

## India's unregulated surrogacy industry

In what might be the ultimate in outsourcing, infertile Western couples are increasingly travelling to India to have their baby delivered by a surrogate mother. Priya Shetty reports.

The difficulty and expense of having a baby through surrogacy in the West is driving thousands of couples to India where a lack of red tape and high-quality medical care means that the process is easy, cheap, and hassle-free. Commercial surrogacy was legalised in India in 2002, as part of the country's drive to promote medical tourism, an industry that the Confederation of Indian Industry predicts now generates US\$2.3 billion annually. Estimates are hard to come by, but more than 25 000 children are now thought to be born to surrogates in India; 50% of these are from the West.

But as with the rest of India's medical tourism industry, surrogacy is entirely unregulated. Beyond the brief guidelines laid out by the Indian Council of Medical Research (ICMR), there is little medical advice to steer clinicians. The combination of profit-driven clinics and financially desperate surrogates has led to serious concerns about the ethics of surrogacy in India, especially the treatment of surrogate mothers. Now, the Indian parliament is considering new legislation on assisted reproductive technology that would mean better regulation and monitoring of this growing industry.

In the developed world, surrogacy is legal in the UK and in some US states, but not in many European countries such as France and Germany. If the Indian legislation is passed, it would set a global precedent. Even in the UK and USA, there are many aspects of surrogacy for which there is no legislation and little medical guidance. For instance, says Vasanti Jadv, surrogacy specialist at the Centre for Family Research, University of Cambridge, UK, "there are no restrictions in the UK regarding the number of times a woman can be a surrogate", though fertility experts

seem to agree that three is probably the maximum. Several fertility experts that *The Lancet* spoke to also said they felt it was essential that a surrogate had children of her own, in case problems during the surrogate pregnancy prevented her ever giving birth again. However, this is not a legal requirement in the UK.

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Stephanie Caballero, who runs a law firm specialising in assisted reproductive techniques in San Marcos, CA, USA, says that differences in laws between US states means that the situation can be as complex there. For the most part, she says, there is little guidance or legislation on surrogacy even in "surrogacy friendly" states such as California. Caballero, who herself went through 13 in-vitro fertilisation cycles before having twins through surrogacy, had to adopt her own genetic children because of restrictive state laws in Oregon, the state where the birth mother lived. Although Caballero doesn't think there needs to be more legislation,

she says that the American Society for Reproductive Medicine needs to take the lead in medical guidance.

There are several reasons why a couple from the developed world might want to travel to India for surrogacy (table). UK law dictates that surrogacy must be altruistic, which has led to a severe shortage of women willing to be surrogates. The amount of money legally payable to surrogates to cover expenses tops out at around £10 000—nowhere near enough of a financial incentive. Not only that, surrogacy agreements are not enforceable in the UK. This means that after months of searching for the right surrogate and waiting for the baby to be born, the prospective parents might be left bereft of their baby. This can happen in the USA too, says Caballero.

In India, meanwhile, these problems are almost non-existent. For one thing, the surrogacy agreement is legally binding. Cultural and financial factors also mean that surrogate mothers rarely want to keep the baby. The taboo around surrogacy means that most women keep their pregnancy largely a secret. Indian surrogates are often struggling to provide for the family they already have; they can't afford not to get paid. Fertility doctor Kaushal Kadam, at the Corion Fertility



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For the Indian Council of Medical Research guidelines on surrogacy see [http://icmr.nic.in/art/Chapter\\_3.pdf](http://icmr.nic.in/art/Chapter_3.pdf)

For the draft Indian bill on assisted reproductive technologies see <http://221.179.130.210:81/1Q2W3E4R5T6Y7U8I9O0P1Z2X3C4V5B/www.icmr.nic.in/guide/ART%20REGULATION%20Draft%20Bill1.pdf>

	UK	US	India
Fee paid to the surrogate (US\$)	15 000	18 000–25 000	5000–7000
Total cost of surrogacy (US\$)	25 000	50 000–250 000	25 000
Enforceable agreement?	No	Yes (in states where it is legal)	Yes
Recommended number of eggs implanted	1–2	3	3
Age limit of surrogate	No limit, but 35 years considered the upper limit	No limit, but 35 years considered the upper limit	Indian Council of Medical Research guidelines say 45 years, proposed bill says 35 years
Number of times she can be a surrogate	No specific guidelines	No specific guidelines	No guidelines but proposed bill would limit to five livebirths, including surrogates' own children

Table: Surrogacy around the world

**Panel: Bobby and Nikki Bains's story**

Bobby and Nikki Bains from Essex, UK, now in their early 40s, are living advertisements for surrogacy in India. After five in-vitro fertilisation attempts, they spent 2 years trying to find a suitable surrogate in the UK. Trying to find a surrogate in the UK, where advertising for one is illegal was “pretty awful” says Bobby, and one surrogate even tried to blackmail them.

They contacted the Rotunda clinic in Mumbai, and finally had their first baby, Daisy, in 2008 after attempts with eight previous surrogates had failed. They had their second child, Dhillon, in 2010 through a surrogate as well, this time through Nayna Patel's clinic in Gujarat. The couple now run a surrogacy advice site (oneinsix.com), helping other potential parents through the process in India, and hold “surrogacy parties” four times a year where they explain “how to do virtually all things surrogacy-related in India”.

The proposed bill would mean that clinics have no involvement in procuring the surrogate, although this is exactly what makes the process so easy for couples right now, says Bobby. “You don't have to be friends or have a relationship with the surrogate if you don't want to.”

Clinic in Mumbai, says that if anything, surrogates ask her “you are sure they are going to take the baby, right? I can't afford to raise three children”.

Indian surrogates earn between \$5000 and \$7000—an enormous sum for women would normally only earn about \$300 a year. The women's financial desperation has led some ethicists and women's rights groups to feel that surrogates are being exploited. Yet it is precisely because the women have so few alternatives to earn money, that some doctors feel they cannot take a moral high ground. “I really don't see any exploitation”, says Kadam. “It's a mutually beneficial situation where the couple is getting their baby and the surrogate is getting benefited in the end.”

Gillian Lockwood, medical director of the Midland Fertility Services, West Midlands, UK, which deals with surrogacy, agrees. “As long as it is properly regulated and their health is protected, it is difficult to see that it is a totally unacceptable activity”, she says. By making the process harder for couples, she adds, surrogacy would “get driven underground, and then it becomes more dangerous with a higher risk of exploitation”.

Fertility experts are also concerned that ICMR guidelines, which say that surrogates can be implanted with a maximum of three embryos are being flouted. Kadam says she knows of some Indian clinics that implant surrogates with more than they should, one clinic reportedly with five or six embryos. Kadam's assertion was borne out in numerous conversations that *The Lancet* had with fertility experts in India. Lockwood is shocked that doctors would implant such “dangerously high numbers of embryos”. For surrogate mothers, she says, “there is already an increased risk due to the immune mismatch, which can lead to conditions like pre-eclampsia or gestational diabetes”.

Implanting so many embryos increases the risk of multiple births, which have substantial health risks. Even a twin pregnancy strains organs such as the liver, kidneys, and thyroid. Multiple births can mean babies are born prematurely, which leaves them at a higher risk for health problems later on in life, she says. Jadva says that in the UK, there is now a move towards single embryo transfer as far as possible.

Ironically, prospective parents might view implanting high numbers of embryos as a good thing, says Lockwood. For “many couples, if they see this is their only chance for a family, adopt a sort of buy one, get one free approach. Given that it doesn't cost any more to have a surrogate mother have twins for you, they can sometimes see it as a weird economy of scale”, she says.

Bobby Bains, who with his wife Nikki, has now had two children through surrogates in India, told *The Lancet* that surrogacy in India worked out so much cheaper precisely because clinics implant more than the two embryos that is standard in the UK. In one of their surrogacy attempts in 2007, their potential surrogate was implanted with six embryos (panel).

Aside from this immediate health risk, there is another, more insidious, cause for concern—the total lack of autonomy that Indian surrogates face

during pregnancy. Surrogacy clinics in India oversee what the surrogate eats, drinks, how much exercise she gets; in short, they run her life. During the pregnancy, the women are made to stay in crowded hostels with other surrogates, and are often allowed to see their families just once a week. “ART [Assisted Reproductive Technology] clinics [in India] play an excessive role in surrogacy arrangements”, says G R Hari, a lawyer who runs the Indian Surrogacy Law Centre in Chennai. “Many clinics deviate from their core role of a health-care service provider and turn into surrogacy agencies” because of the lure of money, he says.

While in most US states, it is legal for prospective surrogates or parents to advertise, in the UK, it is illegal, and both must go through a surrogacy agency. The Indian bill proposes setting up “womb banks” of surrogates to weaken the link between clinics and surrogates. These organisations, whether private or government-run, would be accredited by state medical boards. It will also be mandatory for the commissioning couple to nominate a local guardian to be responsible for the surrogate mother during the pregnancy.

The bill also clarifies points on which the ICMR guidelines were vague. For instance, the guidelines state the maximum age of a surrogate mother was 45 years but said nothing on a minimum age. The draft bill mandates the age range to be 21–35 years. The bill also says that a surrogate could only have five livebirths in her life, and this would include her own children.

Clinics are cautiously in favour of regulation, albeit with caveats. “We need the guidelines to come into force as law”, says Kadam. Her concern centres on the bill's proposal to stop clinics from taking charge of the surrogate mother's health during pregnancy. “Surrogacy agencies can take care of the financial side of things, but the clinic should control the medical care.”

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