

## Art Bill Still Pending, When Will Surrogates Get Their Due Share in India?

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### Short Communication

In the global medical markets, with the breakthrough in science and biotechnology, 'Bodies' and its 'parts' can be sold, purchased or even stolen. Around the world, with growing infertility, couples are moving across borders to bear their own biological child, using assisted and New Reproductive Technologies (NRT), culminating into what is called 'reproductive tourism' or 'fertility tourism'. There are different perspectives to see the process of surrogacy, especially the gestational-commercial, where the third person a 'surrogate' bears child/children, for nine months without any genetic relations, only to relinquish to the commissioning couple for a cost. Clearly there are strict laid down rules and regulations in many countries, where altruistic surrogacy is allowed but commercial surrogacy is completely banned and is illegal. They value human body and more so, do not have 'poor' surplus bodies to take on this drudgery of bearing for a couple, who is a stranger. Long lists of such countries where commercial surrogacy is banned are Australia, Japan, Italy, France, Finland, Hong Kong, Hungary, Pakistan, Portugal, Saudi Arabia, Spain and some states in US. In some countries, however, altruistic surrogacy is allowed, like Canada, Greece, Netherland, Belgium, New Zealand and UK. Only countries, which have legalized commercial gestational surrogacy, are India, Georgia, Israel, Russia, Thailand, and Ukraine [1-3].

Though there is no official data, on how many women are currently engaged in surrogacy, it is estimated that surrogacy is a \$400 million industry and growing at roughly 20 percent a year<sup>1</sup>. Women who carry children for Indian couples make anywhere from 80,000 to 200,000 rupees (\$1,198 to \$2,995), whereas those who work for foreign couples can earn up to 500,000 rupees (\$7,488)<sup>2</sup>. Though from the field studies, it is reported that mostly the CPs are Indian, followed by Non-Residents Indians (NRIs) followed by foreign nationals. Before 2015, surrogacy was allowed for anybody who approaches the IVF clinics; infertile couples, heterosexual, same- sex couples, or even single women.

The IVF clinics are mushrooming across big and small cities, with 3000 fertility clinics across India<sup>3</sup>, thanks to growing infertility problem globally and locally. 'Medical tourism' (MT) is seen as a multi-billion business in India earning foreign exchange. Reproductive tourism is a major component of MT, practiced much more in smaller IVF clinics, compared to big hospitals. CII in its latest report estimated 10,000 foreigners visit India for ART<sup>4</sup>, and many couples opted for surrogacy in India. Government see this huge potential to earn GDP, as is seen and projected for Medical Tourism.

There are different perspectives to see this process of surrogacy. Gupta [4] questions whether it is a win-win situation for both; surrogate and the infertile couples, former is endowed with fertility and the later with money, seen as a mutually beneficial relationship or

mutual solidarity. While Liberal feminists see this as woman's right to self-determination concerning her body and an act of empowerment and have every right to enter into a contract for surrogacy to be part of women's freedom. Radical feminists see it as the ultimate form of medicalization, commodification, and the technological colonization of the female body [5]. Spar [6] see it as a difference in income, implicitly acknowledges, both the sexual politics and the political economy of reproduction and stratified reproduction with intersections of class, race and culture and legal status. Scholars have raised the legal, ethical, social and medical issues around Surrogacy practice in India [7-11]. Majorities are of the opinion, that even if commercial surrogacy is banned in India, it will be practiced discreetly, as has been in the experience of PCPNDT Act<sup>5</sup>. It is thus advocated that it is better to legalize and strictly regulate.

The surrogates in India are mostly from low-income families, either illiterate or with primary education and lacking skills to engage in any livelihoods. Most of them coming from rural background with their husbands into contractual or unorganized work, are motivated by the agents and agencies to get into selling their reproductive services, be it egg donation, surrogacy and in some cases in Hyderabad, becoming subjects for clinical trials. Their poverty and aspirations for better life push them into becoming surrogates. Their main objective is to earn lump sum money for educating their children in private English medium school, buy a patch of land for house, construction of house, marriage of daughters, or to pay back loans. The agents who facilitate them and the counsellors, doctors in the IVF clinics motivate them for this 'Nobel' work, and make sure that they do not get emotionally attached to the baby. They sign a contract, which mentions that they are hired to be surrogate, to relinquish the child, with no claim over the baby and the amount to be given in case of successful delivery. In the process, surrogates sign on the dotted lines without getting the complete information of the procedures, failures, losses in the processes and procedures of surrogacy. The money is given in instalments and some of them have to go back in-between, if they are not able to successfully carry the process. Almost all deliveries are conducted through C-section to ensure the safety of the 'precious' baby, even though surrogates have borne their own biological children through normal delivery [11].

Demographic characteristics of India play an important role in

<sup>5</sup>Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, to stop female foeticides and arrest the declining sex ratio in India. The act banned prenatal sex determination.

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<sup>1</sup><http://www.indiabizsource.com/blog/surrogacy-faces-a-ban-in-india-for-foreigners/> accessed on 21 March 2016

<sup>2</sup><https://www.foreignaffairs.com/articles/india/2015-12-11/indias-surrogacy-tourism-takes-hit> accessed on 21 March 2016.

<sup>3</sup><http://www.indiabizsource.com/blog/surrogacy-faces-a-ban-in-india-for-foreigners/> accessed on 21 March 2016.

<sup>4</sup><http://indiatogether.org/what-surrogate-parenting-entails-in-india-laws> accessed on 21 March 2016.

reproductive industry. Average marriage age in India for men is 26 years and for women 22.2 years. Yet 61 percent of all women (69 percent in rural regions and 31 percent in urban areas) are married before the age of 16. The median age at first pregnancy is 19.2 years<sup>6</sup>, especially from lower and lower middle classes. Mean average age of mothers at the birth of first child is 19.9 in India<sup>7</sup>, thus making them 'young,' 'fertile,' healthy mothers, who can be egg donors and surrogates. This demographic character of being young mothers, becomes an 'advantage' for the IVF clinics to hire them, for the commissioning mothers, coming from better off classes, who marry late and bear children later.

Despite multi- billion dollar business in India, 'the Assisted Reproductive Technology (Regulation) Bill (2008)' is still pending despite so many debates and discussions for the past eight years and is not yet enacted. There are only Indian Council of Medical Research (ICMR) [12] 'National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India (2005) amended in 2008, 2010, and 2013' to go by, which are often flouted by the clinics, as the underlying principle is 'business' [13]. In the process, it is the surrogates, who are at loss, encashed over the desperation of infertile couples to have their own biological child.

In Thailand, the commercial surrogacy industry is worth \$125m, according to the Thai Department of Health Service Support [14]. Now commercial surrogacy is completely banned from July 30, 2015, for foreigners, the reason being ethical. For example, an Australian parents David and Wendy Farnell had left back baby 'Gammy' with Down syndrome, born out of surrogacy and took twin sister Pipah. India too had controversial cases of surrogacy, like Baby Manjhi, where the grandmother had to come from Japan to adopt the surrogate child as the CPs got divorced and the mother refused to take the child. Recently on 4th Nov. 2015, Supreme Court in India also banned surrogacy for foreign nationals. It has also banned surrogacy for the same sex couples and single parents from other countries. It is allowed only for heterosexual couples, with at least one parent with Indian origin. This ban came into action due to unregulated, unethical practice by some clinics. As the studies found that few clinics were hiring more than one surrogate for a foreign couple<sup>8</sup>, was found by the studies [10] and few media reports. It was also raised as a question in parliament session. The clinics follow their own clinical standards and protocols, not following ICMR guidelines. It is largely due to unregulated IVF clinics and no law to bind.

There have been cases of deaths due to overstimulation during egg donations; there are cases of aborting surrogates midway, after all the hormonal doses to prepare the body. There are evidences of hiring more than one surrogate for a couple, hence, preparing an assembly line for 'producing' the desired baby. Almost all have to undergo Caesarean Section, and many of them bear twins, whether the surrogates wants it or not, it is ultimately the doctors and the commissioning parents' choice. Though the ban has come in place, the issues of surrogates are

subdued, few scholars have been writing about surrogate's plight and advocating for their rights. Still the Act has to pass with safety nets for surrogates.

While the whole world is waking up to amending their laws, or formulating rules and regulations either to ban or regulate surrogacy, the political economy of IVF and ART industry clearly indicates the delays in passing the Act or regulating this industry in any forceful manner. Thus giving freedom to have their own ethical, moral and medical standards to follow. So larger question is, when will the surrogates get their due share?

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<sup>6</sup>[http://www.medindia.net/health\\_statistics/general/marriageage.asp#ixzz43WIFyN6U](http://www.medindia.net/health_statistics/general/marriageage.asp#ixzz43WIFyN6U) accessed on 21 March 2016.

<sup>7</sup>[http://www.photius.com/rankings/population/mothers\\_mean\\_age\\_at\\_first\\_birth\\_2014\\_0.html](http://www.photius.com/rankings/population/mothers_mean_age_at_first_birth_2014_0.html) accessed on 21 March 2016.

<sup>8</sup>As per the ICMR guidelines, only one surrogate should be hired for one couple.