members or acquaintances to become unpaid surrogates, especially in the context of the distributive injustices of caregiving responsibilities where the selfishness of some is predicated on the altruism of more vulnerable others. Uma Narayan, in fact, challenges the assumed discontinuity between commercial and what she calls "gift surrogacy" (altruistic surrogacy), and even ordinary motherhood (Narayan 1999, 75). She points out that the kinds of exploitation claimed to be associated with commercial surrogacy can also be found in gift surrogacy when women are forced to gestate children for their relatives or friends. Narayan even draws a comparison with traditional motherhood, where a woman does not have control over reproduction and becomes a mother primarily because it is seen as her duty toward the family. Given the fact that there can be both problematic as well as unproblematic cases in any form of surrogacy, she argues that legally prohibiting one over another does not make sense. In other words, the ethical concerns that arise for commercial surrogacy may also be present in altruistic surrogacy. Narayan's argument can further strengthen our critique of the assumed distinction between commercial and altruistic on the grounds provided by the bill. Moreover, the rationale the bill gives in favor of the ban is that commercial surrogacy is exploitative toward women who come from

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poor socioeconomic backgrounds. Physical and emotional risks are also highlighted. While denying none of these claims, we note that these risks will be no less for women who become altruistic surrogates. Following the Select Committee recommendations, the 2021 Act has finally retracted this close-relative requirement and allows any willing woman to act as a surrogate, but it still does not allow a surrogate to be paid for her labor. Consequently, it does little to allay the fears of naturalizing the surrogate's role in the process. Finally, various problems associated with performing care in the context of the disaggregation of motherhood instituted by high-tech reproduction, and the general devaluation of the birth mother in the surrogacy process, would continue to persist for altruistic surrogacy as well. All these facets, for us, further reiterate the need to see surrogates as care-receivers and not simply as caregivers, and the need to ensure their meaningful and democratic participation as agents in any form of surrogacy.

Speaking in the context of the Assisted Human Reproduction of Canada, that bans commercial surrogacy but implicitly allows for altruistic surrogacy, Rakhi Ruparelia takes a position similar to ours. She argues that though the concerns about surrogacy arrangements tend to be raised only in relation to commercial surrogacy, many of these could be raised in the context of altruistic surrogacy as well. In fact, the potential for exploitation may even be greater in noncommercial surrogacy. She argues that the framework that views altruistic surrogacy as morally acceptable is based on a "western ideal of women's ability to make decisions freely in the family" (Ruparelia 2007, 14). She says that this model is not only inaccurate in the Western family model but is particularly problematic for the cultures in which patriarchal norms relegate women to vulnerable and relatively powerless positions within the family and society. She argues against the presumption that all altruistic surrogates are motivated by love toward the intending couple and are acted out of free will. Our analysis of the Surrogacy Bill not only aligns with Ruparelia's position on commercial surrogacy, but additionally highlights the problem with conceptually reducing care in gestational surrogacy (in any form) to love, sentiment, and feeling. Care is foregrounded as a higher-order concept to affect in our analysis.

Certain basic misunderstandings regarding the nature of care in surrogacy and the affect–care–labor link pave the way for conceptual fallacies in the bill. Consequently, the bill sidesteps many of the pertinent concerns related to exploitation and naively assumes that these concerns can be addressed by removing the commercial component and making surrogacy altruistic. Our analysis, on the other hand, exposes this presumption as flawed and as an outcome of misunderstanding care-based labor in surrogacy (especially altruistic surrogacy). We emphasize the need to rethink the very idea of care and the affect–care–labor link in fundamentally new ways when reproductive labor is directly mediated by technology, and especially so if policymaking on surrogacy is to truly achieve its ethical goal of curbing exploitation. Important to note is that a nuanced understanding of care opens a space for construing surrogates as epistemic and moral agents in the face of exploitation, a point the bill seems to completely undermine in light of its simplified understanding of care. The bill's attitude seems to be one of saving the surrogates, whose presence is in the form of agency-less victims. From the perspective of our philosophical intervention on the bill, it therefore appears that regulation of commercial surrogacy with fair compensation and due consideration for the agency of surrogates holds far greater ethical potential than banning it altogether, and mandating that it be practiced only in its altruistic form as the current Act does. In this respect, our approach contributes to the perspective of regulation of commercial

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surrogacy rather than a blanket ban as a viable ethical approach, given the realities of developing nations.[5]

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Notes

1 Another work that invokes care ethics in the context of global commercial surrogacy is Parks 2010; however, Jennifer Parks's focus is on the children born through surrogacy. She critiques the individualistic liberal arguments given for global commercial surrogacy and argues that the unstable situations into which children of global surrogacy arrangements are born is symbolic of the crisis of care. She suggests that the subsequent harms such arrangements produce can be mitigated through a care ethics approach, which emphasizes relations. She argues that if the commissioning couples consider their proposed surrogacy contracts from a care ethics point of view, they will begin to think relationally about their actions, considering the practice from an ethical lens, not just an economic or contractual one. Our work, however, departs from Parks's both in its object of analysis as well as the specific deployment of care ethics. Our focus is on the ethics of policymaking on Indian surrogacy with an aim to provide a philosophical analysis of The Surrogacy (Regulation) Bill. We evoke the ethics of care to draw up a robust framework for conceptualizing the affect–care–labor link in the context of gestational surrogacy to expose conceptual fallacies in the bill. Another scholar, Sharmila Rudrappa, in her ethnography identifies surrogates as "active participants in emergent intimate industries, shaping a new *ethics of caring* [emphasis added] and giving a whole new meaning to the social *and* economic value of babies and motherhood" (Rudrappa 2015, 8; emphasis in original). Rudrappa uses the phrase "ethics of caring" in a general sense and does not give any specific conceptual grounding for the term. Neither is it evoked in the context of the care ethics tradition. For our part, we go into a rigorous philosophical conceptualization of care as a concept through the lens of the philosophical tradition of care ethics, and with the aim of charting new conceptual ground for care along with the affect–care–labor link in gestational surrogacy. This eventually helps us to also think about what happens when surrogacy is pushed to the altruistic domain as the Bill does.

2 For a consideration of the devaluation of the surrogate in the context of social and global hierarchies, and even as opposed to egg donors along axes such as race, see Banerjee 2014.

3 For a critique of feminist approaches that argue for a conception of surrogates as purely exploited victims on the grounds that they are objectified and their wombs are commodified, see Banerjee 2010.

4 The dual position of the surrogate as caregiver and care-receiver can be seen through Eva F. Kittay's concept of "doulia" as well. Like Tronto, Kittay also critiques the liberal idea of political justice and social cooperation that looks at a well-ordered society only in terms of fair and equal persons engaged in a relation of reciprocity and mutuality, leaving out the people who are dependent on someone else for their survival and also ignoring the position and needs of the caregivers, who might not be able to engage in social life as equal citizens since they have to carry out duties for and on behalf of the ones they care for (Kittay 1995; 1999). Kittay lays out the centrality of the notion of "doulia," by which she means "caring for those who care" so that caring does not deplete the caregiver in her conception of social cooperation for a just society. The concept of "doulia" signifies the service that is rendered to those who become needy by virtue of attending to those in need, so that all can be cared for (Kittay 1995, 18). On these grounds, one can argue for the surrogate's entitlement to receiving care, not just in the form of medical care, but also a certain level of dignity and compensation for her care work. However, a detailed argument through a rigorous engagement with Kittay's work is impossible to undertake within the space of this article. We hope to take this up in our future work.

5 A ban on commercial surrogacy does not alter the social and economic realities of surrogates, nor does a turn toward altruism in and of itself take care of the issue of exploitation, as our analysis highlights. We must emphasize that there is no doubt that commercial surrogacy, as it has been practiced, has had an exploitative character, especially in a developing country like India. Our point, in this essay, however, is

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that a ban on commercial surrogacy and pushing for altruistic surrogacy as a policy measure (the direction the Bill and eventually the Act take) is misplaced and does not take care of the problem of exploitation. In this respect, our approach further speaks to the debates on regulation along with exploitation in other works on commercial surrogacy. For instance, Rudrappa in her ethnographic work on commercial surrogacy in Bangalore points out how many surrogates previously worked in garment factories and preferred surrogacy over that work due to sexual harassment and invariably long hours of work without a break prevalent in those factories (Rudrappa 2015). A ban does not alter these social realities in which the surrogates live. Banerjee, speaking in the context of transnational commercial surrogacy in India, while contending for a nuanced ethical approach beyond an outright moral condemnation of commercial surrogacy, points out that in a context of global inequalities and porous borders, surrogacy can go on undercover even after legal prohibition (Banerjee 2010). In fact, empirically the consequences of the ban on same-sex foreign couples (after the ban was instituted by the Indian government in 2012) have already come to light. After the ban, some doctors started sending Indian surrogates across the border to Nepal to bear children for intended parent(s). However, in 2015 a massive earthquake struck Nepal, and it was at this time that the ramifications of such a move came to light. It was reported that some Indian surrogates who were commissioned to gestate the children for some Israeli gay couples were stranded in Nepal. The Israeli government evacuated their citizens who were there to use surrogacy, along with the surrogate children, but left the surrogates behind (Kamin 2015). Such scenarios highlight how exploitation can increase with blanket bans, pointing to the need for a nuanced understanding of the ethical consequences of a ban versus regulation on commercial surrogacy. In this scenario, we argue for regulation rather than a blanket ban on commercial surrogacy.

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