**Manuscript evaluation guidelines**Title: Right to be a Surrogate: Biological, Constitutional and Economic Perspectives  
  
1. Importance of the paper  
  
           Does it address issues relevant to the fields of bioethics and medical ethics in the developing countries?

Yes, the manuscript addresses a relevant topic in bioethics and medical ethics in developing countries. It examines the Indian Surrogacy (Regulation) Bill 2019 in context of other Indian and international regulations and declarations.   
  
2. Is it topical?  
  
           Is the issue discussed from another country's/culture perspective?

No, the right of a woman to be a surrogate has been discussed in Indian context.   
  
           Will it influence practice or policy?

In its current form, it will not influence practice or policy regarding surrogacy.   
  
           Is it too specialized for the journal?

It is not too specialized for the journal.

3. Originality  
  
           Is the information /comment new?

No the information/content is not new but the core argument defending women’s right to become a surrogate is new in the sense that majority of scholars argue against surrogacy for the concerns regarding exploitation of poor and vulnerable women.

Is there any likelihood of plagiarism?

Unlikely but I cannot be completely sure since I do not have access to detection software.   
  
4. Conclusions  
           Is the interpretation warranted, unwarranted, well developed?

No, neither the arguments nor the conclusions are warranted or well developed and this needs significant work.   
  
           Does the article contain loose generalisations?

Yes it contains loose generalizations especially while discussing various regulations, laws, declarations which cannot be deduced from the information provided by the authors.   
  
           Are there any important omissions?

I am not a legal or human right’s expert, however while reading the manuscript I felt uneasy for I could not follow the arguments. There could be omissions that a legal expert can identify better. I sincerely recommend a reviewer with expertise in legal and regulatory context to review this manuscript. One such expert could be Dr. Sneha Banarji. <https://socialsciences.uohyd.ac.in/polscience/wp-content/uploads/sites/3/2020/06/Sneha-Banerjee.pdf>   
  
5. Other comments

This manuscript needs an expert reviewer specializing in law and human rights if such a reviewer has not already been included in the process. The authors need to clarify and strengthen their arguments. It also seems that the authors believe ICMR guidelines have a higher standing than the regulatory Bills. They referred several times to the fact that the Indian Surrogacy (Regulation) Bill 2019 contradicts ICMR guidelines. This is obvious. The guidelines are created to follow the regulations and laws and not the other way around.

It is also a bit curious that the first author of the manuscript is affiliated with a zoology institute. Though this does not prevent him from writing about surrogacy, this could explain some of the lose generalizations. The authors include a legal and economics expert as well but there are still unclear legal arguments throughout manuscript. This is problematic because the manuscript is built primarily on legal arguments.   
  
6. Recommendation  
  
 Accept as is  
  
 Accept with modifications (specify) **Major revisions**  
 - style

- substance  
  
7. Separate comments for the author

The aim of the paper to defend the right of a woman to be a surrogate and to critic the Indian Surrogacy (Regulation) Bill 2019 for it restricts women’s freedom of choice is novel and interesting but the arguments do not lead to the conclusion the authors are trying to draw. Therefore, the manuscript needs major revision. The points listed below will help in revising the manuscript. Please also keep in mind that the readers of IJME are interdisciplinary, therefore it is important that the manuscript is understandable even to a reader who is not necessarily a legal or human right’s expert.

Introduction

The last sentence of the first paragraph states the following: *…. childless couple resort to opt for surrogacy as an alternative in order to beget a child genetically related to them.* It s not clear from this sentence what is surrogacy an alternative to? Also not all childless couples opt for surrogacy in order to have a genetically related child or even to have a child. The number of couples accepting egg or sperm donation is probably higher than those opting for surrogacy. So this sentence is problematic in number of ways for it makes overarching generalizations that are not substantiated by literature.

The last sentence of second paragraph: *In other words, the surrogate carries the child for* ***a full term*** *and after the birth of the child, renounces all her parental rights over the child and hands it over to the intended couple or the individual concerned.* Again not all surrogate pregnancies lead to a full term delivery even though that is highly desired.

The last sentence of third paragraph: *The surrogate mother, thus, becomes the biological or genetic mother of the child as she carries the child in her womb until the child is born.* There seems to be confusion between genetic, biological and social parenthood. It is not clear what authors imply in this sentence by genetic or biological parenthood. Is it A or B or genetic and biological are used as synonyms. Genetic mother may not be the biologic or social mother. Similarly biological mother may not be genetic or social mother. In Indian surrogacy practice, the surrogate is never a genetic mother, for her own eggs are not used in creating an embryo. There could be an involvement of egg donor but then the egg donor is not the surrogate. Thus surrogate in this case can only be a biological mother if by biological we are referring to the process of carrying the pregnancy and giving birth. Please clarify.

The Surrogacy (Regulation) Bill, 2019: An Overview

The second last paragraph ends with following statement: *After birth, the child is handed over to the* ***biological parents*** *by surrogate mother.* This again refers to my previous comment regarding confusion between biological or genetic parents. How do you define biological parent? If by biology you mean carrying the baby, then the baby is not being handed over to the biological parents but to the genetic parents or commissioning parents.

Insight into different facets of current Indian scenario

The first paragraph ends with the following statement: *… every woman has a right to personal liberty and thereby every woman has the liberty to act as a surrogate mother mainly because of financial motives.* It is not clear what is meant by personal liberty. Are you referring to a legal terminology here then this has to be elaborated and explained more considering that the readers may not have legal expertise. Another relevant point here is why only for financial motives? If she has right to personal liberty, she could chose to be surrogate because she likes the experience of being pregnant but doesn’t want to have more children of her own, or because she wants to help other women. I do not understand why this right to liberty is limited only to financial motivation for being a surrogate.

The middle of the paragraph below has this statement: many poor Indian women are renting their womb and acting as a surrogate mother *in lieu of consideration* (Bhattacharyya, 2016a, b; Spar, 2005). In lieu of what consideration? It is not clear at all.

The paragraph below: *The word ‘personal liberty’ was widened by the Supreme Court (Maneka Gandhi v. Union of India, 1978) which held that* ***a variety of rights constitute the personal liberty of a person*** *in the expression ‘personal liberty’ as found in Article 21 of the Constitution of India (Sehgal, 1999)*. What are these variety of rights? Not all readers have studied law. Since based on this sentence, in next sentence you conclude that right to be a surrogate is a personal liberty; you need to elaborate on this and justify your conclusion.

The very next sentence starts with ***‘from this analogy’***, what is this analogy? It is not clear at all.

Same paragraph further down: *Hence, it is logical to state that the right to procreation should include the right to procreate for another.* This is a huge generalization, not substantiated with solid arguments or legal basis. Please clarify this as many would disagree with this conclusion you have drawn. In its current form, it is far from being logical.

The first sentence of the paragraph below claims that surrogate has *property rights over her body*. Is this a legal claim? Does Indian constitution give people ‘property’ rights on their body? If so, substantiate it with reference. I am not aware that individual’s body is deemed individual’s property. This has far-reaching implications if indeed this is the case.

The next sentence: It can further be justified on the ground that each and every individual has the **right to enjoy the benefits of scientific progress** and the right to enjoy the benefits of such scientific progress and its applications are incorporated in various international and regional instruments. Please explain how does surrogate enjoy the benefits of scientific progress by being surrogate. Commissioning parents benefit from the scientific progress with ARTs but I am not sure same argument can be made about surrogate women.

Right to be a Surrogate vis-à-vis Surrogacy Bill, 2019

In the first paragraph, you have these sentences. *Such restriction imposed by virtue of Clause 3(ii) of Surrogacy Regulation Bill, 2019 is inconsistent with Article 13 of the American Declaration of the Rights and Duties of Man, 1948; Article 27 of the Universal Declaration of Human Rights, 1948; Article 15 (1)(b) of the International Covenant on Economic, Social and Cultural Rights, 1966; The Universal Declaration on Bioethics and Human Rights, 2005 under Article 15 of the Universal Declaration on Bioethics and Human Rights, 2005 as well as the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, 1975*. I am not a legal expert. I am unsure if one can compare a law I or Bill under discussion in India can be compared to the American laws and declarations. Are we implying that since American laws permit surrogacy, so should Indian laws? This needs clarification and the argument needs to be strengthened. Do you imply that the Universal declaration on Bioethics and Human rights would support woman’s right to become a surrogate? Again, this needs to be argued or explained in details. What is the legal standing of Declarations? Are they ratified by all nations? By India? Enlisting various American and international declarations is not adequate to make a claim. Please pay attention to such claims made throughout the manuscript.

Who can be a Surrogate Mother: **A critical analysis**

What do you mean by critical analysis? Hopefully all analysis done is undertaken critically(seriously raising relevant critical issues).

The authors seem to believe that ICMR guidelines hold more weightage than various bills as implied in statements such as the following. *Therefore, the current Bill allows for only a close relative to act as a surrogate, not adhering to ICMR Guidelines.* ICMR guidelines are guidelines, they have limited legal value. Nothing can be done if the practitioners do not follow ICMR guidelines. The laws put forth through bills have the highest legal value and power. If Indian Surrogacy (Regulation) Bill 2019 is passed in both chambers of the parliament, the ICMR guidelines will need to be revised accordingly. And not the other way round. One cannot expect the proposed bills to adhere to guidelines produced by a professional organization. Please check all the arguments and claims made in the manuscript which tend to give higher weitage to the guidelines over bills and laws. Yes but these are only guidelines, you cant expect a bill to abide by current guidelines by a medical research body. ICMR will need to change its guideline to align with the law if the bill is passed.

The last sentence of the last paragraph: *This, although meant for welfare of the surrogate mothers, violates the Article 21 of the Indian Constitution,* ***conventional gender rights and civil liberties.*** What are these conventional gender rights and civil liberties? Please explain.

Economic Perspective on Outlawing Commercial Surrogacy

The term ‘**impugning sacralisation’** in the first sentence of the first paragraph is not easy to understand for non-expert readers. Please explain what you mean better.

Conclusion

The second sentence ends as follows: *…. recognise the Right of a woman to rent her womb as a surrogate for economic benefit*. Can this argument be also applied to selling an organ for economic benefit? Even there, the donor could argue in terms of right to personal liberty and body and organs being his or her personal property.

The next sentence: *It has been found that the Artificial Reproductive Technology (Regulation) Bill, 2008 strictly adheres to the ICMR Guidelines while the Surrogacy (Regulation) Bill, 2019 does not.*  I refer to my previous point again. ICMR guideline is a guideline and not a binding law. The guideline will need to change in case the Surrogacy (Regulation) Bill 2019 is passed and the law comes into force. Please pay attention to all the sections where you seem to imply higher value to ICMR guidelines compared to various Bills under discussion.

The entire manuscript needs to be revised considerably to clarify various terms, to sort in consistencies and to strengthen the arguments.

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\***Please let us know whether you would like your name to be published as a reviewer of the manuscript. This is optional.**

I prefer to remain anonymous.