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# Gauging the interests of birth mother and child: a qualitative study of Swedish social workers' experiences of transnational gestational surrogacy

## Avvägningar mellan den biologiska moderns och barnets intressen: En kvalitativ studie av svenska familjerättsekreterares erfarenheter av transnationellt surrogatmoderskap

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### ABSTRACT

There are few studies on how social workers deal with cases regarding transnational surrogacy. Our study intends to contribute to filling this gap. In Sweden, surrogacy as an assisted reproductive technology method is not permitted. As a result, many prospective parents have turned abroad, mainly to India, for surrogacy. There are no laws regulating surrogacy in Sweden, and difficulties have arisen in establishing legal parenthood when the parents return with the child. This qualitative interview study with social workers found that legal uncertainty and ethical issues surrounded their handling. With no guidelines, the constructions of parenthood will continue to depend on individual social workers' conflicting views on how to best meet the surrogate mother's interest and the best interest of the child. Regulation is thus needed to better protect those involved and minimize the contingent aspects of legal handling by individual officials.

### ABSTRAKT

Det finns få studier om hur socialarbetare handlägger ärenden som berör transnationellt surrogatmoderskap. Vår studie har för avsikt att bidra till att fylla detta tomrum. I Sverige är det inte tillåtet för sjukvården att utföra assisterad befruktning vid surrogatmoderskap. Detta har gjort att människor vänt sig utomlands för denna reproduktionsmetod, främst till Indien. Det finns inga lagar som reglerar surrogatmoderskap i Sverige, vilket har lett till svårigheter vid fastställande av rättsligt föräldraskap när föräldrarna återvänt med barnet. Denna kvalitativa intervjustudie med familjerättsekreterare har funnit att det finns rättslig osäkerhet och etiska frågeställningar som påverkar deras hantering av ärendet. Hur föräldraskap konstrueras i nuläget beror till stor del på enskilda familjerättsekreterares uppfattning om hur man bäst väger surrogatmammans intressen mot vad som är bäst för barnet. Avsaknad av riktlinjer och de etiska frågeställningarna har lett till osäker och olika hantering av ärendena, och en reglering behövs för att bättre skydda de inblandade och öka rätts säkerheten i handläggningen.

### KEYWORDS

Legal parenthood; Sweden; social workers; transnational commercial surrogacy; construction

### NYCKELORD

juridiskt föräldraskap; Sverige; familjerättsekreterare; transnationellt kommersiellt surrogatmoderskap; social konstruktion

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## Introduction

Social workers at social welfare offices are in a delicate position when faced with the unregulated 'new' form of family-making, transnational surrogacy. This paper focuses on Swedish social workers' perceptions and experience of handling legal parenthood after transnational surrogacy.

Surrogacy challenges the traditional view of family formation since it is a contractual agreement between people wanting a child and a woman who will carry a child to term, and relinquish the child when it is born (Hale, 2013). It conflicts with most Western countries' rules for decision-making on parenthood: the presumption of motherhood stating that the woman giving birth is the mother, and the presumption of fatherhood declaring that the birth-mother's husband is the father (William-Jones, 2002). This rule is also practised in Sweden (Act on *The Children and Parents Code*, 1949, p. 381). Family law is then often insufficient for handling matters of legal parenthood when surrogacy is used (Brunet et al., 2013; Permanent Bureau of the Hague, 2012).

Legal restrictions on surrogacy in the home country have made people, often in Western countries, go abroad to avail themselves of this reproduction method, generally in low-income settings (Shenfield et al., 2010; Whittaker, 2010). This has raised moral concerns both in Sweden and internationally (Ekis Ekman, 2010; Gupta, 2006; Rotabi & Bromfield, 2012; Smerdon, 2008; Storrow, 2006). There is also no uniform international law on surrogacy for handling legal parenthood, so what is practised in one country may result in legal difficulties in the home country, leaving children with unclear legal status (Brunet et al., 2013; Crockin, 2013; Davies, 2010; Gamble, 2009; Hale, 2013; Millbank, 2013; Storrow, 2011).

In Sweden the technology enabling surrogacy is unlawful (Act on Genetic Integrity, 2006, p. 351). However, the practice is otherwise unregulated and it is not illegal to use surrogacy outside of Sweden. Swedish couples and singles have mainly turned to countries like India and the US (Arvidsson, Johnsdotter, & Essén, 2015). Even if there are no statistics on how many children in Sweden are born through surrogacy, it is known that the numbers have been increasing. There are at least 136 Swedish children born through surrogacy in India until July 2015 (personal communication with Swedish Embassy, 27 July 2015), but how many Swedish children there are that are born in the US is unknown.

At the time of this study there were only guidelines and no laws regulating surrogacy in India. The guidelines stipulate that a surrogate contract, in which the surrogate mother relinquishes her parental rights in favour of the commissioning parents, is constructed before the conception (Millbank, 2013). The Indian Parliament has stated that foreigners will be prohibited to use surrogacy (Sherwell, 2015), but there is still no law. In the US, there is no national regulation on surrogacy, but certain states permit commercial surrogacy with a pre-conception surrogate contract. In addition, commissioning parents are established as parents in a court decision.

When commissioning parents return to their home country with a child born through surrogacy, the decision-making about legal parenthood is usually made in courts, but in Sweden it is often handled by municipal social workers. In Sweden social workers are handling issues related to legal parenthood, for instance the establishment of paternity and decision-making of custody when children are born outside of marriage. The mother and the father then need to confirm paternity and approve of a custody agreement. After that, the social worker at the social welfare office needs to approve the documents involved (*The Children and Parents Code*, 1949, p. 381). A social worker also handles investigation of a potential adoptive parent before a district court decision. However, no regulations for handling any of these matters exist in the case of surrogacy (Stoll, 2013).

Studies with social workers that deal with legal issues of parenthood after a surrogate birth are rare. In the UK, altruistic surrogacy is permitted, and social workers who act as 'parental order reporters' investigate surrogacy arrangements, similar to inquiries before an adoption. A court establishes legal parenthood based on a report from the parental order reporters (Crawshaw, Purewal, & van den Akker, 2012). One study has explored the parental order reporters' views on their role and on the surrogacy arrangements, mainly focusing on domestic use of surrogacy. The study found that

these officials have difficulties with handling these cases, because of insufficient guidelines. (Crawshaw, Purewal, et al., 2012; Purewal, Crawshaw, & van den Akker, 2012). The fact that the child already existed and was living with the commissioning parents resulted in a 'fait accompli' of the surrogacy process, with limited possibility to influence the situation for the child (Crawshaw, Purewal, et al., 2012).

In a study on regulation related to surrogacy in Sweden, it has been stated that social workers are 'ill-equipped to respond to the problems faced in establishing paternity of the commissioning father and in securing custody in relation to the surrogate-born child' (Stoll, 2013, p. 334). The Swedish National Council of Medical Ethics (SMER) (2013) has expressed similar concerns about the lack of regulations related to legal parenthood following the use of transnational surrogacy. Also the Swedish government is currently reviewing the legal situation on surrogacy (Justice Department, 2013). Still, there is no empirical study on how social workers view the handling of these cases. Social workers' views can also be an important contributor to the debate on these new ways of family formations (Fronek & Crawshaw, 2014).

We aimed to explore how social workers in Sweden view the handling of transnational surrogacy and what issues impact on their decision-making.

## **Materials and methods**

### ***Recruitment of participants***

In order to capture the range and variation in experiences from social workers, 32 social welfare offices in mid-sized and large municipalities in different geographical areas in Sweden were contacted and given written information about the study. Seven of these were excluded because they had never handled a case of surrogacy.

In total, 21 social workers at 13 social welfare offices agreed to participate in the study. Reasons for not wanting to take part included fear of breaching confidentiality, having referred all handling to the district court, and having handled a case only partially.

Out of the 21 participants, 18 were women and 3 were men. The age of the participants ranged from early 30s to early 60s, with a fairly equal mix of age groups. All had taken part in handling cases regarding surrogacy and three of them had leading positions at the social welfare office. Most of them had been working with legal family issues for many years and several had around 20 years of experience. The majority of the social workers had dealt with cases regarding surrogacy between 2010 and 2013. Seven of them had only handled one surrogate case and only three had experiences with more than three cases. Sixteen had experience with cases only from India and five had experience with cases from the US and other countries.

### ***Data collection***

Qualitative semi-structured interviews with social workers were regarded as the best method for data collection since we wanted to study experiences and perceptions of a new phenomenon (Robson, 2002).

The first author carried out a total of 13 interviews between March 2013 and January 2014. The informants were prior to the interview informed about the study and its purpose, as well as given the opportunity to ask questions. All gave written informed consent to participate in the study. Eight interviews involved only one participant, but at four social welfare offices two social workers were present at a time and one interview became a group interview where five social workers participated. The social workers that were interviewed in pairs had worked together on the cases, and they themselves chose to be interviewed together about their experience. This meant that they were able to complement each other in the description of the legal procedures and the actions taken, even if they tended to present similar views about both the case and transnational surrogacy.

Such agreement might have been rarer had they been interviewed individually. Participants in the group interview worked at the same social welfare office, and had also themselves chosen this form of interview. Even if the social workers in the group interview worked at the same office, most had handled cases separately, and not all at their current social welfare office. Each participant talked about their own experience, but they also discussed and reflected about the different ways they had handled the cases they had been involved in. The group interview gave a picture of the different reasoning of the cases, but at the same time more profound knowledge of each case was missed out in this interview. All interviews took place at the social workers' offices or in a conference room. The interview themes included basic information on the cases, views on the decision-making process, their contacts with the commissioning parents, and their general views on surrogacy. Open-ended questions were used along with follow-up probing. Each interview ran between 1 and 2.5 hours, was recorded, and then transcribed verbatim.

### **Analysis**

To identify overarching themes related to the aim, thematic analysis was used (Clarke & Braun, 2006). This method is suited for illustrating a group's comprehension of a certain issue (Joffe, 2012) and also for finding similarities and differences in the data relating to the same issues. In order to find themes and patterns in the data, the transcripts were read repeatedly and data related to the objective coded. An inductive approach was followed in the coding, with no pre-existing codes or themes. Each interview was read individually and data related to the objective colour-coded with annotations. The codes were continuously refined and gradually linked together to create preliminary themes. Transcripts were read again and were compared in order to finalize themes representing the data set. To increase the credibility of the analysis all authors discussed the interpretation during peer debriefing.

In the analysis we have a social constructivist approach. In such an approach we focus on social constructions of categories of people and how such social constructions influence decision-making (Winther Jørgensen & Phillip, 2000).

The overall analysis mainly concerned the cases from India, but views regarding the cases from the US were also included. Data saturation was reached regarding handling of cases from India, but not from the US. The reasoning and handling in these cases differed from those involving India, and since only a few had experience from cases connected to the US, it cannot be said that saturation was reached regarding handling of these cases. Nevertheless, these cases offer an important contrast to those related to India and the most important differences are presented in the Results section.

### **Ethical considerations**

The Regional Ethical Review Board in Uppsala approved this study (registration number 2012/462). Although many informants wanted to convey their experience of cases regarding surrogacy, they also wanted to avoid the possibility of their participation being traceable to them or their social welfare office since this is a sensitive issue. To eliminate the possibility of identifying any cases or social welfare offices through the quotations or other information in the text we have been extra careful in what to present from the quotes. All informants were also given the opportunity to delete quotes taken from their interview before manuscript preparation. Only one minor change in a quote was conducted based on request from a social worker.

### **Results**

The analysis ended up with four main themes that reflect what issues have an impact on the social workers' reasoning and handling of the surrogacy cases. These were: (a) perceiving existing laws as

inapplicable; (b) fearing of become part of an exploitative system; (c) viewing exploitation differently depending on country; and (d) taking a children's rights position.

### ***Perceiving existing laws as inapplicable***

The most important ground for the social workers' difficulties in handling legal parenthood was the lack of a perceived applicable law. When commissioning parents contacted the social welfare office to seek help in becoming legal parents, the social workers expressed much uncertainty about the establishing of legal parenthood when surrogacy was used. *Their starting point for how to deal with legal parenthood is the Children and Parents Code*, but surrogacy is not mentioned therein. This caused much doubts in handling the cases. The lack of guidelines also made social workers handle the cases in different ways and with great uncertainty.

P1: We have no guidelines (laughs)

A: But what is your point of departure then?

P1: What is our point of departure? Well, it is good common sense, we discuss among us how to do it and check how they do in other municipalities. I know that some say they do not handle it at all, 'we do not concern ourselves with this' because they do not know how to do it. And others are very helpful and really ... I think we've found kind of a middle way in that. But it's not as if we decided that this is how we do it. (...) We would of course need to know; should we establish paternity, should we refer everything to the court, can we write an agreement [on custody], is it okay if we do not meet the surrogate mother? Of course, we would like to know such things. (Social worker 4)

Since the law was not seen as applicable to surrogacy, the social workers ended up finding out from their own judgment and discretion how to deal with the case. The Indian surrogate contract, where the surrogate mother relinquishes all parental rights in favour of the commissioning parents, was not seen as legitimate in relation to the Children and Parents Code, hence the surrogate mother was seen as the mother and her husband as the father. The focus was on how to transfer parental rights to the commissioning parents, with the priority being how the genetic father could become the legal father. The commissioning mother or a non-genetic father could only become legal parents and gain custody through the genetic father's consent to adoption, after he had been given custody.

The social workers dealing with cases from India meant that in order to transfer parental rights the surrogate mother and her husband would need to sign documents in accordance with Swedish rules for paternity and custody.

However, the social workers were unsure whether it was possible to establish legal parenthood in a legally correct way because they had no personal access to the surrogate mother. This was also the reason for some social workers not to handle the case.

We have tried as far as possible to equate surrogate cases to the form that exists. But in all the aspects of the surrogate case, we do not have enough guidance. (...) We cannot do a proper investigation since we are not able to meet all the parties involved in the custody agreement, so we believe that a social worker does not have the authority to approve of such agreements. We at this social welfare office believe that without any guidelines this is not something we should be part of. (Social worker 10)

P1: We of course thought it a little strange given that it does not even exist, because it is not consistent with the law, surrogacy, and yet we were supposed to handle it in some way. It became difficult.

P2: It was so complex, international law and our rights. This requires special legal skills and it is clear that the district court should take it. (Social workers 6)

Social workers found the handling of the cases extra difficult because the commissioning parents had 'by-passed the law'. 'This circumvents the Swedish legislation, and how should we as an authority deal with that, because we are obliged to follow the law, so it becomes a very difficult balance and, well, a difficult position' (group interview). Not only was the reproductive method not in

accordance with the Children and Parents Code for how to determine parenthood, but additionally it was seen as a questionable mode of reproduction.

We have no law on this, there is an uncertainty when the child comes here, who is the guardian? And it can take time. In Sweden, it is not permitted, and we still have to follow Swedish rules, and there are reasons why we do not allow this. (Social worker 9)

Referral to the district court was predominantly seen as the best possible way of handling the case when there were no applicable laws regulating surrogacy. Still, there were some social workers who sent documents on paternity and custody to India for the surrogate mother and her husband to sign. The great diversity in handling the cases among municipalities and the unregulated situation were the issues that most interviewees highlighted and often had strong opinions about.

It's not acceptable that we are dealing with these matters in 290 different ways in our municipalities. It's not acceptable. I certainly understand that it is a politically sensitive question. But in fact cases are handled and questions are asked to the authorities every day in this country, and certainly it cannot be unregulated, it's not possible. (Social worker 10)

In whatever way the social workers had handled a case, they were unsure if they had dealt with it correctly, regardless of whether they had been presented with one or several cases. This was especially evident in the group interview, where their diverse approaches were revealed and discussed.

In all interviews there was a strong emphasis on the need for guidance to lay out what would be considered a right procedure.

### ***Fearing to become part of an exploitative system***

Many social workers reflected upon the surrogate mothers, their situation and the surrogacy process. Even if social workers did not think it should affect their decision-making, it made them hesitate to take on the management of the case. Transnational surrogacy was seen as a method that circumvented the law and made social workers uncertain of the legal possibility to handle parentage.

Social workers wondered if the surrogate mother's involvement in the surrogacy process had been voluntary, and if she had consented to give away the child. This also contributed to questions if handling paternity and custody would be legally correct. Below social workers in the group interview discuss their uncertainties if the surrogate mother had been fairly treated in the surrogacy arrangement.

P2: What is most difficult is of course if you believe that the woman is very exploited or just ...

P4: Yes that's what it's about.

P2: Living under very dodgy conditions, and utilized in many different ways and getting very little compensation and so on. (Group interview)

Some social workers referred to articles, books, and TV documentaries that had affected their views. One in the group interview recalled seeing a documentary of a place she thought had 'factory-like methods' for surrogacy, and she questioned whether it was ethically correct for their social welfare office to be part of this. One social worker explained her dilemma in handling a case after reading about surrogacy in the media and while she had unanswered questions about the surrogacy arrangement and the surrogate mother:

But when I read these debate articles, sometimes it makes me think. It's not an easy question, it's hard, really hard. It will be easier if you just think that now it is one of those children here who have come to be born in this way. Now we will make sure it gets custodians and so on. If we limit ourselves just to that, it would be simpler, but if you think about the full implications of all the problems, it is difficult. (...) One would like to know that these children that we are supposed to handle have come to be born in a fair way so that the surrogate mother knows what she's doing, that she has been informed, and so on. (Social worker 4)

Media and the debate on the surrogacy procedures and how surrogate mothers could be exploited affected some social workers, and one social worker expressed that this further fuelled her need for instructions on how to handle cases regarding surrogacy.

So my feeling is that somehow it is about, should you be able to buy a child? And that there is something ethical ... How do we as an authority get instructions to handle this in a way where we are ... how should we say? ... where we are a service to our community residents according to their needs and somewhere not put any judgment on how they [the couples] do it. So I feel, it has made me think a lot as I have read debates and stuff. (...) You feel like ah, but it is completely wrong, you cannot do like that. You cannot buy a child, and you feel sorry for those who carry it, they are exploited. Then there are many aspects of it and I'm not saying in any way that it is easy. (Social worker 13)

### ***Viewing exploitation differently depending on country***

The few social workers who had handled cases from the US did not seem to have any similar ethical dilemma when dealing with these cases. The view of the US surrogate mothers was very different in comparison to the surrogate mothers in India. The social workers did not view the surrogate mothers in the US as vulnerable or exploited. This had caused the social workers to not have any hesitations in dealing with cases from the US. The perceived differences are illustrated here:

They [surrogate mothers in the US] have good incomes and good educations. They did not do it because they needed money. From what I know, I do not think it is like that in India. It might be my prejudice, but in India I think it is much more a case of women who need money to feed their families. In those cases, I am more hesitant. (Social worker 4)

Social workers also referred to the court decisions from the US making the handling less hesitant. In these court decisions, the surrogate mother had relinquished custody to the genetic father and his partner. One social worker had additionally been in personal contact with the surrogate mothers. This social worker thought the surrogacy arrangement was easy to understand and this contributed to her not being reluctant to handle the cases and not seeing any ethical dilemmas in the handling:

The cases I have had from the US have been very transparent. I have been able to contact the surrogate mothers via phone or e-mail. I have not felt that they have been exploited, as many perhaps have thought in the case of surrogate mothers in India. Emotionally there is a big difference. It feels clean and comprehensible. I do not think it is very strange. (Social worker 7)

The social workers additionally got more knowledge about the surrogate mothers from the commissioning parents, which made them refer to the relation between the surrogate mother and the commissioning parents as one being more equal.

Those first children, they had pictures of their mother, a lot of pictures of her and her family. I feel that this is showing more respect for those women. They are equal in some way. The men [the male same sex couple] are equal to, or the women are equal with them. There is not any difference in rank or so. That's how it feels. I don't think that the women are used in that way. (Social worker 4)

Thus, social workers viewed the situation of surrogate mothers in the US far more positively. That, in addition to the legal process in the US, where paternity had been established in court, made the social workers less reluctant to deal with such cases.

### ***Taking a children's rights position***

The social workers had three parties to take into account which was seen as pressing. Still, it was the children's rights that took precedence.

I think I feel more confused now than before but it is also due to the increasing debate, which makes you see it from different angles. You see it from the surrogate mothers' and the children's point of view now as well. It really is not simple. Whose perspective shall you take? The child's? But it is the adults we meet. It is more complicated than I thought from the start. (...) We are very eager to deal with it quickly once the children are here, there's no



doubt about that, but then there are questions. I have every respect for that you long for children, but sometimes I feel that when talking about these women, they are [pictured as being] just an oven. And what about the children then? (Social worker 4)

The view of the child's legally unsecure situation was the reason that some social workers had tried to pursue the case, even though they had moral concerns over the commissioning parents' reproduction method.

One can question whether it is a morally correct way to have children, if it is a right to have children at any price, and that is a never-ending discussion. But eventually we landed in the reasoning that these cases exist and will continue to exist and the children have the right to get help with the legal aspects. (Social worker 2)

Another social worker similarly argued that despite hesitations about the reproduction method, it had already resulted in a child, who was without legal guardians, and this was their priority to solve.

When there actually is a child, then it is different from when there isn't one. If it should be permitted, that is one thing. But when somebody already has got a child, I don't think the present situation is okay. Legally, it is a very insecure position for this child. (Social worker 3)

Arguments for handling the cases in some way, despite the lack of regulations, were justified by wanting to help speed up the process in order for the child to get custodians. The argument was that children need an expedient process to be removed from a legally vulnerable situation as illustrated in these quotes:

Within 14 days, the child has been given a guardian in Sweden and I think children should have that. Because it is quite complicated to be an infant without legal guardians. (Social worker 7)

We have 'small' members of our society who are without a father and a custodian and I think that situation needs to be resolved. Then I simply try to find the fastest way. (Social worker 5)

In the first quote above, a social worker refers to a case from the US in which the US court decision was accepted. In the second quote the social worker had handled paternity and custody by signing the Swedish documents where the surrogate mother in India had confirmed paternity and consented to the custody agreement, but this process was not seen as legally correct by everybody.

To act in this way and sign custody agreements might be wrong and, ultimately, that could affect the children since they are not legally valid. (Social worker 6)

The social workers had apparent different opinions of the legal correctness in their own dealing with paternity and custody agreement. The child's best interest was the guiding principle in the social workers' handling of cases regardless of in what way they handled the case. The goal of all social workers was to reach a correct legal affiliation. For sure the social workers did not want to prevent the commissioning parents from having the custody of the children, but they had different views on their own partaking in achieving this.

## Discussion

Findings from this study suggest that the important issues for the social workers in their decision-making were the lack of guidelines, the fact that surrogacy strikes a discordant note with the construction of parenthood in the law, concerns about how the surrogate mother's rights are taken into account, and ethical concerns about the reproduction method. However, when this reproduction method has resulted in a child, their legal and ethical concerns were put against the best interest of the child. The already existing child, resulting from a perceived questionable reproduction method, puts social workers in a difficult position, as also found in the study from the UK (Crawshaw, Purewal, et al., 2012).

From the findings of our study it is evident that these cases raise questions about how to address both the children's and the surrogate mothers' interests; those who are seen as being in a vulnerable

state in the surrogacy arrangement. This resulted in complex and varying handling of legal parenthood.

The view of the surrogate mother as being *the mother*, but seen as unreachable in India, caused great difficulty in handling the case. However, a further complication, highlighted in this paper, is the view of the Indian surrogate mother, who is seen as being in a vulnerable situation. With an additional perception of the child's legally insecure situation in Sweden, the social workers struggle with conflicting wishes how to safeguard both parties' interests. Not all find it possible to deal with these cases, and thus refer them to the district court.

The conflicting interests between the child, the surrogate mother and those having initiated the surrogacy arrangement, are well-known factors in surrogacy arrangements. However there is no international consensus about whose interest that should have priority, even if the child's security is of primary concern (Sharma, 2006). The International Federation of Social Workers (2012) has suggested that the particular challenge of transnational surrogacy is how to balance commissioning parents'

right to impartial advice with protection from exploitation and harm of (1) potential donors and surrogates – the latter almost invariably young women in the world's least wealthy countries – and (2) any child who may be conceived or affected by the procedure.

In absence of formal guidelines on how to handle parenthood in surrogacy cases, a media-generated construction of the (Indian) surrogate mother, usually depicted as vulnerable and exploited (van den Akker, Fronek, Blyth, & Frith, 2015), has come to play an important role when social workers assess their cases.

Discourses in media are said to play a 'key role in the understanding of surrogacy' (Gondouin, 2012, p. 3), and the social workers' view of Indian surrogate mothers also corresponds with the main media discourse that depicts women in the global South as being poor, oppressed 'powerless victims' (Bailey, 2011; Markens, 2012), leading to moral reactions against the use of, in particular Indian surrogate mothers.

It is suggested in the study of parental order reporters from UK that any negative attitude towards surrogacy might affect the handling of legal parenthood and result in delay in the process to legal parenthood for commissioning parents (Purewal, Crawshaw, & van den Akker, 2012).

The social workers' narratives about the surrogate mothers indicate a view of power imbalance between the surrogate mother and the commissioning parents with ethical concerns, which is also in line with the view in media on transnational surrogacy (Riggs & Due, 2013).

Studies on transnational surrogacy in India show that the situation for surrogate mothers generally is more complex than depicted in media. The question is if the surrogate mother has given valid consent to participate in the surrogacy process. In addition to their decision likely being grounded in poverty, surrogate mothers are rarely fully informed about what can be expected from the surrogacy procedure (Munjal-Shankar, 2015; Pande, 2009; Tanderup, Reddy, Patel, & Nielsen, 2015). Even though the surrogate mothers' actual consent to engage in surrogacy can be questioned, acting as a surrogate mother may also give 'self-worth' and be perceived as more meaningful than their previous job as for instance garment workers, as shown in a study by Rudrappa (2016). Additionally, Rudrappa has shown that the substantial amount of money the surrogate mothers get, compared to salaries from other types of work, is much needed, even if not always necessary for survival. This complex reality is rarely given any space in mass media representations of surrogacy. Consequently, the social workers' understanding of the surrogate mothers' situation might not fully incorporate all aspects of these women's complex life situation.

The context for surrogacy seems to be crucial for attitudes to surrogacy and views of the surrogate mother. In the US surrogacy process, a more equal view of the parties involved is displayed and the reproduction method is questioned to a lesser extent. Surrogacy is apparently not seen as exploitative unless it takes place in a context with economically poor women, still, some feminists would say that surrogacy is exploitative irrespective of context (Van Hoof & Pennings, 2011).

The lack of concern for the surrogate mother and the surrogacy process when social workers dealt with cases from the US is also in line with the discourse in media. Surrogate mothers are framed differently depending on their location, in the global North or South (Markens, 2012). Markens describes surrogacy in the US as 'framed as less about a financial transaction than a family-making endeavour' (p. 1749). Here Markens states that the financial benefit is downplayed and instead the altruistic motivations of the surrogate mothers are highlighted. This would suggest that lack of negative framing in media about surrogate mothers in the US, in addition to the perceived transparency of the surrogate mother's situation, facilitates the social workers' handling of the cases from the US. Existing laws can be interpreted and applied with less hesitation and uncertainty.

Also in the UK, in dealing with parental orders (which transfer parental rights from the surrogate mother and her spouse to the commissioning parents), they similarly feared that surrogate mothers were exploited in transnational surrogacy arrangements, but the social workers had fewer concerns about surrogacy when done in the UK where they could have access to, and more knowledge about the surrogate mothers (Purewal, Crawshaw, & van den Akker, 2012).

The lack of transparency in the surrogacy process in India and media-generated view contributes to the complex handling and reluctance in handling the cases. One can argue that a higher degree of transparency in the surrogacy arrangement and some kind of access to the surrogate mother, through establishment of transnational procedures, would address some of the difficulties for social workers.

Different conclusions regarding what would be in the child's best interest lead to great diversity in decision-making. On one hand, a referral to the district court is seen as the most legally correct way for the child to get legal guardians. However, the view of the surrogate mother and the surrogacy arrangement contribute to hesitation in handling the cases and might also influence the referral to the district court. On the other hand, an emphasis on the child's need of an urgent removal from a legally uncertain position makes some social workers in favour of a quick decision, since that is seen as being in the best interest if the child.

The best interest of the child is 'the principle which most effectively stabilizes all the relevant normative expectations' (van Krieken, 2006, p. 447), but there is a lack of definition of how to achieve this, possibly ending up in different handling. This underscores the significance of the social workers' expressed need for guidelines to reach a more consistent handling. In line with our findings, a study from the UK found that the unstructured rules for handling legal parenthood, made parental order reporters develop their own process to administer cases of surrogacy, with varying results and rigour, but with the child's welfare in focus (Crawshaw, Purewal, et al., 2012).

The question is how guidelines can address the complexity related to perception of the child and the surrogate mother, to facilitate a process towards desirable safeguarding of the child.

How to legislate legal parenthood after transnational surrogacy, in a way that protect those involved, is an urgent question and posed by many (e.g. Davies, 2010; Gamble, 2009; Hale, 2013; Permanent Bureau of the Hague, 2012; Trimmings & Beaumont, 2011). Even if it has been considered to be in the child's best interest to legally recognize the parent-child relationship (Crawshaw, Blyth, & van den Akker, 2012; Crocchin, 2013; European Court of Human Rights, 2014; Permanent Bureau of the Hague, 2012; Singer, 2006/2007), there are still many legal uncertainties in the handling of these kind of cases. As Fenton-Glynn (2015) has remarked, the decision-makers are faced with a task to take into account public rules and the child's welfare, which in transnational surrogacy seem to be conflicting. In a social constructionist perspective, we can see that social workers – facing situations in which legal guiding is insufficient – have to deal with constructions of these categories that are inconsistent and contradictory. The birth mother may have relinquished her rights to the child, but may have done so in a situation of exploitation (Qadeer, 2009; Saravanan, 2013; Tanderup et al., 2015). The commissioning parents may have partaken in exploitation of a vulnerable woman, but are on the other hand the ones who are in a position to safeguard the well-being of the child. The child has, on one hand, been produced abroad in disputable ways but, on the other hand, is a minor resident in Sweden whose rights and interests must be met. The social workers have to deal with these surrogacy cases,

navigating among these contradictory notions, and that is what makes their assessments so full of doubts and hesitance.

Policy-makers would benefit from taking into consideration social workers' expressed ambiguous feelings of concern for both the surrogate mother and the child. Drawing from social workers' narratives, both a rapid process to get children legal parents and measures to secure the surrogate mothers' rights in the best way possible are needed.

In a legal review about how to handle legal parenthood for children born through surrogacy (SOU, 2016, p. 11), it was suggested that also in the future it should not be allowed in Sweden and that there should be no law on surrogacy. However, the legal review acknowledged that children's legal situation needs to be secured and hence the process for the genetic father's legal parental status was suggested to be facilitated. Furthermore, the surrogate mother was considered in the legal review to continue to be seen as the mother until relinquishing her parental rights at a Swedish foreign office. Such measures might meet some of the social workers' concerns, but if they are sufficient in light of the social workers' strong demand for regulations and guidelines remains to be seen. Additionally, their hesitation of handling these cases also depended on their view of the surrogate mother's situation and the social workers' fear that their involvement possibly meant taking part in an exploitative system. Thus, even if having regulations on surrogacy and or guidelines, social workers might still have concerns about how to handle these cases.

## Methodological considerations

Since only a few social workers had experience of handling cases from the US, there is a limitation to the analysis regarding these narratives. Nevertheless, these cases offer an important contrast to those related to India.

Interviewing social workers in pairs and in a group discussion may have resulted in less depth of information in these interviews. However, this can also be seen as a strength since these interviews contributed with joint reflections about the phenomenon as such and on the handling process.

Studying a relatively new and unregulated phenomenon means that the circumstances are under constant change. With the new draft Bill, foreigners might be legally banned to use surrogacy in India, and in practice this has already limited foreigners' use of transnational surrogacy (Sherwell, 2015). In this study, we have mainly explored the process for the establishment of legal parenthood when surrogacy is used in India. However, there are still countries with low-income settings that are reluctant to regulate surrogacy and to thoroughly protect surrogate mothers (e.g. Cambodia and Georgia, Bhowmick, 2016; Hoyle, 2015). The social workers' experiences of these cases can still be applicable to the use of surrogacy in other countries and, thus, our study is relevant for a wider discussion about transnational surrogacy.

## Conclusion

With our study we have shown that with lack of an applicable law, the conflicting views on the surrogate mother, the commissioning parents and the child have an impact on the reasoning when deciding to take part or not of securing the child's legal situation. The social workers' constructions of the parties involved are contradictory and how to balance them without any guidelines is a challenge. Whatever the legislation regarding surrogacy, a regulation on legal parenthood is needed when surrogacy arrangements already have been conducted.

Future guidelines and regulation need to be established in ways that better protect those involved, and minimize the inconsistent legal handling of parenthood. Such legislation should also regard varying local ways of defining parenthood, both in countries where surrogacy takes place and in countries where the children are brought after they have been born through surrogacy. Further, future local authority decision-making must be based in a legal framework that spans not

only the nation but transnational relations as well, taking various social and economic inequalities into consideration.

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No potential conflict of interest was reported by the authors.

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