



## CONTRIBUTOR

# Why India's new Surrogacy Bill is bad for women

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Feminist ethicists have been asking for deeper regulations of the surrogacy industry in India. But on August 24, 2016 the Indian government went ahead and moved closer to *deregulating* the industry when the Union Cabinet cleared the Surrogacy Bill 2016. The new bill bans commercial surrogacy altogether, but leaves the door wide open for altruistic surrogacy where no money shall be exchanged between birthing mother and commissioning parents. This new bill will lead to far deeper exploitation of indigent women who are now expected to labor for free.

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This is not to say that the practices of global surrogacy have been egalitarian. In various fora, along with other feminist ethicists, I have argued that surrogacy in India has been based on unfair labor conditions for surrogate mothers. The regulations to date had privileged clients over surrogate mothers; provided no enforceable guidelines on the number of embryos to be transplanted; no guidelines on the number of times a woman could be hormonally hyper-stimulated for the purposes of commercial pregnancy; no choice for the surrogate mother to carry her pregnancy to term or opt for an abortion, or even choose how to birth her contracted child; and finally, very little ability to [bargain for better wages or working conditions](#).

But rather than address these inequalities the response of the Indian state has been to institute a blanket ban on commercial surrogacy because it is against an Indian "ethos" of life. Following the Union Cabinet's vote, foreign minister Sushma Swaraj introduced the bill in a press conference as a "revolutionary step" towards women's welfare because it removes the taint of money so central to the trade, and instead focuses on selflessness of Indian women who will now give away their reproductive labor for free. Observing that girl children and children with disabilities had been abandoned, she went on to state in her press conference that, "this thing [commercial surrogacy] that is against nature, only to earn money for surrogacy clinics, has to stop." Yet, curiously, altruistic surrogacy, which is allowed by the new bill, is not

deemed to be against “nature.”

To be sure, altruism could, *prima facie*, make the whole reproductive arrangement cheaper because the surrogate mother does not get paid. But, these sorts of medical transactions will remain outside the purview of the majority of childless couples because assisted reproductive technologies entailed in any sort of surrogacy agreement are exorbitantly priced.

Looking at the Bill more closely, we can discern why Minister Shushma Swaraj believes that *altruistic* surrogacy is not against “nature.” This is because altruistic reproductive exchanges are allowed only for Indian citizen *heterosexual* couples who have been married for more than five years, and have medical reasons for their childlessness. The surrogate mother must be a “close relative” of the couple, married, and must have given birth to a healthy child prior to surrogacy. She can be a surrogate mother only once in her lifetime and will not be monetarily compensated for her reproductive labor because the presumption is that she is doing this out of the goodness of her heart. Her “generosity” however, cannot be extended to gay couples, unmarried couples, single women and men, foreigners, and married couples with progeny—biologically achieved or through adoption— because the Bill specifically names them to be ineligible for surrogacy.

Let us consider whom the Bill is supposed to protect: those working class women who have so far signed on as surrogate mothers. These women are not necessarily the poorest of the poor, but are a part of the growing citizenry whose economic and social lives are eviscerated by the loss of secure and well-paying jobs, safe housing, clean drinking water, and good schooling for their children. These are women who sincerely believe they can jump out of poverty through becoming surrogate mothers, but research proves otherwise. Instead, surrogacy becomes a survival strategy to pay off debts to usurious money-lenders, find better schooling for their children for a few years, hope for better housing, and receive money to obtain medical assistance for family members suffering various sicknesses. Their entanglements with surrogacy have not changed the vast number of these women's lives for the better; but at the very least, the money they have earned has tided them over [economic difficulties](#). The current Bill removes even this modicum of a security blanket and replaces it with nothing.

The new surrogacy Bill mandates setting up a national surrogacy board and an appropriate authority to implement its

provisions, much like the Authorization Committee that was created by the Transplantation of Human Organs Act, 1994, meant to monitor the donation of kidneys. The THO Act and its Authorization Committees were supposed to limit organ exchange to just between family members, as well as those who are not near relatives to recipients, but who wanted to [donate their organs](#). However, in spite of these efforts, the illicit trade in kidneys continues with far lesser protections for the indigent who continue to be poached for their [vital organs](#).

There is no precedence to say that this particular ban on commercial surrogacy is better for working class women. Instead, the new Surrogacy Bill is poised to create a situation where women—now not even deemed workers because they are altruistic individuals—are at the receiving end of their commissioning parents' mercy. Not monitored by contract law, it is now up to the commissioning parents to show as much, or as little gratitude to their altruistic “relative” who has donated her reproductive labor.

All this ban on commercial surrogacy does is alleviate middle class conscience that the Indian government has been revolutionary by removing the exchange of money for babies. This new law is in accordance to “Indian ethos” which allows child-bearing women to act altruistically all in the name of hetero-normative, nuclear family values. But in reality, the new Surrogacy Bill has further deregulated the industry, and opened the possibilities for deeper harm of working class women.

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