

Topic: Black Day for Surrogacy

Surrogacy is when a **woman carries a baby for another couple and gives up the baby at birth**. In the past decade, commercial surrogacy has grown tremendously in India. It is currently estimated to be a **\$2-billion industry**. Before November 2015, when the government imposed a ban, **foreigners accounted for 80 per cent of surrogacy births** in the country. This is because most countries, barring a few such as **Russia, Ukraine and some U.S. states**, do not permit commercial surrogacy. Many countries in Europe have completely prohibited surrogacy arrangements, both to protect the reproductive health of the surrogate mother as well as the future of the newborn child.

The trigger

The debate began when, in **2008, a Japanese doctor couple commissioned a baby** in a small town in Gujarat. The surrogate mother gave birth to a healthy baby girl. By then **the couple had separated and the baby was both parentless and stateless**, caught between the legal systems of two countries. The child is now in her grandmother's custody in Japan but has not obtained citizenship, as **surrogacy is not legal in Japan**. In 2012, an **Australian couple** who had twins by surrogacy, arbitrarily rejected one and took home the other. A single mother of two from Chennai decided to become a surrogate mother in the hope that the **payment would help her start a shop** near her house. She delivered a healthy child, but her hopes bore little fruit for herself. She received only about **Rs.75,000, with an auto rickshaw driver** who served as a middleman, taking a 50 per cent cut. After repaying the loans, she did not have enough money. On January 29, 2014, 26-year-old Yuma Sherpa died in the aftermath of a surgical procedure to harvest eggs from her body, as part of the egg donation programme of a private clinic based in New Delhi.

These incidents highlight the total disregard for the rights of the surrogate mother and child and have resulted in a number of public interest litigations in the Supreme Court to control commercial surrogacy. **The 228th report of the Law Commission of India** also recommended prohibiting commercial surrogacy and allowing ethical altruistic surrogacy to needy Indian citizens by enacting a suitable legislation.

The Surrogacy (Regulation) Bill, 2016 proposes to regulate surrogacy in India by permitting it as an option for couples who cannot naturally have children, have a lack of other assisted reproductive technology options, are keen to have a biological child, and can find a surrogate mother among their relatives. **Altruistic surrogacy**, which means an arrangement without transfer of funds as inducement, is currently practised in some centres in India, though the majority of surrogacy centres use women who are paid for their services. The child born through surrogacy will have all the rights of a biological child. Indian infertile couples between the ages of **23-50 years (woman) and 26-55 (man)** who have been **married for five years** and who do **not have a surviving child** will be eligible for surrogacy. The surrogate mother should be a **close relative of the intending couple** and between the ages of **25-35 years** and shall act as a surrogate mother **only once in her lifetime**. Implementation will be through the national and State surrogacy boards. Any establishment found undertaking commercial surrogacy, abandoning the child, exploiting the surrogate mother, selling or importing a human embryo shall be **punishable with imprisonment for a term not be less than 10 years** and with a fine up to **Rs.10 lakh**. Registered surrogacy clinics will have to maintain all records for a minimum period of **25 years**.

While the **government seems pleased** with itself for giving the nod to the Surrogacy Regulation Bill, leading gynecologists view the bill-which bans commercial surrogacy, in another light.

The key concerns that doctors share about the bill are the following:

- In the event of surrogacy, the bill allows it only with a woman who is a **“close relative”** of the childless couple. This obviously **limits the possibility**
- Why would a woman agree to surrogacy in the **absence of suitable monetary benefits?**
- The new bill would lead to **corruption like in the case of kidney rackets** in the country

Is surrogacy legal?

It varies from country to country. **Countries such as France, Germany, Italy, Spain, Portugal and Bulgaria prohibit all forms of surrogacy.** In countries including the **UK, Ireland, Denmark and Belgium**, surrogacy is allowed where the **surrogate mother is not paid, or only paid for reasonable expenses.** Paying the mother a fee (known as commercial surrogacy) is prohibited. Commercial surrogacy **is legal in some US states**, and countries including **India, Russia and Ukraine.** People who want to be parents may go abroad if their home country does not allow surrogacy, or if they cannot find a surrogate. However, even here, the laws may vary. For example, some **Australian states have criminalised** going to another country for commercial surrogacy, while others permit it. An international non-profit surrogacy organisation, has estimated the approximate average costs in different countries: **US - \$100,000 (£60,000), India - \$47,350, Thailand - \$52,000, Ukraine - \$49,950, Georgia - \$49,950, Mexico - \$45,000.** There are few statistics on how many children are born through surrogacy arrangements, as many countries do not formally record this. Nicola Scott, a lawyer with UK family law firm Natalie Gamble Associates, says that about 25% of her firm's clients go to the US, often because they feel it is safer. **"The US has a very long history of surrogacy.** One reason is that the parents know there are established frameworks in many states, particularly California, so there is safety associated with going there," she says.

Read further:

<http://www.medicalindiatourism.com/surrogacy-in-india/surrogacy-laws-by-country.html>

<http://indianexpress.com/article/india/india-news-india/stern-surrogacy-rules-to-hurt-infertile-couples-most-experts/>

<http://timesofindia.indiatimes.com/india/New-bill-to-settle-surrogacy-issues/articleshow/51218061.cms>

<http://www.dailyrounds.org/blog/doctors-say-new-surrogacy-bill-unfortunate-black-day-for-surrogacy/>