

**COMMERCIAL SURROGACY IN INDIA - BANE OR BOON**  
**BY**  
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After business process, knowledge process and legal process outsourcing, genetic pool banks of India are the latest outsourcing Industry from India. Would be parents from the Indian Diaspora in the US, UK and Canada and foreigners from Malaysia, UAE, Afghanistan, Indonesia, Uzbekistan, Pakistan besides Nepal are descending on sperm banks and In-Vitro Fertilisation (IVF) centres in India looking for South Asian genetic traits of perfect sperm donors. Equally, renting wombs is another easy and cheap option in India. Relatively low cost of medical services, easy availability of surrogate wombs, abundant choices of donors with similar racial attributes and lack of any law to regulate these practices is attracting both foreigners and Non-resident Indians (NRIs) to sperm banks and surrogate mothers in India.

India, surreptitiously, has become a booming centre of a fertility market with its "reproductive tourism" industry reportedly estimated at Rs. 25,000 crores today. Clinically called "Assisted Reproductive Technology" (ART), it has been in vogue in India since 1978 and today an estimated 200, 000 clinics across the country offer artificial insemination, IVF and surrogacy. So much so, in the recent decision of the Supreme Court on September 29 in Baby Manji Yamada's case, it was observed that "commercial surrogacy" reaching "industry proportions is sometimes referred to by the emotionally charged and potentially offensive terms wombs for rent, outsourced pregnancies or baby farms". It is presumably considered legitimate because no Indian law prohibits surrogacy. But then, as a retort, no law permits surrogacy either. However, the changing face of law is now going to usher in a new rent-a-womb law as India is set to be the only country in the world to legalise commercial surrogacy.

The complicated case of Japanese baby Manji born on July 25, 2008 to an Indian surrogate mother with IVF technology upon fertilization of her Japanese parents eggs and sperms in Tokyo and the embryo being implanted in Ahmedabad, triggered off complex knotty issues. The Japanese biological parents divorced and the mother disowned the infant upon its birth in India. The grandmother of the infant petitioned the Supreme Court challenging the directions given by the Rajasthan High Court relating to production and custody of baby Manji Yamada. Her request to the Apex Court for permission for the infant to travel with her and for issuance of a passport under consideration with the Central Government was directed to be disposed off expeditiously. Following the directions of the Supreme Court dated September 29, 2008, the Regional Passport Office in Jaipur issued an "Identity Certificate" to the baby on November 1, 2008. Thereupon, the grandmother Emiko Yamada flew out to Japan with the baby. A Pandora's box has opened with a floodgate of questions and issues related to ethics and legality surrounding surrogacy with Japanese baby Manji's case and even her citizenship status remained unclear.

In another separate case, Israeli gay couple Yonatan and Omer Gher became parents in India on October 12, 2008, when their child was conceived with the help of a Mumbai based surrogate mother in a fertility clinic in Bandra. It is reported that a 3.8 kilo baby boy was born to them at Hiranandani Hospital in Powai (Mumbai) on October 12, 2008.

Reportedly, Yonatan and Omer had been together for the past seven years and had decided to start a family. But since Israel reportedly does not allow same sex couples to adopt or have a surrogate child, India became their choice to find a surrogate mother. Yonatan and Omer reportedly first came to Mumbai in January 2008 for an IVF cycle when Yonatan is stated to have donated his sperm. Thereafter, they selected an anonymous “mother”. Accordingly, the child was conceived with the help of a Mumbai based surrogate mother in a fertility clinic in Bandra. After the child was born, the gay couple left for Israel with the child on November 17, 2008.

Even though homosexuality is an “Unnatural Offence” under Section 377 of the Indian Penal Code as Indian law criminalizes homosexuality, there is no bar to gay couples hiring a surrogate mother to deliver children for gay couples in India. Thus, there are reports in the media that there are numerous gay couples coming to India to look for surrogate mothers as India does not disallow such surrogacy arrangements.

In the absence of any law to govern surrogacy, the Indian Council of Medical Research (ICMR) issued Guidelines in 2005 to check the malpractices of Assisted Reproductive Technology (ART). These national guidelines for Accreditation, Supervision and Regulation of ART Clinics in India, 2005 are non statutory, have no legal sanctity and are not binding. Silent on major issues, they lack teeth and are often violated. Exploitation, extortion, and ethical abuses in surrogacy trafficking are rampant, go undeterred and surrogate mothers are misused with impunity. Surrogacy in UK, USA and Australia costs more than US Dollars 50,000 whereas advertisements on websites in India give varying costs in the range of US Dollar 10,000 and offer egg donors and surrogate mothers. It is a free trading market, flourishing and thriving in the business of babies.

At a time when the World’s first Test-tube baby Louise Brown born in 1978 in UK has now herself become a mother and high profile international adoptions by celebrities like Madonna and Angelina Jolie are glorifying international adoption, India does not lag behind. Noted Indian film actress Sushmita Sen inspires single women both in India and abroad to adopt children breaking conventional taboos and age old practices. Resultantly, orphan girls are finding mothers in India and abroad.

Genuine adoptive foreign and NRI would be parents too are pitted against an insurmountable wall. Child adoption in India is a complicated issue. It is over burdened with knotty legal processes and complicated lengthy procedures for those who want to give a new home and a new life to reported 12 million Indian orphans. Even though the Indian Constitution ordains it to be a sovereign, socialist, secular, democratic republic, 60 years of Independence have not given a comprehensive adoption law applicable to all its citizens, irrespective of the religion they profess or the country they live in as Non-Resident Indians (NRIs), Persons of Indian Origin (PIOs) or Overseas Citizens of India (OCIs). Resultantly, those who cannot by law adopt and can be appointed only as guardians under personal Indian laws, turn to options of IVF clinics or rent surrogate wombs. It is in this perspective that India now needs to adopt another law to turn to actual reality dreams of those who live abroad rather than turning to unhappy and some times unethical practices.

A silent revolutionary change is fast heralding a new dawn in matter of inter-country adoptions. However, the plethora of Indian laws, does not improve the plight of 12 million orphaned children in India who need adoptive parents. The Guardian and Wards Act, 1890 permits Guardianship and not adoption. The Hindu Adoption and Maintenance Act, 1956 does not permit non-Hindus to adopt a Hindu child. Requirements of immigration have further hurdles after adoption. Should law not change because these children need adoptive parents? May be the urge to be a parent has now taken over in the form of “embryo adoption” wherein fertilized sperms and eggs developed into an embryo are successfully implanted in Indian clinics and nurtured by foreign mothers in their homeland ensuring hassle free adoption of Indian embryos without complicated procedures. Technology has overtaken law. Time is now ripe for Indian laws also to legitimize adoptions. Society has engineered changes. Indians whether NRIs, OCIs or PIOs are all Indians and must get the first benefit of adopting Indian children.

In a phenomenal exercise to legalise commercial surrogacy, The Assisted Reproductive Technology (Regulation) Bill & Rules – 2008, a draft bill prepared by a 15 members committee including experts from ICMR, medical specialists and other experts from the Ministry of Health and Family Welfare, Government of India has been posted online recently for feedback. This 135 page document is stated to be an Act to provide for a national frame work or the Regulation and Supervision of Assisted Reproductive Technology and matter connected therewith or incidental thereto as a unique proposed law to be put before the Indian Parliament. Abetting surrogacy, it legalizes commercial surrogacy stating that the surrogate mother may receive monetary compensation and will relinquish all parental rights. Single parents can also have children using a surrogate mother. Foreigners, upon registration with their Embassy can seek surrogate arrangements.

Before the law is put on the anvil, it needs a serious debate. Ethically, should women be paid for being surrogates? Can the rights of women and children be bartered? If the arrangements fall foul, will it amount to adultery? Is the new law a compromise in surpassing complicated Indian adoption procedures? Is the new law compromising with reality in legitimizing existing surrogacy rackets? Is India promoting “reproductive tourism”. Does the law protect the surrogate mother? Should India take the lead in adapting a new law not fostered in most countries? These are only some questions which need to be answered before we drape the new law. Let us pore into our hearts and with introspection decide carefully. Are we looking at a bane or a boon? We should not wait for time to test it. We should decide now. The surrogacy bill needs to be discussed threadbare.

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