Surrogacy guidelines: how do we implement them? Reflections on the November 2012 Shetty article in the Lancet

Members of the executive committees of both the International Federation of Gynecology and Obstetrics (FIGO) and the European Society of Human Reproduction and Embryology (ESHRE) read with interest the article by Shetty on India surrogate motherhood industry, discussing the Indian legislative plans (Shetty, 2012), and share her concerns about possible abuse of Indian women by (mostly) European or US residents. Indeed, both the ESHRE TF law and ethics and the FIGO ethics committees have made recommendations that address care and welfare not only of infertile patients, but also of their collaborators, women who serve as surrogate mothers. Central to these concerns are the well-being and reproductive rights of women in general, whether infertile or surrogates, and the families of each. (ESHRE TF Ethics and law and FIGO ethics considerations).

Unfortunately, neither one of these sets of recommendations was referred to in this important article outlining the plight of Indian women induced by disproportionate rewards for into surrogacy. Our subfertile patients have, mostly, a congenitally anomalous or scarred uterus, or have lost this reproductive organ due to a catastrophic obstetric event. They do not wish to abuse other women, but may be desperate for a treatment which is allowed in few European countries only (Belgium, Greece, the Netherlands and the UK) although more widely in the USA, at a price, and in India, which this Lancet report addresses.

Indeed, both sets of guidelines/recommendations share a common theme, stressing that surrogacy should be available only for medical reasons, and find it “a morally acceptable method of assisted reproduction of last resort” (ESHRE). Furthermore, ESHRE asserts that “payment for services is unacceptable; only reimbursement of reasonable expenses and compensation for loss of actual income should be considered”. It also advises “the surrogate should be aged <35 years for partial surrogacy, and <45 for full surrogacy, and last but not least “ strongly recommend(s) that only one embryo should be replaced in order to prevent multiple pregnancies and to avoid unnecessary endangerment of the surrogate’s and the future child’s health”.

As for FIGO, its recommendations state that “all efforts must be undertaken to reduce the chance of multiple pregnancy with the ensuing risk to the surrogate mother and future babies”, and that “surrogate arrangement should not be commercial, and are best arranged by non profit-making agencies”. Further, in its international capacity of focusing on the plight of women in low/moderate income
countries, special consideration must be given to trans-border reproductive agreements, where there is increased risk of undue inducement of resource-poor women from resource-rich countries’ citizens”.

Thus, the main question is not whether proposals exist to prevent or reduce wrongs associated with surrogate motherhood agreements, but how to implement recommendations made by international bodies. Where do we turn to when recommendations and guidelines to promote professional responsibility and respect for all women are ignored? Failing effective action by medical professional associations and/or licensing authorities, only the law, with its symbolic and coercive strong arm, may then, we hope, provide the solution. We are happy that India’s legislators are following this arduous path, and hope it will not prove to be yet another example of laws voted into operation but regularly frustrated, like the social sex selection legislation, another symbolic legal step which has been largely ignored to this day (Seth, 2006).

On behalf of ESHRE chairman Anna Veiga, ESHRE executive committee and Sabaratnam Arulkumaran FIGO’s president

This statement was posted on ESHRE’s website last December, with a link to the Lancet article, under “what’s new”, FIGO/ESHRE collaboration

Refs
FIGO Surrogacy ethics considerations, www.figo.org/publications, ethics guidelines
FIGO Resolution on “Sex Selection for Non-medical purposes, Reviewed and approved by FIGO Executive Board September 2005 and adopted by the FIGO General Assembly in Kuala Lumpur, Malaysia on 7th November 2006www.figo.org/publications