



Social aspects of surrogate motherhood in ancient India

Dr. Jaya Dhadhich

Guest Faculty, Faculty of Law, Jai Narain Vyas University, Jodhpur, Rajasthan, India

Abstract

The inability of women to bear children has been documented in written and oral history since the dawn of time. Very early the practice of surrogate motherhood to overcome this “curse” has been used. This practice was approved in many cultures around the world and throughout history.

There are no authentic documents survived up to contemporary times. Information is to be collected from chronicles, legends, myths, epics and even the folk songs that have survived from oral transmissions from generation to generation. The concept of surrogate motherhood was well known in the ancient India. Surrogacy was known and practiced in ancient times also.

Ancient Hindu scriptures stand testament to the fact that surrogacy has been very much existent in India. We could easily connect the thread of scientific achievement of surrogacy to its existence in the Indian mythology even before the scientific intellect could fathom it and proved its existence.

The Hindu mythology provides examples like that of sage Bhardwaja produced Drona, later to be the teacher of Pandavas and Kaurvas.

In this way, it can be said that Indian culture was very much rich regarding the aspect of surrogacy practices which were being carried out in ancient India by different names.

Keywords: Social, surrogate motherhood, chronicles, Surrogacy

Introduction

Surrogacy in Ancient India

It is an ancient custom which has been followed for millennia in India that if a women be unable to bear children, it is permitted by mutual agreement, for her husband to produce a child by another women, equally if a man be unable to produce off spring by mutual consent for his wife to conceive a child by another man ^[1]. If a man-should die without issue, it is permitted for his widow to conceive a child by another man for the purpose of preserving the blood line of her deceased husband, children thus produced are regarded as equal in all respects to blood children.

Having children ^[2] has always been important since time immemorial and the continuity of the family unit has been of major significance in Hindu culture.

Men who could not fulfill their biological obligations because of a physical problem (impotency) or a mental quirk (homo sexuality) were termed rather derogatorily *kliba* or *napunsaka*, sexually dysfunctional non man. In the *manusmritis* an ancient Hindu law book, such sexually dysfunctional non man were debarred from sacred rituals and from inheritance, only by producing children were a man in Hindu society gives the right to enjoy worldly pleasures and possess worldly wealth ^[3]. A king could not be king unless he was married and on impotent man or a man who could not father a child was not allowed to be king.

Infertility is a social stigma even today. Ancient tales hold the key to the unconscious desires of people; they help us appreciate the fears and incentives of people ^[4].

In this article, sacred narratives from ancient scriptures are explored to understand the importance of fertility in Hindu world-wide.

A. Surrogacy in Hinduism

In our ancient Indian society, male child was always given priority in all religions and male child ^[5] was supposed to fulfill social and religious duties. All the religions emphasize the importance of son for spiritual welfare of a man.

In ancient literature ^[6], the benefits of son were to continue and perpetuate the family and to provide for the performance & preservation of religious sacra and offerings. This desire was common in ancient societies almost everywhere, it is believed that all men come into this world burdened by a debt — the *pitrrann* (*pitr* — ancestors, *rann* debt), the only way to repay this debt is to father a male offspring. During funerary rites, known as *shraad*, males are reminded of this debt.

In *Dharmshashtras* ^[7] it is said that those who fail to repay this debt end up in the hell known as “*put*” where they suffer for all ternity. Since the birth of a child liberates a man from his debt, the Sanskrit word for his son is *putra* (derived from *put*). The daughter or *putri* is also a deliverer from *put* but to a lesser extent.

In ancient society, there existed a practice known as “*Niyogi Pratha*”. *Pratha* means practice. It must have been introduced as a result of the necessity of having a male child. A woman has who was childless because her husband was impotent was allowed to conceive through her brother in law ^[8]. The child belonged to the couple and brother in law had no claim over it.

In our society today, surrogate motherhood is not unheard of *Niyogi Pratha* was surrogate fatherhood. It was much less complicated legally and emotionally, then surrogate motherhood.

The Veda Vyasa and the Mahabharata, vyasa was called upon to impregnate the royal widows^[9]. Niyogis were considered great people, they were specialist's at one time in reproductive medicine in ancient times. "Dhanvantari God" was from niyogi sage "Atreya" who was also incarnated later as "Dattatreya God"^[10].

Surrogacy was known and participated in ancient times. In the Mahabharata, Gandahri wife of king Dhritrashtra, conceived but pregnancy went for nearly 2 years, after which she delivered a mass (mole). Bhagwan Vyasa found 101 cells that were normal, these cells were put in a nutrient medium and were grown in vitro till full term, of these 100 developed into male children (Kaurvas) and one as a female child called Dusheela^[11].

There are tales that suggest that the ancients were familiar with the "idea" of artificial insemination, for e.g. we learn of "magic potions" being created by sages for queens of childless kings that makes the women pregnant^[12]. These magic substances could be fertility drugs or donated semen. One story states that the God Shiva once spurted semen when he saw lord Vishnu in the form of celestial enchantress Mohini, sages collected this semen and gave it to the wind God "Vayu" who poured it into "ear"^[13] of Anjani, a monkey, who gave birth to Hanuman, the monkey God. Devoid of the mythical aura, one might say that the tales refers to the practice of artificial insemination, semen is transferred to the womb without sexual intercourse.

B. Concept of Niyogi Pratha

"Appointment of a wife or widow to procreate a son from intercourse with an appointed male". Great divergence of views prevails about the origin and purpose of this practice. The first concept is derived from the most ancient smritis.

Gautama^[14] gives much importance on this point that a woman whose husband is dead and who desires to have offspring may secure a son from her brother in law should obtain the permission from elders and have intercourse only during the menstrual period (excluding first 4 days, she may obtain a son from a sapinda, a sagotra or one who belongs to the same caste, when there is no brother in law). Some hold this practice is allowed with nobody except a brother in law; she shall not bear more than two sons by this practice.

Gautama^[15] in shloka 18.11 says that a child begotten at the request of living husband on his wife belongs to the husband. In shloka^[16] 28.32 Gautama says that such a son is called ksetriya, the wife is called Ksetra (field), the husband of the wife or widow is called Kestriya (to whom the wife or widow belongs) and the person appointed to produce offspring is called bijin (one who sows the seed) or niyogin (one who is appointed).

The ancient literature^[17] prescribes the father or brother of the widow (or the widow's husband) shall assemble the gurus who taught or sacrificed for the deceased husband and his relatives and shall appoint her to raise issues for the deceased husband, let him not appoint a widow who is mad, not master of herself or is diseased or is very old, nor shall an appointment be made if the person who is to approach her is sickly. Let him approach the widow in the Muhurta^[18], sacred to Prajapati like a husband, without dallying with her and without abusing or ill-treating her. No appointment shall be made through a desire to obtain the estate^[19], Baudh dharma (Sh.II 2.17 vol. 14 pg. 226)^[20] defines Keshtriya son as one who is begotten by another man after permission on the wife of deceased person.

Manu (Ch.IX Sh. 59—61) says that a widow who is properly appointed may obtain offspring, in case there is total failure of issue from her husband, that the person appointed should approach her in dark and should be anointed with ghee and should procreate only one son and never two, while some says that he may procreate two.

Baudh Dharma, Yajnavalkya and Narada^[21] lay down similar rules. Kautilya says that a king who is old or suffering from incurable disease should procreate a son on his queen through a matrabandhu or a feudatory chief endowed with qualities similar to his. In another place he says that if a brahmana dies without leaving a near heir, then a sagotra or a matrabandhu may be appointed to procreate a Ksetraja son, who should get the inheritance^[22]. The conditions necessary to allow niyoga were (a) the husband whether living or dead must have no son (b) the gurus in family council should decide to appoint the widow to raise issue for husband (c) the person appointed must be either the husband's brother or a sapinda or sagotra of the husband or a person of the same caste (d) the person appointed and the widow must be activated by no lust but only a sense of duty (e) the person appointed must be anointed with ghee or oil (Narada Sh.82), must not speak with or kiss her or engage in sportive dalliance with the woman (t) this relationship was to last till one son was born (or two) (g) the widow must be comparatively young, she should not be old or sterile or past child bearing or sickly or unwillingly or 29 pregnant (h) after the birth of a son they were to regard themselves as father in law and daughter in law^[23], it is further made clear by the texts that if a brother in law has intercourse with his sister in law without appointment by elders or if he does so even when appointed by elders but other circumstances do not exist e.g. if the husband has a son he would be guilty of the sin of incest²⁴ and a son born of such intercourse would be a bastard and not entitled to any wealth (Narada Sh. 85 — 86) and that he would belong to the begetter^[25].

Narada says that if a widow or male acts contrary to the stringent provisions about niyoga, he or she should be severely punished by the king or otherwise there would be confusion. Yaj. Ch. II Sh. 234 makes such a person liable to be sentenced to a fine of one hundred panas.

It will seen from the above that even in the times of Dharmasutras, the practice of niyoga was hedged round with so many restrictions that it must not have been very much prevalent and instances must have been rather rare, while ancient Dharmasutras like Gautama allowed niyoga, there were other dharma sutras and writers almost as old as Gautama that condemned the practice and forbade it. After referring^[26] to the view of some, that a girl is given to a family in marriage and declaring that practice (of polyandry) is forbidden adds a condemnation of Niyoga. Baudh Dh. Sh. II 2.38 refers to the view of Aupajanghani, that it is only the aurasa son that is to be recognized as a son and then quotes there verses which are also cited as quotations^[27] which call upon husbands to guard their wives and not allow others to procreate sons son on later as the sons so procreated will benefit only the begetter.

Manu though first describes niyoga, ultimately condemns it in the strongest terms possible (Ch. IX Sh. 63 - 64), he says that among dvijatis a widow should never be appointed to raise issue from another for by doing so, ancient dharma would be violated, that in the mantras relating to marriage, there is no reference to niyoga nor is the remarriage of

Widow spoken of in the procedure about marriage, that niyoga is a beastly way and was first brought into vogue by king.

King Vena who thereby caused Varna shankara and since that time good men condemn him who through ignorance appoints a widow to produce offspring. Manu Ch. IX explains the meaning of niyoga by saying that the rules and the ancient texts about niyoga apply or refer to that case only where after a girl is promised as a bribe the intended bridegroom dies, the brother of the later is called upon to marry the girl and to have intercourse with her once during each period till she gives birth to a son, who would be the son of the deceased, though Manu, condemned the ancient practice of niyoga, he had to make provisions for Kshetraja son as regards partition.

Brahaspati refers the fact that the *manusmriti* [28] first described the ancient niyoga and then forbade it and adds that in former ages men possessed tapas & knowledge and could strictly carry out the rules while in Dwapara and Kali age there is great deterioration of power and so men of these times cannot now practice niyoga. The Vishnu Dh. Sh. 15.3 contains an innovation which is not found in the Sutras of Gautama & Vashishtha. The Ksetraja [29] is one who is procreated on an appointed wife or widow by a sapinda of the husband or by a Brahmana.

The Mahabharata is replete with the cases of niyoga, Adiparva (Sh. 95 & 103) narrates how Satyawati pressed Bhishma to procreate sons for his younger brother, Vichitravirya (who was dead) from his queen and how (Adi. P.Sh.105) when Bhishma refused, Vyasa ultimately was appointed by Satyawati and procreated Dhritrashtra and Pandu. Pandu himself is said to have asked Kunti to procreate sons for him by niyoga from a brahmana endowed with great tapas (Adi. P. Sh. 120) and tells her certain stories of niyoga (Adi. P. 120 — 123) and winds up by saying that [30] three sons is the limit and that if a fourth or fifth were procreated the woman would be svairini (a wanton woman) and bandhaki (harlot) (Adi. P. Sh. 64 & 104) states that when parshuram tried to exterminate the Kshatriyas, thousands of Kshatriya widows approached brahmana for the procreation of sons [31].

C. Critical Analysis of Niyogi Pratha

Owing to the bewildering and often conflicting rules about niyoga in Smritis, commentators like Vishvarupa, Medhatithi who wrote at a time when niyoga was almost unheard of, made heroic, tough unsatisfactory efforts to bring order out of chaos.

Vishvarupa on Yaj. Ch. I Sh. 69 states several views on the point. The first is that niyoga is bad in present age as opposed to smriti texts [32] and these shlokas strongly disfavor the system of niyoga and to the usage of shistas (respectful feelings).

The second view was in Manu smriti [33] recommends the system of niyoga for the running of breed of societies. A third view was that there was an option (as niyoga was both forbidden and allowed). A fourth view (which seems to be the view of Vishvarupa himself) was that the smriti texts about niyoga refers to sudras (Manu Ch. IX sh. uses word *dvijati*) and it was also allowed to royal families when there was no male to succeed (only a brahmana was to be appointed) and Vishvarupa relies upon two verses [34]. Vishvarupa further says that the procreation of sons by Vyasa from the queens of Vichitravirya should be paid no

heed i.e. not to be relied on like the marriage of Draupadi to the five Pandavas.

The Mahabharata probably reflects what happened owing to the incessant wars among the princes of India. Whole princely houses must have been slaughtered if niyoga was prevalent among them, the males appointed, when they had to be of the same caste would have been ordinary soldiers (Kshatriyas). The proud princely families very likely thought it below their dignity to associate widowed queens with ordinary Kshatriyas. It is possible to hold that they choose brahmanas for appointment as they were deemed to be higher than even kings in the spiritual domain.

It is impossible to believe that brahmanas who had no temporal power, could coerce the proved and warlike caste into choosing brahmanas for niyoga unless the teaching of smritis falls in with the notions of the ruling houses themselves to some extent.

There was difference of opinion as to whom the child of niyoga belonged. There are divergences to this [35]. The first view was that the child belonged to the begetter, this view would cut at the very root of the purpose for which niyoga was recommended.

Nirukta [36] 111 supports this view and relies on views of Gautama and Manu.AP. Dh. Sh. II 6.13.5 says that according to a brahmana text the son belongs to the begetter. The III view was that if there was an agreement between the elders of widow and person appointed or between the husbands himself and the begetter that the child should belong to the latter vide Gautam Sh- II 18.10.11, Vaishnav Dh. 17.8 Adi. p. [37] Sh. 104.6.

A third view was that the son belonged to both the begetter and the owner of the wife, this is the view of Namda Sh. 58, Yaj. 111 127, Manu IX Sh. 53, Gautam 18.13.

Niyoga was forbidden in the Kali age by Brahaspati and it was included among practices forbidden in the Kali age by several works vide Mitakshara on Yaj. Sh. II 117 and Apararaka pg. 97 quoting Brahampurana. The [38] practice of raising issues from the widow of one's brother or marrying her was a widespread one, vide Westermarck's history of human marriage. The Nirukta [39] and Medhatithi [40] on manu applies to niyoga.

According to sutras and smritis, niyoga was entirely different from marriage. In many ancient societies, women were inherited like property on the death of the eldest brother, his younger brother took the family property as well as his widow, but the Rigveda had reached a stage much beyond that when niyoga was allowed in the sutras polyandry had been either unheard of or forbidden. Dr. Jolly [41] thinks that apart from the religious importance of a son, economic motives were at the bottom of the long list of secondary sons, including the Kshetraja, this appears to be quite wrong. The practice of niyoga was from the past and probably owed its origin to several causes, but one of which was the great hankering for a son evinced by all in Vedic times. Vaishnav Dh. Sh. 17.1—17.6 lends support to this view, since after quoting Vedic passages about the importance of a son for paying off the debts to ancestors and for securing heavenly worlds, he at once, proceeds to the description of the Ksetraja.

Some foreign writers [42] puts forward poverty, paucity of women and the joint family system as the causes of niyoga but there are no data's to prove that there was paucity of women in India during historic times. There might have been a paucity of men owing to wars nor do the other two

reasons bear close examinations, it is better to say that niyoga was a survival from the remote past that gradually became rarer and rarer still in the first centuries of the Christian Era it came to be totally prohibited.

Conclusion

Ancient Hindu scriptures stand testament to the fact that surrogacy has been very much existent in India. We could easily connect the thread of scientific achievement of surrogacy to its existence in the Indian mythology even before the scientific intellect could fathom it and proved its existence.

In this way, it can be said that Indian culture was very much rich regarding the aspect of surrogacy practices which were being carried out in ancient India by different names.

References

1. www.islamhinduism.com
2. www.indianchild.com
3. www.hindubooks.org
4. www.talesofwisdom.com
5. As the son enables the father to pay off debts he owes to his ancestors to secure immortality and heavenly worlds.
6. Manu Smiriti and Yajnavalkya Sh. 1.78
7. Law books written between 500 -1000A.D.
8. Assisted Reproductive Techniques- SURROGACY & ADOPTION By J. Malhotra. N. Malhotra. S. Chaturvedi
9. www.islamhinduism.com
10. www.hindubooks.org
11. Assisted Reproductive Techniques - SURROGACY & ADOPTION by J. Malhotra. N. Malhotra. S. Chaturvedi
12. www.freewikipedia.com
13. A common mythical metaphor for the womb
14. Gautama Dharmasutras - Sh, 14 to 18.4
15. Gautama Dharmasutras - Shloka 18.11
16. Manu. Chap. IX, Sh. 32, 33 & 53 forwards, Gautama Sh. 18.11 And Apasta Dharma, chap 11 6.13, uses the word "Kshetra" for wife and Gautama chap. IV Sh. 3 uses the word 'bijin for wife. Vashishtha Sh. 17.56 - 61, 65.
17. Narada Stri Pumsa and Vishvarupa Samhita by Vashishtha
18. Prajapatya Muharta" is the same as "Brahma Muharta" i.e, at the Last watch of the night (i.e. % of an hour before sunrise) vide Vashishtha Sh. 12.47, Manu Sh. 4.92.
19. Sonless woman could get property of her husband only if she submitted to niyoga otherwise she was to get only maintenance
20. Baudh dharma(Sh.II 2.17 vol. 14 pg. 226)
21. Baudh Dharma Ch. II Sh.2, 68- 70, Yaj.Ch. I Sh. 68 69 and Narada (Stripumsa Sh. 80-83)
22. Kautilya shashtra Ch. I 17-p-35 AND Kautilya Ch. II Sh.6 pg. 163
23. Narada Stri Pumsa - verses 82 AND Vishvarupa Ch. I pg 68
24. 24. Manu Ch. IX Sh. 58, 63, 143,144 & Narada Sh. 85 & 86
25. Vaishnava Dharma shashtra, Sh. 17.63
26. AP. Dh. Sh. II 10.27
27. AP Dh. Ch. II Sh. 6.13.6.
28. Yajnavalkya Ch. I Sh. 69, Manu Ch. IX Sh. 68
29. Vishnu Dharmasutra 15:3
30. Adi Parva, Mahabharata, Sh. 123.77
31. Adi. Parva, Mahabharata Sh. 104 & 177
32. Manu Smriti Ch. IX Sh. 64 & 68
33. Manu Smriti Ch. IX Sh. 69
34. 34. Vrddhmanu and a gatha of Vayu
35. Vaishnav Dh. Sh. 17.6
36. Nirukta Ch. III
37. 37. AP. Dh. Sh. Ch. II Sh. 6.13.5)
38. Adi Parva Sh. 10.46 AND Brahma Purana quoted by Apparark pg. 97
39. NiruktaCh.III Sh.15 explains Rg. Ch. X Sh. 40. 2,where in Some missing word "dever" is explained as 'second' husband (dvitiyavara)
40. Ch. IX Sh. 66 explains Rg. Ch. X Sh. 40.2.
41. Vishnu Dharma Sutra - Dr. Jolly- 1881
42. Dr. Winternitz's paper (notes on Mahabharata) in J.R.A.S.
43. 1897 pg. 716 -732 for niyoga in the great epic