How to make the Surrogacy Bill more inclusive?

The government need not restrict the surrogacy option to married couples only.

A foreigner couple with their child, which was born through surrogacy, in Hyderabad in 2013.

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The Surrogacy (Regulation) Bill was introduced in the Lok Sabha earlier this month with the intent of facilitating altruistic surrogacy in the country. The Bill stipulates that a surrogate mother has to be a 'close relative' of the intending couple. The government claims that regulating surrogacy will put an end to rampant commercialisation of the practice. But in the process, it has left a lot of women from underprivileged backgrounds who lend their wombs worse off. In a conversation moderated by Ramya Kannan, gynaecologist Dr. Kakoli Ghosh Dastidar (KGD) and author Gita Aravamudan (GA) look at the Bill's shortcomings.

How will the Bill impact surrogacy in the country? Will it increase or decrease the chances for people to choose from the many reproduction options?

KGD: I would like to mention that I have spoken to Union Health Minister Harsh Vardhan. I have also, in fact, written to him that it looks like we are putting the cart before the horse. For surrogacy to happen, we need embryos, and embryos are cultured in various In-Vitro Fertilisation (IVF) laboratories. So, before speaking of surrogacy, we should have brought in the Assisted Reproductive Technology (ART) Bill, which has been lying in cold storage for years now. We should have formulated rules and regulations for ART because there is a mention of 'donor eggs' in the Surrogacy Bill; and it is the donor eggs that are used for the IVF procedures. Second, the Bill specifies that the intending couples should be married Indian couples. There is no mention of Non-Resident Indians working or studying abroad who may want to come back...
home to have a baby. As far as the other provisions go, they are mostly okay, but we need to be able to debate the Bill at length.

Are there any problems with the Bill?

**GA:** There are a lot of problems. First, as Dr. Kakoli said, we are putting the cart before the horse because there is a whole process involved, and surrogacy is only the ultimate end of it. There are many other points in the Bill that are very problematic. First, it leaves out a lot of people in case they want to have a baby through IVF, including unmarried couples who want to have a baby through surrogacy, gay couples and single men and women.

Also, the Bill allows only altruistic surrogacy; this provision is very problematic as far as I'm concerned. I spent two years with surrogate mothers, clinics and intending couples; what I found is that the people who are lending their wombs in order to bear children for somebody else — they are doing a job which is very creditable because they want to help somebody, but it doesn’t mean that they should put their life on hold for it, or that they should not be paid for it.

Altruistic surrogacy has, in fact, failed in other countries, and has resulted in various other forms of assistance being given, though money may not be paid. If we are going to rely on relatives alone, many may not come forward. Surrogacy should be declared as a kind of profession — the person providing a womb must have a contract, must be paid properly and get insurance and proper medical checks.

Both of you sound quite agitated at the exclusion of certain groups of people.

**KGD:** I would like to mention here that our group, led by my husband, Dr. Sudarshan Ghosh Dastidar, was the first in the country, possibly globally too, to help a single-male parent have a baby through IVF surrogacy in 2005.

We have been working on IVF since 1986-87, so we have had so many experiences of dealing with people who seek surrogacy. Thus, I strongly speak in favour of transgenders and same-sex couples. I think they should have been included in this Bill.

But as far as the experience of surrogate mothers is concerned, some women had been exploited so much that the government was forced to bring this proposal. The mothers were not being given good food or medical treatment and postpartum care was non-existent.

While in my own experience, I have always dealt with close relatives who came forward as surrogates, I am all for including other groups of people too in the Bill, if couples are unable to, or cannot bear children due to medical reasons. However, I’m strictly against ‘fashion surrogacy’, where women who feel their figure would be disturbed if they carry a baby opt for surrogacy.

**GA:** In the case of LGBTQI couples and single parents, when medical facilities are available, surrogacy should be allowed, because otherwise how will they have a baby? They will need the womb of a surrogate. Living in has become acceptable now, and live-in couples should also be allowed to have surrogate babies. All these archaic rules, I think, should be shed from the Bill.

Surrogate mothers have indeed been exploited, because there is no process to monitor the clinics or any law to ensure that the mothers are not defrauded by the clinics or the intending couples. The question is, will this Bill manage to ensure a fair and just process?

**GA:** So, I agree with Dr. Kakoli that there are certain places where surrogates were thoroughly exploited and it was the agents, the middlemen, who did that. However, instead of removing the
means of livelihood from them, you should have a contract that all surrogates and the commissioning parents have to sign.

The contract should include details of the payment to be made, specify insurance coverage, and give an assurance that the mothers will be treated properly even in the post-partum stage. I have come across a couple of surrogate homes in Gujarat, in Bengaluru and Hyderabad, where the surrogates are actually treated very well.

Surrogates are actually not very attached to the babies they are carrying in their wombs, because it is a means for them to get a livelihood. If the government can only ensure that everything is done legally, we don’t need this kind of a Bill that is so non-inclusive and superficial, in the sense it doesn’t delve deep into the problems.

So, it seems logical that ART is the key to surrogacy. Is it possible that the ART Bill will be fast-tracked now?

KGD: We are trying to solve the problems by talking, and we are going to discuss this next week. Only at the end of the discussion will we be able to see how many amendments the government has accepted.

If you have a surrogate pregnancy, it should be preceded by an IVF. That is why IVF should be discussed first. IVF clinics have mushroomed all across the country, and malpractices are happening, for instance, in dichotomy or seed-splitting. There are also advertisements where celebrities falsely claim to provide a 100% success rate, whereas the internationally acceptable rate for women is about 35%, and it can never be more than 40%.

We do have, in certain age groups, a 70% success rate; but it might be just 30% for the next age group, so the cumulative rate comes to 35%-40%. But these IVF units are claiming a 100% success, so more patients are going to them. Costs are also going up. While an IVF procedure earlier used to cost less than ₹1 lakh, it now costs ₹4 lakh-₹5 lakh. So, the ART Bill should be tabled before the Surrogacy Bill.

GA: The ART Bill has been in cold storage. But the Surrogacy Bill, which deals with the end of the process, is being touted as very important. It is not. What is important is to take note of the fact that malpractices are taking place in these IVF laboratories, to the extent that somebody else’s embryo can be put into you saying that it is yours. These fly-by-night operators have to be regulated. ART Bill has to be taken up again, and discussed first, after being tabled in Parliament, and passed. Otherwise, are going to have a very messy situation.

Have all points of view been represented in the Bill? Did a consultative process precede the introduction of the Surrogacy Bill?

KGD: When the ART Bill was drafted in the late 1990s, an expert committee was constituted by the Indian Council for Medical Research. It held public debates in all four parts of the country and we involved the public. We put out advertisements in newspapers and asked the public to speak out. Only after this, did the ART Bill come about. Even for surrogacy, the public should have its say, because this is a democracy.

Couples with infertility problems, transgender people, single women, divorced women, and widows should be involved in the public debate and only then should the Bill be brought in.

GA: Exactly! I agree with you on that. The Constitution gives a woman the right to reproduce, or not to reproduce, as she wishes, and she has the right to privacy when she makes her reproductive choices. So, this has to be incorporated into the Bill — If I have a right to
reproduce, that means I can hire a surrogate, I can go in for IVF whether I’m a transgender, a lesbian or a divorcee, I have this right as I wish.

A woman who has lent her womb also has these rights.

Any closing remarks?

GA: We need a law, but passing the Surrogacy Bill without looking at the whole process — I think this means we are heading for disaster.

The whole Bill has been drafted without taking into consideration the many physical and emotional factors at stake. Meanwhile, there are many people who don’t know whether or not they can hire a surrogate. There are people who have already hired surrogates. What will happen to their baby? There is a lot of doubt in these areas now.

When the government banned surrogacy for foreigners, some foreigners who were here earlier had already put some embryos in deep freeze thinking that they would come back and have another baby through the viable embryos. Following the ban, they asked for the embryos to be returned. They had gone through a lot to produce a life form, but the government said there can be no export and import of embryos any more. So what will happen to those embryos? You cannot put everything in jeopardy at the last moment, and then say ‘let me think about it and get back to you after a year’. This is a very complicated issue.