

Planning Commission
(Voluntary Action Cell)

Sub: Summary Record of the CSW presentation on '**Challenges posed by rising Commercial Surrogacy in India**' by Sama - Resource Group for Women and Health held on 24th July 2013 at Yojana Bhavan.

The Civil Society Window presentation on 'Challenges posed by rising Commercial Surrogacy in India' by Sama - Resource Group for Women and Health was held on 24th July 2013 at Yojana Bhavan under the Chairpersonship of Dr. Syeda Hameed, Member, Planning Commission. List of participants is enclosed as Annex-I.

Adviser (VAC), while welcoming the Speakers and Participants for the presentation, informed that this is the 50th Civil Society Window (CSW), part of the initiative started in 2005 by the efforts of Dr. Syeda Hameed, Member (VAC, WCD & Health) along with some of the then and present Members of the Planning Commission. The idea of CSW is to provide a platform where civil society representatives working and researching at the grassroots level get a chance to share their experience and inputs with the policy planners. He further informed that today the NGO Partnership System (NGO-PS), being facilitated by VAC, Planning Commission has just today crossed the milestone of 50,000 VOs/NGOs/CSOs, who have signed-up on this portal, may be seen at the link: <http://ngo.india.gov.in/auth/default.php> and requested all invited NGOs and their associated NGOs to sign-up on this portal. He thanked Pr. Adviser (VAC, WCD & Health) for her overall guidance for this achievement, which provides visibility and useful information to NGOs, who sign up on the NGO-PS portal.

Ms. Vandana Jena, Pr. Adviser (VAC, WCD & Health) stated that we still have to go a long way and would like to achieve the target of having one lakh NGOs signed-up on this NGO-PS portal at the earliest and to maintain the CSW initiative more active.

Dr. Syeda Hameed, Member, Planning Commission highlighted the need to understand the impact of rapidly spreading commercialization of surrogacy in India, having implications for the health and well-being of the women and children, posing enormous challenges in the absence of any legislation on

surrogacy. She then invited Ms. Sarojini, Sama to make her presentation based on their long term research on surrogacy.

Ms. Sarojini, along with her Sama team members, informed that they work towards building women's competencies to identify and address linkages between women's well-being and livelihoods, violence and other larger issues that affect their lives. Sama works closely with community based organizations, health networks, people's movements and health care providers across the country. Their current areas of interest include the unethical conduct of clinical trials in India, violence against women, adolescent sexual and reproductive health & rights. Their recent publication is 'Birthing A Market: A Study on Commercial Surrogacy' (2012) and they have produced recently a Film on Surrogacy entitled '*CAN WE SEE THE BABY BUMP PLEASE?*' whose abridged version, of about 30 minutes was screened.

The Film highlighted the ethical challenges, medical malpractice and potential exploitation that can occur when surrogacy is practiced in a legal vacuum, while also highlighting the interplay of surrogate women's choices, contexts and compulsions.

Through the Film, concern that although commercial surrogacy has increased in India, there is no proper mechanism to regulate it was highlighted. The draft Assisted Reproductive Technologies (Regulation) Bill - 2010 prepared by the Indian Council of Medical Research (ICMR) addresses the need of regulating surrogate arrangements but is not comprehensive. It does not have provisions for protecting the rights of surrogate mother and children. It was also highlighted that while the neo-natal care is encouraged in case of new born but in case of surrogacy it is discouraged, in order to sever the connection between the mother and child, which is harmful for the health of both the mother and the child. Even breast feeding banks are coming up as commercial ventures, as children born by surrogacy are not allowed to be fed by the surrogate mothers.

Child nurturing through surrogacy is fast becoming an independent trans-national industry having many players. There is a lot of variation in amount / mode of payment made to surrogate mothers in different cities within India. The payment is value for the child and major part is paid only after a healthy child is born. Payments are not made in case of still birth or miscarriage. In such cases there is no consideration for the physical labour undergone by the mother. In this trans-national industry sometimes mother is encouraged to move to another country for various reasons such as for sex selection for which there are no stringent laws in the concerned country. There is no registration of such births in many towns. Agents take the major portion of the money. Even medical tourism operators and religious institutions are involved in this business.

Sama group emphasized that there should have been greater participation of the civil society while drafting the Bill. The group does not want a ban on this industry but wants to ensure protection of health and rights of surrogate mother and child through a supportive and comprehensive Bill.

DDG, Indian Council of Medical Research (ICMR) informed that in the revised draft Bill, 2012 most of the concerns raised by Sama group have been addressed appropriately. Comments of the Ministries/Departments have been called for on the draft Bill. Civil society representative and other stake-holders were involved and the draft Bill was debated in seven cities of the country. When enquired by the Member (SH) whether they have involved domain experts while drafting the Bill, DDG (ICMR) informed that knowledgeable persons like Ms. Mira Shiva, representative of an NGO were members of the Drafting Committee of the draft Bill. DDG, ICMR also informed that as per the new additions in the Bill, these services will be available to all needy people including single parents and married couples but not 'live- in relation' couples. Besides there will be a restriction that a mother cannot resort to surrogacy more than three times (including her own children) and there has to be a gap of two years between children. No woman

less than 21 years of age and over 35 years of age shall be eligible to act as a surrogate mother under this Act. Foreigners will be legally bound to take responsibility/custody of the child. There will be an Agreement as per which they will have to be responsible for the well-being of the child till the age of 21 years.

Ms. Kushal Singh, Chairperson, National Commission for Protection of Child Rights (NCPDR) informed that they have not yet received the draft Bill. She desired that there should be an agency to take care of the interests of the child, after he/she is handed over to the commissioning parents. Such an agency should intervene in disputes, such as the case that happened recently where a surrogate child was taken away by an Israeli citizen, who later found to be a paedophile.

Mr. Nina Naik, Member, NCPDR highlighted following points for consideration in the draft Bill:

- Surrogacy prima-facie violates child rights to inherent mother-infant relationship, e.g. right of the child not to be separated from his or her parents, to be breast fed
- Surrogacy is equated with baby selling - commercialization and commoditization of child and therefore it is unethical
- Issues of nationality, citizenship, claims on Right to Inheritance, determination of parentage
- Appointment of Local Guardian (if commissioning parents are from abroad)
- Illegal practice of sex selection and female feticide
- Institutional arrangements for surrogacy related disputes
- Insurance for family of surrogate mother for a period of 12 months
- Alternative arrangement in case the commissioning parents fail to take custody of the child.

Asstt. Representative, UNFPA suggested that the National Women Commission and State Women Commissions also need to be consulted. She also expressed her apprehension that if the Bill is not properly drafted it will open flood gates for foreigners seeking surrogate mothers in India.

Deputy Registrar General, Office of RGI apprised that for registering the birth of children born out of surrogacy they follow ICMR guidelines, i.e. to have names of genetic parents only.

Representative of the Ministry of Law & Justice informed that they examine the draft Bills from the point of view of the Constitutional and legal angle only and do not make any addition / deletion on the subject matter.

Representative of the Ministry of Health & Family Welfare informed that they are not dealing with the drafting of Bill and it is the mandate of ICMR, Department of Health Research. He said that it is a complex issue and many more Ministries are concerned and need to be involved.

Adviser, Health, Planning Commission explained that when the drafting of the Bill started, ICMR was with the Department of Health and later when Department of Health Research was created ICMR along with this subject had gone to the new Department. He further suggested an alternative for consideration, i.e. to amend the Clinical Establishment Act, instead of having a new law on surrogacy.

Pr. Adviser (VAC, WCD & Health) informed that in one of her earlier meeting with DDG, ICMR; she had raised various issues such as: lack of monitoring mechanism to check how many children born to a surrogate mother, status on involvement of single girls in this business, non-prevention of neonatal care, encourage adoption instead of surrogacy, care of children born with abnormalities, how to register the birth of surrogate children, etc. but they appear to have not been considered by ICMR, while drafting the Bill. On the basis of a quick look at the laws on surrogacy prevailing in different countries, she informed that except a few countries like Georgia and Russia, commercial surrogacy is not legal. Many countries allow only altruistic surrogacy.

She suggested that to control the misuse of surrogacy, wider consultation with the Ministry of Health & Family Welfare and other concerned ministries, including

Planning Commission, civil society representatives as well as surrogate mothers is required before finalizing the Bill,. She desired to know further how to restrict those who are going for surrogacy only for aesthetic reasons, like those involved in modeling and acting or busy business women.

Chairperson while concluding remarked that there are other means to alleviate poverty of women than pushing them into surrogacy. Issues such as right to claim inheritance, adoption, visa issues and other disputes arising in such cases should get incorporated in the final legislation by having wider consultations. She felt that the surrogacy services may be used for the women who are unable to conceive and it should not be used as a matter of convenience. She desired that all points raised by the Pr. Adviser (VAC, WCD & Health), Planning Commission and raised under this CSW dialogue need to be considered while revising the Bill. A copy of the draft Bill should be sent to the Planning Commission at the earliest by the concerned Department and after studying the Bill a small expert core group may be constituted in the Planning Commission.

Meeting ended with a vote of thanks to the Chair.

**List of participants at CSW Presentation on Surrogacy
held on 24th July 2013**

Dr. Syeda Hameed - In Chair
Member, Planning Commission

Ms. Kushal Singh
Chairperson, NCPCR

Ms. Nina P. Nayak
Member, NCPCR

Shri Deepak Rastogi
Additional Registrar General of India, Office of RGI

Ms. P. A. Mini
Deputy Registrar General, Office of RGI

Dr. R. S. Sharma
DDG (SG), ICMR

Dr. S. K. Sikdar
Deputy Commissioner, M/o Health & Family Welfare

Shri M. N. Singh
Asst. Legal Adviser, D/o Legal Affairs
M/o Law & Justice

Ms. Reena & Ms. Richa Saxena
Scientist-B, ICMR

Ms. Ena Singh
Assistant Representative, UNFPA

Dr. Karabi Majumdar
Consultant, Health Bridge

Ms. Sarojni
Sama

Ms. Deepa, Ms. Tarang Mahajan & Ms. Simran Shahni
Sama

Planning Commission

Ms. Vandana Kumari Jena
Pr. Adviser (VAC, WCD & Health)

Dr. C. Chandramohan
Sr. Adviser (Education)

Ms. Sudha P. Rao
Adviser (WCD)

Dr. Rakesh Sarwal
Adviser (Health)

Shri Ambrish Kumar
Adviser (Minorities)

Dr. Lalit Kumar
Adviser (VAC & YA)

Shri B. K Pandey
Adviser (State Plan)

Ms. Deepika Shrivastva
OSD (WCD & N)

Dr. Pitam Singh
Joint Adviser (HRD)

Ms. Mamta Sankar
Director (WCD)

Ms. Jeevan Shina
Dy. Secretary

Ms. Anita Tipra
Dy. Secretary (VAC & YA)

Shri R. C. Meena
Dy. Adviser (VAC)

Shri D. Meher
YP (WCD)

Shri Mantosh Kumar
YP (VAC)

Shri Alok Kumar & Shri Mourya Manish
Programmer (VAC)

Ms. Shraddha Jain
Intern (WCD)

F. No. M-11/15(2)/2013-(VAC)
Planning Commission
(Voluntary Action Cell)

Yojana Bhawan, Sansad Marg
New Delhi-11001

Dated 21.08.2013

OFFICE MEMORANDUM

Sub: Presentation on "Challenges posed by rising commercial Surrogacy in India" on 24th July 2013 at 11:00 A.M in Room# 122, Yojana Bhavan.

A copy of the Summary Record of the Civil Society Window presentation on "**Challenges posed by rising commercial Surrogacy in India**" held on 24th July 2013 under the chairmanship of Dr. Syeda Hameed, Member, Planning Commission at Yojana Bhavan, New Delhi is enclosed for information and necessary action please.



(Lalit Kumar)
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To: The Secretaries to the Govt. of India
(as per the list attached).

List of Secretaries

Secretary

Ministry of Women & Child Development
Shastri Bhawan, A - Wing
Dr. Rajendra Prasad Road
New Delhi-110001

Secretary

Ministry of Health and Family Welfare
Nirman Bhavan
New Delhi-110011

Secretary

Ministry of Home Affairs
North Block, Central Secretariat
New Delhi-110001