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**ETHICS OF FERTILITY TOURISM AND
COMMERCIAL SURROGACY IN INDIA
UNDER THE PERSPECTIVE OF HUMAN
RIGHTS**

William Eronimoose, MI[†]

University: Regina Apostolorum (Rome-Italy)

Faculty: Bioethics

Director: Tham Joseph, LC

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Introduction

Fertility Tourism is the latest sector of Medical Tourism (MT), wherein health seekers travel with the intention of attaining what is not available or prohibited in their home countries by making use of extreme applications of Artificial Reproductive Technologies (ARTs). Fertility tourists, more stringently infertile couples who are unable to conceive naturally, and more comprehensively gay/lesbian and single men/women who are still fertile or past reproductive prime

[†]**Rev. Fr. William Eronimoose, MI**, belongs to the Order of the Ministers of the Infirm (Camillians), is a Bioethicist, Pastoral theologian and a Counsellor. After completing his licentiate in Bioethics (Regina Apostolorum, Rome) and licentiate in Pastoral Health Theology (Camillianum, Rome), he did his PhD in Bioethics in the Pontifical Athenaeum Regina Apostolorum, Rome. He has a Masters in Counselling and a Diploma in Health Care Assistance. At present, he is the visiting professor at Dharmaram Vidya Kshetram (DVK), Bangalore, and Vinjananilaya, Eluru, AP. He is teaching Ethics in Nursing in St Philomenas Hospital, Bangalore and is the Director of Camillian Pastoral Health Centre, Snehadaan, Bangalore. Email: willimoose@gmail.com

but desire for children without marriage, procreation and family, travel to other countries to hire wombs-for-rent, that is, surrogate mothers who are legally made available through contracts and commerce to bear children. This is the latest revolution of Fertility Tourism for Commercial Surrogacy (FTCS), which is a multimillion industry in India because India, with CS Law (2002), renders high-tech facilities with low-cost procedures of ARTs. While FTCS offers hopes to the fertility tourists, it is certainly manipulation of life and violation of dignity and rights. A probe into this problematic revolution of FTCS in India under HR perspective is a timely needed research.

Overview of Chapters

Overall the research aims at presenting the revolution of FTCS in India and at the globe, questioning the very value of science and technology because it goes against the absolute value of woman in her rights. Accordingly, the dissertation has been divided into three chapters. The first chapter "Revolution of Fertility Tourism and Commercial Surrogacy with Special Reference to India," tries to bring out the revolution of FTCS both at global and at Indian level. The research starts from Medical Tourism (MT), which, from an old phenomenon, has become a new industry today attracting several countries with multibillion profits. India, with about 300 million poor citizens, has become the contemporary global booming centre for MT and receives an annual revenue of \$300 million, with a projected growth to \$2 billion by 2012. But, MT brings about many issues like privatization of healthcare, dependence on technology, uneven access to medical resources, accelerated globalization of healthcare, and morality and rights at risk.

Still, MT continues to grow and takes its latest segment Fertility Tourism (FT). By this tourism people with or without infertility problem avail themselves of ARTs to have children and FT has become a globalized tourism with a free trade in the world market. The lack of legally binding regulatory mechanisms leads to self-regulation by professional bodies, who do not have any accountability to the public and their decisions seem to be guided almost and exclusively by profit.

Not only that, the progression of FTCS from an unusual taboo means of obtaining a child to a *commercial* market has also become the latest job in India, where CS agencies are overwhelmed with requests from western fertility tourists. India contributes a *commercial* role for

FTCS because 1) CS has been legal since 2002; 2) Indian surrogates, poor and beautiful, are more fertile; 3) Indian clinics are more competitive in the hiring and retention of Indian females as surrogates; 4) low cost affair, i.e., the price comes to roughly a third of the price compared to the price in USA; 5) lack of regulations in national registration, data collection, ethical guidelines; and 6) good revenue. So, FTCS is clearly economic business, entirely up to the discretion of the physician or the clinic director, reflecting his/her particular political and ethical beliefs or lack thereof. FTCS is a forcible overthrow of a moral order in favour of a new cultural system; it is a demand of few people without respecting the existing ethical systems and human rights values; it is a conquest of a few mighty people over many vulnerable women, leading to slavery, exploitation, violation, ruin and to strange patterns of behaviour, assaulting on traditional values of marriage and family.

In this context, the second chapter, "Paradigm of Human Rights in times of Fertility Tourism and Commercial Surrogacy" has been proposed to intervene against FTCS. Although international HR movement has been the conclusion of a long historical process, the present scientific context calls furthermore to fight for human rights against scientific developments, which are seen as a new war against the most vulnerable sections of the society. It is in this context there have been developed HR documents in relation to bioethics (e.g., UDHGHR, IDHGD, UDBHR and CO), which protect the vulnerable people of their human rights in times of ethical dilemmas brought out by scientific society. Legal and ethical recognition of human rights at global level has led our research into a revisiting of human rights in India, which are historical, constitutional, fundamental, practical and contextual: 1) human rights are historical because they flow from the ancient Indian culture of *dharma* (righteous action) or *swadharma*, i.e., *dharma* inherent in every human being. This vision emphasizes not only the individual but also the total person, whose interdependent rights and duties are determined by his/her position within a hierarchical network of relationship in group and society. 2) Human rights are constitutional and fundamental because, since independence, Indian Constitution (IC) has been seeking the nation's deep commitment to the respect and protection of human rights and human dignity. 3) Human rights are practical because there are special provisions against discriminatory and arbitrary actions to the vulnerable women of the Indian society through various Acts. 4)

Human rights are contextual because Indian contexts are very much conducive to the promotion of human rights due to spirit of tolerance, peaceful co-existence, socialist democracy, and economic development, rich social heritage of unity in diversity and consideration of women as equal promoters of the society for their potentiality to look after themselves, children and society. So, revisiting the relevance of human rights in India demands an urgent task to sensitize the people to be aware of their own rights and to restructure the society based on human rights because without human rights, no democracy or no progress is possible. Having delineated the importance of human rights globally and in India, our research focuses on some fundamental elements of human rights in their description, characteristics, theory and principles.

Hence we have the third chapter, namely, "Human Rights Interventions against Fertility Tourism and Commercial Surrogacy in India." While fertility tourists consider FTCS as a non-problematic tourism because it is being defended in the name of consumer market, infertility problem, new forms of family, altruistic love and procreative liberty, generally FTCS is dehumanising as it places only profit motive at the heart of fertility treatments. Ethically FTCS reduces fertility and fecundity to a function, sexuality to a technology, infertility to a problem to be fixed, and surrogacy as a gestational option. Under HR perspective, FTCS violates the rights of the women. At Indian level, human rights intervene against FTCS as it violates some rights enlisted in IC. Human rights intervene against FTCS as it violates the principle of vulnerability, the principle of dignity and the principle of family. As a whole, there is a general discomfort that FTCS is an evil in itself and therefore our research tries for a possible outlaw of FTCS, based on two reasons: 1) existence of restrictive laws; 2) traditional-cultural-social-religious stand on family.

In times of infertility for the married couples, there should be legitimate human concern of appreciating and understanding their problems; there should be scientific concern of diagnosis and cure where medical science has determined a situation of sterility. Science should not go beyond what is diagnostic, preventive, therapeutic and rehabilitative putting itself at the service of human desire, reducing itself to a mere device, abiding itself to whomever with whatever desire from whichever country and trampling down of the vulnerable women by playing on their life, value and rights.

Conclusion

In synthesis, our research into FTCS in India under HR perspective is an invitation to international and Indian ordinances to work hard on a common denominator of human rights for an authentic dialogue, assumed not only for single clearly definable actions against FTCS but also for general licit developments within society. This dialogue calls for solidarity among human beings, international cooperation among nations, and social responsibility among duty-bearers (UDBHR, art.13, 14), aimed at protecting women from FTCS, condemning those states and governments, which do injustice to women through FTCS, stopping this movement and abrogating existing CS law. India, which tramples down the rights of women through FTCS, has to shamefully acknowledge her contribution to FTCS, has to study its problematic elements through various bioethical-human rights conferences in an attempt to strengthen the protection of women. It can be a form of self-regulation for India to regain her integrity and identity even if she may lose her credibility at global level. FTCS that does not respect the vulnerable woman has to be banned at all costs and towards this ban our research continues to voyage.