Number 537
October 2016

Population & Societies

Version française

Gestational surrogacy in India[1]

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While gestational surrogacy is illegal in France, it is authorized in other countries, such as India. Drawing upon a study of Indian surrogates, Indian and foreign intended parents pursuing surrogacy, as well as physicians, lawyers and Indian clinic and agency managers, Virginie Rozée, Sayeed Unisa and Elise de La Rochebrochard describe how surrogacy services are organized in India and examine the expectations and rationales of the protagonists.

Women have borne children on behalf of other women since ancient times. Surrogacy was practiced in ancient Rome and, in the Old Testament (Genesis 16), Abraham's son Ishmael was born that way, carried by Sarah's servant Agar. However, with medically assisted reproductive technologies (ARTs) the practice has taken a new turn, in the form of gestational surrogacy (see Box 1). Some countries such as France have banned surrogacy, but in a globalized world it has become a transnational phenomenon. A woman can now carry a child for intended parents living on the other side of the planet.

In numerical terms, surrogacy is a very marginal form of medically assisted reproduction. For example, in the United States, where it is allowed in some States, it represents less than 1% of all ART procedures carried out. And yet it has become a widely debated social issue, with some people defending women's right to control their own body while others denounce its commodification. The two positions are more specifically at odds when the surrogacy arrangement involves a financial transaction between a woman in a developing country, who is therefore seen as vulnerable, and wealthier intended parents from a rich country. Until 2015, India was a case in point and was for years the main focus of media attention. More than 25,000 children are thought to have been born through surrogacy in India, half of them for

Box 1. Surrogacy techniques

Surrogacy is an arrangement whereby a woman (the surrogate) bears a child on behalf of someone else (woman, man or couple) who wants to become a parent. Surrogacy is called "traditional" when the surrogate is also the egg donor: the embryo grows from gametes of the father (or a sperm donor) and the surrogate. Fertilization is by artificial insemination.

Surrogacy is called "gestational" when the woman who bears the child is not the woman who provided the egg. The technique used is in vitro fertilization. Gestational surrogacy is the most common practice worldwide and is the practice used in India.

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(1) This study was supported by the People programme (Marie Curie Actions) of the European Commission's 7th framework programme for research (FP7/2007-2013), under project number PIOF-GA-2011-301789.

Box 2
The "Micro-realities of Surrogacy in India" study

In 2013 and 2014 we ran a sociological study called "Micro-realities of Surrogacy in India" in Mumbai, Chennai and New Delhi. In all, we interviewed 32 experts (physicians, lawyers, agency and association managers, politicians), eight parents (Australian, Indian and French) and 33 surrogates. It proved particularly complicated to interview the surrogates, notably because of the conditions imposed by the physicians running the clinics. For example, we were not allowed to contact the surrogates outside the clinic or in the absence of a clinic or agency representative. Interviews with surrogates were held in Marathi, Hindi or Tamil and directly translated into English by our assistant or by physicians from the clinic.

foreign parents.[1] In 2015, the Indian government banned surrogacy for foreigners, but not for Indian couples. Foreign intended parents are now turning to new destinations like Cambodia and Kenya.

Here we examine the organization of surrogacy in India and the experience of the different stakeholders, before the recent policy changes. Our findings are based on qualitative research conducted in 2013-2014 (see Box 2) and on observations from other sociological studies [2-5]. While the situation has changed in India, the questions examined in this study apply equally well to the new surrogacy destinations.

Intended parents using surrogacy in India

Until recently, surrogacy was available in India for Indian and foreign heterosexual couples and foreign homosexual couples. In all cases, the couples turned to surrogacy after repeated setbacks in their efforts to become parents.

For heterosexual couples, the pre-surrogacy story was one of years of infertility and unsuccessful ART treatments. Most couples, whether heterosexual or homosexual, reported undertaking and finally abandoning attempts to adopt a child. The same stories were heard over and again: adoption proved impossible because of the time required, the cumbersome formalities and the numerous restrictions that applied.

When people considered surrogacy, the reasons for choosing India seemed to be a conjunction of legal, economic, practical and medical factors. In the first place there was no specific law on surrogacy in India, which was why the practice had developed there. But India was not the only country where surrogacy is possible. Surrogacy is either explicitly permitted or not banned, and is therefore practiced, in Australia, Israel, Canada, some States in the USA including California, the United Kingdom, Belgium, Greece, South Africa, Ukraine, Russia, Iran and, since May 2016, Portugal.[6] In some of these countries, including the United Kingdom, Canada and Australia, the law allows only "altruistic" surrogacy, in which the surrogate is not paid for her services. Intended parents from these countries might have turned to India for surrogacy because of their difficulties trying to find a surrogate in their home country. Like Israel, Russia and Ukraine, India allows commercial surrogacy. Another advantage of India was that, in contrast to other countries (Unites States, Thailand, United Kingdom), the child's birth certificate is drawn up in the name of the intended mother and not the surrogate.

For foreign parents, surrogacy was relatively cheap in India: about €30,000 to €40,000 (excluding travel expenses), compared to a minimum of €100,000 in the United States. From a practical standpoint, India had an ample supply of high-quality medical services, and the formalities were facilitated by the use of English.

Intended parents chose a clinic either online or through an association. They stressed that their choice was guided by the clinic's reputation, its stated rate of success, the transparency of its organization and its respect for those concerned.

Some of the parents in our study said they still had doubts about the legitimacy of the surrogacy process. Others were explicitly at ease with the practice, presenting it as a mutual exchange that enabled surrogates to improve their own children's living conditions. Many of the European and Australian parents had told their close friends and family about their project and intended to tell their child, later on, how he or she had come into the world. This is in sharp contrast to the attitude of Indian parents, who use surrogacy in the utmost secrecy.

The physicians and the organization of surrogacy in India

In the absence of a specific law, surrogacy is overseen by clinics and agencies, usually run by physicians. Surrogates are mainly recruited for their ability to perform the "work" of gestation; in particular, for having a large, healthy uterus capable of carrying more than one foetus if necessary. The intended parents can usually choose the surrogate from profiles posted on the agency's or clinic's private website. However, it is sometimes the physician who makes the choice,

according to surrogate availability and the desires expressed by the future parents.

A tripartite contract is then signed between the agency or clinic, the parents and the surrogate. The contract fixes the working conditions and the sums to be paid. Surrogates are paid a premium in the event of a multiple pregnancy or a Caesarean section, which carries more risk for the woman than a vaginal delivery. The parents can add specific clauses, for example about diet, or music to be listened to during the pregnancy. The contract is written in English, so not all surrogates can read it for themselves. The agency or clinic staff generally tell them what is in it, but the surrogates do not amend it.

During the pregnancy, the surrogate may live at home, be temporarily housed near the clinic, in the parents' home (if they are Indian), or in special collective accommodation for pregnant surrogates. The physicians often prefer this latter solution as it ensures optimal medical supervision of the pregnancy. Supervision is especially important, given that surrogacy more frequently leads to multiple births or Caesarean deliveries, which both entail risks. The WHO recommends limiting multiple pregnancies by transferring only one embryo, but multiple embryo transfers are still practiced.

Indian physicians offering surrogacy consider that their way of working offers appropriate conditions for informed consent by the surrogate and good risk management for both surrogate and foetus. They describe surrogacy as scientific progress and a win-win solution, the parents very often leaving with a baby and the surrogates earning a sum of money they could not otherwise have obtained.

The Indian surrogates

In all the studies of surrogacy in India, the surrogates generally meet the criteria set by the Indian government recommendations, i.e. that they should be mothers, aged between 21 and 35 and married, have obtained the explicit agreement of their husband, and have had fewer than five live births already. In the event of separation, divorce or widowhood, the surrogate must be accompanied by a guarantor, for example a sister. Most Indian surrogates interviewed in the various studies were in paid employment before becoming surrogates. Compared to the Indian population as a whole, surrogates are neither the least educated nor the poorest. Few are illiterate. Half have a monthly income of at least 10,000 rupees, placing them in the top 25% of the Indian population in terms of income in 2011-12.

Their reason for becoming surrogates is financial. For the entire process they are paid between 200,000 and 500,000 rupees (approx. €2,800 to €7,000). This is often equivalent to several years' wages. Surrogates have clear ideas of what they will do with the money. They say it will improve their living conditions, and above all those of their children. For many of them, this pregnancy is a way of providing a better future for their children, whether by paying for education at a private school or by providing dowries so that their daughters can marry. So carrying a child for someone else can be seen as a "maternal strategy". It might also fit into a broader family strategy, with the money going to pay off debts, buy a dwelling , or buy a rickshaw so that the father can provide for the family. Apart from this economic motivation, the women believe that by helping a childless couple they are performing a good deed. This is an important aspect of Hinduism, the religion of 80% of the Indian population.

Many of the women were egg donors before becoming surrogates. They heard about opportunities to be a surrogate by word of mouth or from the media. Before deciding to become surrogates they consulted their spouses and close kin (parents-in-law, mother, sister). Some surrogates had to persuade an initially reticent spouse. They then went directly to the clinic or agency to be recruited.

The surrogates speak of surrogacy as a relatively positive experience. They emphasize that for the first time in their lives they are free of daily drudgery and are well looked after by the medical staff. They do not seem to feel weighed down by the medical supervision, but their accepting attitude should be seen against the background of women's general situation in India, where they live under the authority of their father, husband and parents-in-law, with little freedom of movement or decision-making power. [7] The women often present surrogacy as an occupation with advantageous conditions in the Indian context where they emphasize the difficulty of entering the job market. They mention poor working conditions in previous jobs (such as unpaid overtime), sexual harassment in the workplace and on the journey to work, and being the target of neighbourhood gossip for working outside the home.

Even so, the women admit to some fears and difficulties. The medical examinations and the demanding treatments are a source of anxiety. They

(2) The difference between the sum paid by the parents and that received by the surrogate covers all medical costs, accommodation costs for the surrogate, and profits for the clinic and agency.

International scientific conference on surrogacy

Surrogacy: Situating France Within the World

A conference on surrogacy is being held on 17-18 November 2016 in Paris. It will analyse the diversity of legal frameworks and surrogacy experiences around the world.

Information: http://www.ined.fr/en/gpa-paris2016/

dread the prospect of a Caesarean section. With regard to the child they are carrying, they emphasize the happy future that awaits it with loving, well-to-do parents, but express regret that they will not be allowed to see it after the birth.

The main difficulty mentioned by the surrogates concerns society's condemnation. They describe social attitudes to surrogacy in India as extremely disapproving. Some explain that their social circle knew nothing about in vitro fertilization, associating surrogacy with extramarital relationships, which in India are strongly stigmatized and punishable by law. Faced with such condemnation based on ignorance, the surrogates see themselves as well-informed women who understand a complex medical procedure that dissociates the conception of a child from sexual activity and gestation from genetics. To protect themselves from their neighbours' lack of understanding, surrogates hide their surrogacy and sometimes prefer to be away from home during their pregnancy, even though it is hard for them to be far from their family.

In sum, surrogates tend to view surrogacy as an assumed choice. They see themselves as educated women, wives and mothers who are taking their family's destiny in hand to improve its living conditions or address short- or longer-term financial problems. However, the interviews sometimes reveal cracks in the façade. Many surrogates say they do not want to repeat the experience in the future. More poignantly, some women respond with emotion when asked about the possibility that a daughter of theirs might one day become a surrogate. They believe that if that happened, their own surrogacy would have failed to change their family's life. This study stopped at the doors of the medical centres; it remains for future research to explore what happens to these women, their children and their families, to find out whether their dreams of a better future are fulfilled.

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Abstract

Surrogacy is a highly controversial practice both in France and across the world. Little is known, however, about the representations and experiences of the people involved. A study of physicians, intended parents and surrogates conducted in India reveals a complex reality, simultaneously described as a «win-win" solution and as a difficult choice with some inherent risks. Following recent political changes in India, surrogacy is now only available to Indian couples, but the same questions arise in new surrogacy destinations.

ined INSTITUT NATIONAL D'ÉTUDES DÉMOGRAPHIQUES

Ined: 133, boulevard Davout, 75980 Paris, Cedex 20
Director of Publications: Magda Tomasini
Editor-in-chief: Gilles Pison
Editorial assistant: Marie-Paule Reydet
Translator: Harriet Coleman
Layout: Isabelle Milan
Printer: Mérico Delta Print, Bozouls, France
D.L. 4th quarter 2016 • ISSN 0184 77 83
No 537 • October • Population & Societies
Monthly bulletin of the French Institute for Demographic Studies

Every issue of *Population & Societies* is immediately accessible on the INED website:
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