

# Should commercial surrogacy be legalised?

THAILAND

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**T**hailand at present has no laws relating to the practice of surrogacy. This absence has created a legal loophole that has prompted business-minded opportunists to introduce and commercialise surrogacy, as the recent case involving Vietnamese surrogates recruited by the Taiwanese company Baby-101 in Thailand has unveiled.

In an attempt to curb commercial surrogacy, the cabinet approved a draft bill last year which is currently awaiting parliamentary approval. This bill relates to children born through the use of assisted reproductive technology. It covers full surrogacy (the couple supply their sperm and ova for in vitro fertilisation), and partial surrogacy (the couple provide either sperm or egg for artificial insemination paired with the sperm or egg of another person).

The bill states that a child born as a result of surrogacy will be legally deemed the child of the commissioning couple. The other important feature of the new surrogacy bill includes prohibition of payments to a broker or to the surrogate mother.

It is crucial to regulate surrogacy since a real demand for this service exists in Asia. For instance, many clients come to Thailand to buy this service, despite the risks involved in arrangements which are legally ambiguous.

If this legal loophole is not dealt with appropriately, it can lead to murky situations. For instance, the rescue of the Vietnamese surrogates has created a situation in which the Taiwanese parents are being denied the babies, while the surrogates who do not want children are literally left holding the baby. This regrettable outcome may push the House to rapidly approve the bill. But



**On Feb 27, 2011 Social Development and Human Security Minister Issara Somchai visited a welfare home where 15 Vietnamese surrogate mothers (seated) were being cared for. The women told him they wanted to return home to Vietnam as soon as possible.**

will this new legislation stop these instances from happening? And how will it deal with the possibility that parents may not be able to find surrogates who will offer their services for free?

The Baby-101 case has been as treated as human trafficking because of the abusive working conditions some of surrogates had to endure. However, there has not been any mention of “human commodification” — a point of contention embedded in the debate about commercial surrogacy. This raises questions about whether commercial surrogacy can be equated with the selling of babies and human trafficking; in other words, these babies are treated as a commodity.

The main contention against commercial surrogacy is that the payment made to the surrogate mother is the price of the baby. In this argument, it is considered morally wrong to treat persons as commodities, all the

more so if these persons are infants. There are two points which may be made against this assertion.

First, it can be said that an arrangement in which the baby is conceived for surrogacy and given to the commissioning parents after birth, is functionally different from selling a baby that was already conceived and genetically unrelated to the commissioning couple.

The second argument relates to the nature of the payment. What do the commissioning parents really pay for in such arrangements? Do they pay for the baby? Or do they pay for a service? Defenders of paid surrogacy argue that the payment is not the price of the baby, but rather compensation made to the surrogate mother for the efforts and risks undertaken during the pregnancy and birth (food prescriptions, health expenses, loss of income due to maternity leave).

Another argument against commercial surrogacy stresses that it involves the economic exploitation of poor women who feel compelled to engage in exploitative arrangements. Here the parents are treating the surrogates as a means to their own ends.

Defenders of paid surrogacy make several objections to this claim. First, if we assume that only poor women engage in paid surrogacy, would it not be possible to argue that legal surrogacy would provide them with another protected way of earning much needed income?

Second, if the main concern were economic exploitation, it would then make sense to compensate the surrogate mother for the risks and inconvenience of surrogacy. This would overthrow the charge that the commissioning couple is economically exploiting her. Third, surveys conducted in the United States in the 1980s, a period in which commercial surrogacy was largely debated, showed that:

- ◆ Paid surrogates did not always come from the poorest socio-economic classes, thus refuting the assumption that only poor women engage in paid surrogacy.

- ◆ The decision to become a surrogate mother emerged from reasons that were not solely pecuniary. The surveys found that some women enjoyed being pregnant while others perceived it as an altruistic act.

Commercial surrogacy will be banned in Thailand under the new legislation. Nevertheless a real demand exists across Asia, as the case of the Vietnamese surrogates has shown. Proscribing commercial surrogacy might tempt childless parents to seek illegal and risky solutions, as did the Taiwanese clients of Baby-101.

The time may have come to open the debate about the legal status of commercial surrogacy.

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