COMMENT

Regulate technology, not lives: a critique of the draft ART (Regulation) Bill

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The Assisted Reproductive Technology (Regulation) Bill, 2008 (1), has been posted on the websites of the Indian Council of Medical Research (ICMR) and the Ministry of Health and Family Welfare for comments from the general public. It follows, and draws from, the functional and ethical guidelines for assisted reproductive technologies (ARTs) issued by the ICMR in 2005. News reports suggest that the bill is meant to protect couples seeking the technology from exploitation by unscrupulous medical professionals (2, 3) and unethical marketing practices of ART clinics. It also purports to regulate surrogacy and respond to social and ethical issues around parenting associated with ARTs.

However, a close inspection of the bill suggests that it is not meant to achieve such concerns. On the contrary, the intention seems to be to protect clinics from complaints in social disputes such as who the "real parent" of the child is. It does not protect women from dangerous technologies. It dwells on the infrastructure for clinics but underplays the side effects of the procedures. It specifies who may access the technologies but is unclear about whether these technologies are actually treatments for infertility. It also tries to safeguard the rights of the "commissioning couple" vis-à-vis the surrogate while claiming to protect the rights of the surrogate.

In this commentary on the ART Bill, I will discuss the principles behind ARTs to understand what should be regulated to protect the bodies of women who use these techniques. I will also raise some questions about the repeated use of technological solutions for social problems. Finally, I will propose that these technologies might actually be used to redefine certain norms in society.

But to begin with, who do the assisted reproductive technologies really assist?

Who do ARTs assist?

Assisted reproductive technologies are essentially what the name suggests they are–technologies to assist reproduction. They are not treatments for infertility. Even in those rare cases when they are assisting the infertile, they do not cure them of infertility or treat them for it. In fact they make no such claims.

Who can the ARTs assist in having children?

They can assist those women who have husbands or male partners with no sperm, or low sperm count, or sperm that are not motile enough, or sperm that for some reason the women's bodies repulse. They can assist women who do not have fertile eggs being produced in their bodies, or those who cannot carry a full term pregnancy. They assist single women who do not have male partners to provide sperm and therefore need ARTs though they are fertile. They assist women who may or may not have husbands and have proven fertility but who decide to nurture a child for someone else in their own bodies (providing either the nurture alone or also the ovum or egg) either in an altruistic manner or in a commercial transaction.

ARTs also assist men in a heterosexual relationship who have sperm-related problems. They assist single men who can use altruistic or commercial services from fertile women to beget children with their paternal lineage. They can also assist men who are in sexual relationships with other men to have their own genetic child from a woman without having sex with her though this option is rarely used.

So ARTs can help people with many kinds of biological and social infertilities or inabilities to have their own genetically-related children. Since they do not treat any biological causes of infertility, they are actually a technological solution to the social problem of not having a child of "one's own".

It is true that not having a child of one's "own"–a child that bears a genetic imprint of oneself–is a social problem. It can make life for some people miserable and for many others very difficult. This is because genes are one of the ways in which families are made. Such families are assumed to be the essential material and emotional support for all people. They are also the only social security available to many people and therefore difficult to forego.

A social problem needs a social solution. We need to have social security for all. We need to make a society that is more tolerant to all kinds of love, relationships and families. We need a society that respects diversity and difference. We need to explore the ways in which material and emotional support can be shared between a group of individuals irrespective of their ages and abilities.

ARTs, however, underline the importance of genetically linked families. In that sense, they provide individual solutions to a wider social problem. By feeding into the normative notions of family and support, they necessarily weaken all struggles to redefine the problem itself.

What are the ARTs?

To add to this, many of these technologies (that are flaunted as major achievements of science) are harmful, especially for

the women whose bodies they invade. This fact is underplayed by the providers in the same way that the effect of harmful and invasive contraceptives is ignored. Once again individual women are forced to make a choice between the physiological suffering of ARTs and the social recriminations of not having a child of "one's own". However, we need to understand the principles of these technologies to comprehend the price that is paid.

Broadly speaking, there are two kinds of technologies: one in which the fertilisation of the egg happens *in vivo* (inside the woman's body) and the other in which part or all of this process is done in *vitro* (in the laboratory).

The first set of technologies involves manipulation of the husband's sperm (from the woman's husband or partner or from other men). These sperm are then introduced into the woman's uterus or vagina through a syringe (instead of the normal procedure of using a penis). Fertilisation occurs inside her body *(in vivo)* in the usual manner and need not involve any alteration of her hormonal cycles. The manipulation of sperm happens outside the male body. This set of technologies does not interfere with the regular functioning of the body. It may not need much medical supervision. The technology is very rudimentary and can in fact be used by women and men themselves without the intervention of a medical professional.

These technologies are very different in character from in vitro technologies. It might be technically correct to call both ARTs but they cannot be equated. Doing so undermines the graveness of in vitro technologies.

In vitro fertilisation (IVF) means the egg is fertilised outside the body. For this, the egg has to be retrieved from the woman's body and fertilised, and the fertilised embryo has to be implanted into a body that has been prepared to nurture a pregnancy. Extraction of an egg is not a simple process, unlike normal sperm extraction. It needs medication which can have serious side effects and also minor surgery. Similarly the insertion of the embryo requires preparing a woman's body to receive it (usually with synthetic hormones). It also involves the use of procedures slightly more complex than those required for the insertion of sperm.

In IVF, the woman giving the egg and the woman receiving the embryo might not be the same. In rare cases the egg could be made of parts contributed by two women. So it can involve chemically controlling, intervening in and manipulating two or more women's bodies. It means constantly monitoring the women, controlling their bodies with the help of the medical team and the use of technology, both chemical and surgical. This is where the power of science and technology is eulogised and this is where the maximum manipulation of technology happens.

As ARTs are practised today, there is no standardisation of the drugs used, no proper documentation of the procedures, insufficient information for patients about the side effects of the drugs used, and no limit to the number of times a woman may be asked to go through the procedure. Doctors and clinics compete and boast of high success rates for less money. They do not disclose the fact that a "successful cycle" need not lead to a baby being born. They do not disclose the actual costs involved in the process (4). They do not give exact information on the procedures and their possible side effects.

Such malpractices are not addressed in the ART Bill. For the women whose bodies will be sites where these technologies and businesses operate, this is one of the biggest lacunae in the Bill. Checking infrastructure and record maintenance–which the Bill provides for–is no guarantee that the best medical procedure is followed.

Second, the Rules with the Bill that lay down details of the nature of procedures, selection of patients and possible side effects assume that ART is being used only by a heterosexual infertile couple. So they specify indications for various techniques based on the nature of infertility (5). The side effects are underplayed as "ART procedures carry a small risk both to the mother and the offspring." (6) Evidently the risk is "small" in comparison to the pain and trauma of infertility. In any case the use of fertile women's bodies for egg retrieval or for surrogacy does not figure in the discussion on risks.

The Bill has provided for many informed consent forms to be filled and records to be kept. But it does not require that adequate information is given to the people seeking ART or the surrogate. For example the consent form for couples asking for IVF and ICSI (intracytoplasmic sperm injection) has only the following information about on the possible side effects: "The drugs that are used to stimulate the ovaries to raise oocytes have temporary side effects like nausea, headaches and abdominal bloating. Only in a small proportion of cases, a condition called ovarian hyperstimulation occurs where there is an exaggerated ovarian response. Such cases can be identified ahead of time but only to a limited extent. Further, at times the ovarian response is poor or absent in spite of using a high dose of drugs. Under these circumstances, the treatment cycle will be cancelled." (7) Is this adequate or even indicative of the kind of problems that are possibly in store? And even this is not part of the informed consent form for the surrogate who might go through the same procedure

Low temperature preservation

There is another aspect of ARTs–cryopreservation–which involves technology. Various types of germ cells are created and extracted from the human body using ARTs. Sperm are extracted (all of which may or may not be used), eggs are removed from women's bodies after super ovulation (sometimes as many as 14 or 15 per cycle), all of which may not be used for fertilisation, and embryos are generated after fertilisation (sometimes seven to eight per cycle), all of which may not be inserted for continuation of pregnancy. These are inevitable by-products of these technologies (8).

It is possible to preserve these by-products and use them later. They can be used for reproduction or in research laboratories.

So arrangements have to be made and technology used to create the temperatures at which this preservation is possible. These germ cells are stored for future use in "banks" which function much in the same way that ordinary banks do where resources can be stored and saved by individuals to use when needed by them or by someone else. Sperm banks have existed for some time now where sperm are cryopreserved and from where individuals can get "safe and matching" sperm.

The new bill acknowledges that the low temperature facilities are for more than sperm. And so they have renamed these facilities - but instead of "germ cell banks" they have been renamed "semen banks"!! The proposed "semen banks" will preserve sperm, eggs and embryos and also be places for registering surrogates. One wonders if this nomenclature is a result of careless drafting or a patriarchal mindset which assumes that only the male's contribution results in life and not the "inactive" egg inside an even more "inactive" woman's body. I hope it is the former but I am almost certain that it is a combination of both and this makes the proposed bill more suspect.

Further, there are no specifications about the nature of equipment, staff or facilities that the "semen banks" ought to have. While they are treated in this lackadaisical manner these banks are entrusted to advertise for and source donors of oocytes and sperm and surrogates as well.

The worst, however, is reserved for the definition of surrogacy and how this social reality is addressed by the bill.

Restricted surrogacy

The bill defines surrogacy as an "arrangement in which a woman agrees to a pregnancy, achieved through assisted reproductive technology, in which neither of the gametes belongs to her or her husband, with the intention to carry it to term and hand over the child to the person or persons for whom she is acting as a surrogate; and a 'surrogate mother' is a woman who agrees to have an embryo generated from the sperm of a man who is not her husband and the oocyte of another woman, implanted in her to carry the pregnancy to full term and deliver the child to its biological parent(s)"

By this definition, all surrogacy arrangements that involve the woman bearing a child using her egg (oocyte) and the commissioning man's sperm are illegal. The definition underlines the fact that the surrogate mother is not the biological parent thus emphasising that only those that contribute the genetic material can be considered to be biological parents. The fact that a human body nurtures the pregnancy has, according to this Bill, nothing to do with biology.

By this definition fertile surrogate mothers will necessarily have to use technology meant for treatment of infertility. Surrogates will now be forced to use only the second set of technologies and not the first, even though they can get pregnant with methods like artificial insemination which are much safer for them. The need to hide conceal the identity of the gamete donor emphasises that the child's parentage is understood to be a product of the genes. It underlines the perspective that the nurture in the biological body has no role to play. So the surrogate is just a womb that has to be prepared to receive the embryo.

Registration of surrogates with a "semen bank" further underlines the fact that the surrogate is seen as another component of the technology – a womb. In true reductionist science paradigm, a child is made with the help of a sperm, an oocyte and a womb. Just as the semen bank looks for donors of eggs, sperm or zygotes, it is also entitled to advertise for and register surrogates. This ignores the fact that while the donated egg or zygote gets separated from the woman's body, the womb continues to stay inside her and thus has to must be looked at differently. For this one would need to treat women as human beings and not just child-bearing devices.

In fact what is incomprehensible is why this Bill talks about surrogacy at all. The Bill is about regulation of assisted reproductive technology which it defines as "all techniques that attempt to obtain a pregnancy by handling or manipulating the sperm or the oocyte outside the human body, and transferring the gamete or the embryo into the uterus".

Since the technology is concerned with a human body and a uterus, why should a clinic, a doctor, and a giver of such technology be concerned with which human body and which uterus? Does it matter if the uterus belongs to a woman who is married and is carrying her "husband's" child or to one who is married but not carrying her "husband's" child? Does the provider of the technology need to know what kind of legal contract she has made with the man whose sperm contributed to the embryo–that of marriage or that of surrogacy? Do the health concerns vary with the reasons for pregnancy? If not, then why then does the Bill put a limit on the number of times that an embryo transfer can be done for a surrogate but not so for other women?

A surrogacy contract, much like a marriage contract, is definitely needed to protect the woman's rights. The question is: does this need to be put under the ART Bill? The inclusion here just underlines the idea that women are baby producing machines, if not in their avatars as wives then definitely as surrogate mothers. A Bill that is meant to safeguard the provider and the commissioning couple (because they are seeking to produce children through methods that are not normally used / by "non normative" means) will not protect the rights of the surrogate. She is the most marginalised and vulnerable in this triad. Her rights need to be protected, but not under a Bill that regulates technology. We need to oppose the inclusion of surrogates' rights within this same Bill and also oppose this definition of surrogacy.

When the commissioning parents do not provide the gametes, donors are kept secret presumably so that the rights of the child are protected. With or without technology, there are many disputes around parentage of children. There are many instances when the gamete donors, especially the legal

husbands of the mothers of the children, have not fulfilled their responsibility towards the children and/or questioned the paternity of the child. These are issues that are social in nature. They will come up however much we try and deny the surrogate mother the right to be mother in the first place and define parentage only through the genes. A woman should not have to go through the range of in vitro technologies just to ensure that she is not also the genetic parent for fear of future legal problems.

The debates within

Finally, if the rights of surrogates are not taken care of in this Bill, how are we going to ensure that these rights are protected? For that we must first acknowledge that surrogacy is another name for reproductive labour that women have always done (9). Through these technologies when the emphasis is once again on the germ cell and gamete theory of children and everyone is under a moral pressure to have "a child of their own", the surrogate who asks for monetary compensation and voluntarily gives her child to someone else to nurture is probably the only subversive element in the story.

In a caste ridden, hierarchical, patriarchal society such as ours, adoption of children is a process that helps break many norms of caste and lineage. Even though the Bill mentions adoption and doctors state that they offer adoption as an option right at the beginning, these technologies and those providing it them actually underplay adoption. The availability of these technologies itself pushes people to try and have their "own child" rather than adopt. Considering the amount of money that providers make and the credit that they get for "providing children in people's lives", it is hard to imagine that they would even suggest adoption before having milked these opportunities.

Yet there is a minor but subversive potential in these technologies. They can be used by all those who are socially not allowed to have children of their own. They also allow for the possibility of multiple parents–the gamete donors, the pregnancy-nurturing mother, and the parents in whose guardianship the child grows up. Of these the smallest role is actually that of the gamete donors. The surrogate/woman who carries the pregnancy is an important part of the child's life. And she, in her act of getting pregnant with the conscious decision of not nurturing the child beyond birth, redefines motherhood, lineage, and reproductive labour.

Of course this perspective raises new issues to resolve. Acknowledging surrogacy as legitimate labour and permitting a market in surrogacy could push women back into their role as reproducers, thus endangering the hard-won gains that women have made to be more than mere reproducers. There is also the argument that surrogacy will encourage exploitation of poor women as cheap labour, available to all and sundry, especially for foreigners. Also, women's bodies will continue to be exploited through commercial control over their reproduction as they are already exploited through control over their sexuality.

My response to such concerns is that the reproduction market and the consequent exploitation of women is a reality in all aspects of women's lives. It is a battle to be fought at a larger level. It cannot be fought over an individual's very limited "choice" of using that market potential to her full ability through using whatever sells best–physical, reproductive, or sexual labour. By creating a hierarchy of legitimacy between these various kinds of labour, we allow for a moral edge to our arguments that makes the surrogate even more vulnerable than she already is. Instead of talking of the rights and wrongs of surrogacy we need to find out more about who these surrogates are and what they need to deal with the forces in this burgeoning industry, where technocrats are called doctors, businesses are called clinics and clients are called commissioning parents.

Until the voices of these women are heard and concrete demands emerge from their experiences, let the Bill do just what its name indicates that it should do–regulate technology not human beings.

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4. For a very brief but fairly comprehensive list of side effects of these interventions see *Cheap and Best: Analysis of websites, brochures and advertisements on assisted reproductive technologies in India.* New Delhi: Sama - Resource Group for Women and Health; 2008. p 36.
5. There is an attempt in the Bill at defining a couple as any two persons and yet every time there is a couple being mentioned in the Bill, what is meant is always a heterosexual, married couple. Similarly although technically single persons can use the technology, all along what is implied is that there is a married couple that is availing of the technology.
6. Page 67, section 6.13 on complications.
7. Form D page 81 of the ART (regulation) Bill, 2008. The only other information that is given is about how the technique may not succeed and that there is no guarantee that there shall be a pregnancy.
8. This is similar to the ways in which multiple pregnancies are by-products of these technologies. Since every embryo inserted may not result in a pregnancy, many embryos are inserted at a time into a woman's body. There is at present no limit on the number of embryos that may be inserted into a woman' body. Very often more than one embryo result in pregnancies and that is the secret behind the miracle of multiple pregnancies! Similarly, as each cycle of super ovulation is physically taxing, drugs are administered so that many eggs mature and can be extracted in one cycle.
9. In any case all women can be considered to be surrogates for their husband's children. How else do we explain the fact that the moment a child is born she gets the father's name and guardianship? The mother is not taken to be the natural guardian. Until very recently children were also assumed to be as much a property of the father as the woman herself. Every mother is paid for this labour in society in kind and in status.