

# The Impact of Assisted Reproductive Technologies on Modern Society

## The Example of India

Olga Savvina

Department of Ethics

Faculty of Humanities and Social Sciences

Peoples' Friendship University of Russia

Miklukho-Maklaya str., 10/2, Moscow, Russia, 117198

E-mail: savvina\_ov@rudn.university

Ivan Lapshin

Department of Ethics

Faculty of Humanities and Social Sciences

Peoples' Friendship University of Russia

Miklukho-Maklaya str., 10/2, Moscow, Russia, 117198

E-mail: lapshin\_ie@rudn.university

**Abstract**—The article analyses the practice of assisted reproductive technologies in the globalizing society. Today the “reproductive tourism”, caused by high mobility of world population, is developing rapidly. Patients travel all over the world to get access to the needed medical service – fertility treatment. The article considers “reproductive tourism” to India and its consequences for low-class women. The study also shows that the influence of the reproductive technologies on the Indian society resembles scenarios of cyberpunk science fiction where people are exploited by high-tech technologies.

**Keywords**—assisted reproductive technologies; surrogacy; autonomy of a patient; cyberpunk

### I. INTRODUCTION

One of the widely used assisted reproductive technologies, gestational surrogacy, is a relatively recent technology which originated in the 1980s. It includes the procedure of in vitro fertilization (implantation of an embryo in the uterus which was conceived in vitro – “in glass”). The impregnated woman in this case is not the genetic mother of a coming child and gametes are taken from the genetic parents (father and mother). Surrogacy is usually applied in couples that can't have children due to health reasons and also in “nonstandard” couples consisting of homosexual men.

Attitudes towards surrogacy vary widely in different countries as well as the legislative regulation of this practice. Three different approaches can be highlighted in the legislation: 1) both altruistic and commercial gestational surrogacy is banned; 2) voluntary altruistic surrogacy is allowed, but commercial surrogacy is banned; 3) both voluntary altruistic and commercial surrogacy is allowed. Russia follows the latter principle. In the countries which adhere to the first position prison term is a common sentence.

Some couples willing to resort to surrogacy services which live in countries with prohibited surrogacy try to find the solution abroad. It should be noted that cultural traditions and religions strongly influence the laws that regulate surrogacy [1]. Initially, the legislation of countries didn't take into account the position of other countries to this

problem, which entailed a lot of ethical problems and legal cases. France and Germany originally didn't recognize the practice of surrogacy and denied citizenship to children born by a surrogate mother abroad despite the fact that the parents themselves were the citizens of France and Germany, respectively. Eventually, the parents didn't have a legal option to bring their own children home. In most cases they were brought in as adopted and their citizenship was changed. This trick sometimes didn't work because in the countries of birth, for example, in Ukraine, the child automatically acquires the citizenship of their parents. In this situation it is impossible to adopt one's own children [2]. However, the EU countries have been revising their policy on surrogacy lately.

### II. THE CURRENT SURROGACY SITUATION IN INDIA

From 2015 on in France it is possible to register a child born by a surrogate mother abroad [3]. Before, children born through this procedure couldn't claim for French citizenship. A year earlier, Germany which had had a prohibitive law came to the same conclusion: the couple that resorted to surrogacy abroad should have parental rights and the possibility to give German citizenship to the children [4]. Most likely, it was the “reproductive tourism” of the citizens of these countries which contributed to these changes. Situations of parents who can't bring their children home and give them their own citizenship are often covered in the mass media and talk shows, they gain social resonance and draw attention to the problem of legislative regulation of surrogacy. So, the “reproductive tourism” starts to affect the laws of countries that regulate the assisted reproductive technologies. Countries are trying to adapt to “reproductive tourism” and mitigate its consequences for institutions and citizens.

The price of the procedure and payment for surrogate mothers are the second most important (after local legislation) criterion affecting the choice of foreign clients. A large part of the price is payment for surrogate mother's “work”. In developing countries women are willing to provide services for a lower price so the cost of the whole procedure substantially decreases. The payment for a surrogate mother

in India ranges between 800 and 10000 dollars while in the USA it is 35000 dollars [3]. The salary of doctors here is also different and this is why clients often choose to travel to developing countries.

India has both advantages: the laws are liberal to genetic parents and the price of surrogacy procedure is relatively low. These conditions turned India into an international center of surrogacy. However, the development of this new branch of medicine in India (which is outward-oriented to a large extent, 75% of clients of Indian IVF clinics are foreigners [5], [6]) led to unwanted consequences and aggravated social problems.

During many centuries Indian society was stratified. A caste is a European term (from Portuguese word *casta* “sort, variety” or from Latin *castus* “clean”) [7. P. 151]. *Varnas* are divided into *jati* (Sanskrit “clans, tribes”) which are numerous. “*Jati* is the basic unit of traditional Indian society along the whole documented history till modern times” [7. P. 151]. *Jati* often perform the same professional work and are named identically throughout the whole language area or the territory of the country [8. P. 330]. Transition from one *jati* to another is quite problematic even today. From the middle of the 20th century on, the Indian government attempts to fight the discrimination of “untouchables” and promotes democratic values. In 1997 in India an “untouchable” was first elected to President [7. P.151]. Despite the fact that *varnas* still play a prominent role in India and there are certificates that prove *varna* affiliation, the government had some success on its way to democratic values. The discrimination of “untouchables” from the lowest fourth *varna* of *Shudras* (there are also “clean” castes of *Shudras*) is forbidden by the Indian constitution since 1950 and considered a crime. This constitution is still in force, though it had about 500 corrections [9]. Characteristic for it is the “proclamation of a wide range of rights, freedoms and duties of citizens and the actual persistence of the caste system and the large gap in the level of development of the various ethnic groups in the country” [9]. On the one hand, the state reinforces the caste system, on the other hand, it tries to implement democratic values. Article 15 of the constitution says that “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them” [10]. However, the Indian administrative practice implies the concept of “community”, which, in fact, means “caste” [7, P.154], which reflects the prevalence of the old orders and the structure of society.

Returning to the question of surrogacy, we would like to note that the cost of the surrogate mothers’ services and usually this job is undertaken by women from the lower castes. Doing so, they don’t consider this work as something that needs informed consent. Indian women see surrogacy as a necessity that befell them because of their place of birth and they humbly accept their fate (despite the fact that the constitution of India prohibits the discrimination on grounds of place of birth or caste). There are not many people trying to fight for their rights or to sue the IVF clinic if a woman suffered significant damage to her health because there’re enough surrogate mothers and they are barely protected by the law [5]. Some cases when a surrogate mother died got to

the press [11]. So, the inferior status of surrogate mothers contradicts the Indian legislature. Enjoying the cash flow from abroad, the state refutes its own legal innovations and perpetuates the old caste system and also creates the gap between promoted values and the actual situation so that new practices are ruled by old traditions and the usual way of life. Of course, this situation is a cause for indignation of those who share democratic values. The exploitation of women in India has attracted the attention of many foreign researchers and journalists.

### III. THE NEW INDIAN SURROGACY BILL

Understanding the negative side of surrogacy and the consequences for society and law in India, the government backed down and introduced a draft bill on 21 of November 2006 to regulate surrogacy – the Surrogacy (Regulation) Bill [12]. As of 1 March 2017 the bill is being reviewed. The new bill is a turning back in the sphere of surrogacy. First, the bill prohibits commercial surrogacy, leaving only “altruistic” surrogacy. A surrogate mother has to be a relative of social parents (a blood relation is not necessary) and she receives no fee except for compensation of medical expenses and money that were spent for gestation and birth of a child. Moreover, a woman can become a surrogate mother only once in a lifetime, she has to be 25 to 35 years old, married, divorced or a widow and to have at least one child. Violation of this bill would be followed by up to 10 years in prison.

Because of this new bill, it would be very difficult for the foreigners to resort to the services of Indian surrogate mothers. One may say that the new bill would put an end to the exploitation of Indian surrogate mothers from the lower castes. However, this document may carry certain risks. There is a whole industry in India and a significant part of profit is generated by the foreigners. The new bill could cause considerable damage to this economic sphere, bankrupting many IVF clinics and having their medical staff left without work. This will cause public dissatisfaction and, in addition to the losses of the industry, will also contribute to instability of society. Moreover, the surrogacy market of India never had a deficit in the last years. Customers may have had height, skin color or place-of-birth preferences, but there were always those for whom the only important question was the potential mother’s ability to bear a child, and there were always women willing to make money this way. It means that many Indian women, despite all the disadvantages of this “work”, are ready to undertake it. If the bill comes into force, it could stimulate the development of shadow illegal market of surrogate mothers. Another question remains open – would it be fair if the government simply forbids women from becoming surrogate mothers and takes away this chance to solve financial problems which are unlikely to be solved otherwise. Having this branch of economics developed during the last decades, the government won’t be able to destroy it quickly and without consequences.

One more unanswered question concerns the autonomy of women aspiring to be surrogate mothers. Under the new bill, women who will make it out of altruistic reasons will supposedly feel less exploited than before. However, the bill

does not take into account the will of those women who would like to "work" on a commercial basis. Now they have to risk their health and sometimes life to get their reward, and the new law could take away their right to choose. Women of the lower castes remain as powerless as before but now they lose even the ability to risk themselves for their loved ones, usually their own children which need treatment, proper nutrition, clothing and housing. The bill does not protect exploited women now and even restricts their rights. It should be added that this happens along with the liberalization of European laws: registration of children born in India through surrogacy and granting them citizenship in European countries (France, Germany) are now legal if their genetic parents were citizens of these countries.

So, the new Indian bill on surrogate motherhood seems to run in opposition to the already established branch of medicine and its economy as well as to the protection of human rights, namely to the protection of right of vulnerable groups which live below the poverty line. The bill also doesn't contribute to the solving of the problem of the surrogate mother's autonomy and her ability to make decisions independently. In international law (and namely in the Declaration of Helsinki which regulates the conditions of experiments on people) there is such a notion as vulnerable groups [13]. This notion is directly related to another one – free and informed consent. It implies obtaining consent from the patient and/or medical experiment participant. A patient should be informed about the risks, the benefits of a treatment or experiment, the consequences of treatment refusal, alternative treatment methods, the purpose of the experiment. One of the first documents which used the notion of informed consent was the Nuremberg code, 1947 [14]. Vulnerable groups are groups of people who are unable to give informed consent for medical intervention, or the ability to give consent is questionable, for example, when a person's decision can be easily affected by the third party. These groups of people which are unable to give informed consent traditionally include minors and mentally ill people (judged to be incompetent); groups of people who have this right but whose decision may be affected include poor people which are unable to pay for treatment, people with incurable diagnosis, uneducated (not able to read and write) etc. Each state and international organizations such as the World Health Organization protect the rights of these groups by establishing legal acts, declarations, recommendations and other documents which have legislative or recommendatory power. Today, women from lower castes can be considered vulnerable groups. They give their informed consent because of their poverty and difficult circumstances. The new bill was developed to protect the women's rights through prohibiting the exploitation of these social groups. Unfortunately, not only the new law will not protect the rights of low caste women but it will also take away their opportunity to become a surrogate mother. It is not a good way to solve the problem if the Indian government would like to enshrine democratic rights and freedoms. The low caste women will be protected from the exploitation but they will also lose the right to choose. It would be more logical to protect their rights by another way, for example, by establishing additional control of IVF clinics

or making IVF clinics provide medical care and diagnostics to surrogate mothers after childbearing. Moreover, the owners of IVF clinics would agree with these measures even if the costs increased. The owner would save the business and they hardly would do that with the new bill. The difference between costs would be compensated through price increase on IVF including the reproductive labor of surrogate mothers. Even if costs increased surrogacy in India would be more advantageous than in the USA and other economically developed countries. It is worth to note that surrogacy is prohibited in some European countries. So, Indian government could protect their vulnerable groups – low caste women – and contribute to the development of their autonomy so that surrogacy would not seem a cruel fate and would become an informed and voluntary choice.

It is also worth noting that this context shows how close to the reality were the science fiction writers of the 1980s in their social, historical and legal expectations. W. Gibson, B. Sterling and some other authors whose books later became associated with the concept of "cyberpunk" depicted the near-future world (i.e. the world of the beginning of the 21st century) lost in explicit powerlessness of large world population groups, it is a world in which countries abandoned most of their social obligations and their place was taken up by transnational corporations interested primarily in increasing their influence, improving their technological equipment and building up of the military power of private military companies. In general we can say about cyberpunk that it is the future that never took place because technical and social progress went the other way: many alleged technologies already turned out to be unnecessary or completely unattainable and some social processes have ended differently than expected. However, at the level of some countries a certain part of fantasies (which can be seen as warnings of some kind) proved to be true [15, C. 401]. One of the features of the world depicted by the cyberpunk writers is the combination of developed biomedical technologies and immorality of those who own these technologies. In medicine, examples of this combination can be a genetic engineering aimed at growing organisms which are very different from the human ones; surgery which strongly modifies the human form; reproductive technology forcing women to bear children whose future was planned for many years ahead and which leaves no place for family relations. Of course, most modern countries pay special attention to bioethical issues and regulate the corresponding technologies. However, the classical Dozois criterion, "high tech, low life", quite accurately describes the current situation with surrogacy in modern India (advanced reproductive technologies, poverty and lack of rights of surrogate mothers). As for the new bill on surrogacy, it is difficult to say for sure whether it will deter India from such a pessimistic future or, on the contrary, bring India to it.

#### IV. CONCLUSION

Such a radical decision – the prohibition of commercial surrogacy – may be a reaction to the consequences of "reproductive tourism" in India and the result of the

discussions about the fate of surrogate mothers in the media as well as Western studies of "surrogacy tourism" in India. In this case, the government is trying to solve the problem with the exploitation of the lower strata of the population not by giving them autonomy and protection (and the possibility to "work" as a surrogate mother and receive some respect for such a «reproductive labor») but by the simplest way – by prohibition. Such a policy will only hit the industry of surrogacy in India but won't solve the problem with the women of the lower strata which will seek for other ways to earn money, perhaps using the means of the shadow economy – arranging fictitious kinship with the genetic parents or even nurturing someone else's child as their own and then placing it for adoption. In this case women become not only powerless but also criminals not entitled to any protection at all. At this rate, grim picture of cyberpunk could come true in the cities of India.

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