COMMENT

The draft ART (Regulation) Bill: in whose interest?

SAROJINI N B, AASTHA SHARMA

Sama Resource Group for Women and Health, B 45 2nd floor, Shivalik Main, Malaviya Nagar, New Delhi 100 017 INDIA email: Sarojini NB: sarojinipr@gmail.com Aastha Sharma: aasthasharma14@gmail.com

The process of regulating conceptive technologies (like artificial insemination, in vitro fertilisation and surrogacy) commonly known as Assisted Reproductive Technologies (ARTs), which started in 1999 in the country, reached an important turning point on September 13, 2008. At a two day National Consultation on 'Assisted Reproductive Technologies (ARTs): Emerging Concerns and Future Strategies' organised by Sama Resource Group for Women and Health in New Delhi, the Indian Council of Medical Research presented the Draft Assisted Reproductive Technologies (Regulation) Bill & Rules-2008. The Bill has been in the pipeline for about three years now and has finally been made public on the websites of the Ministry of Health and Family Welfare and the Indian Council of Medical Research (1).

Women and health rights activists have been looking forward to the drafting of this Bill in light of the unregulated practice of these technologies and the increasing commercialisation and commodification of women's reproductive tissues. The Bill is based on the 'National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India' issued by the ICMR in 2005. It is a welcome and much appreciated step, but unfortunately, it carries on the vestiges of the drawbacks present in the guidelines. Although some of the concerns regarding the guidelines have been taken into account, many issues–some new, some old–continue to be contentious.

Concerned activists feel that the Draft Bill tends to regularise and promote the interest of the providers of these technologies rather than regulate and monitor the current practices. The Bill is also inadequate in protecting and safeguarding the rights and health of the women who undergo these procedures, surrogates and egg donors and of the children born through these techniques. The Bill also actively promotes medical tourism in India for reproductive purposes. Though the Bill takes some step to regulate the process of surrogacy in the context of growing numbers of foreign couples coming to India, the equally important issue of Indian women also becoming egg 'donors' for foreign couples is not taken into consideration.

The Bill, making commercial surrogacy legal, prohibits the use of the egg of the surrogate mother for attaining pregnancy. This implies that an infertile couple will have to look for a surrogate as well as an egg donor; further, a woman with a healthy reproductive system (surrogate) will be subjected to a complicated, hazardous and expensive procedure like in vitro fertilisation rather than a simpler one like intra uterine insemination (IUI). The legislation is self-contradictory when it comes to protecting the anonymity of the surrogate. The document, while insisting on a number of measures to be taken to ensure the anonymity of the surrogate, states that the surrogate mother should register under her own name for the purpose of medical treatment and provide the name of the couple for whom she is acting as surrogate. If the legislation makes it mandatory for the surrogate to disclose her identity, then it is unclear as to how her privacy and anonymity will be maintained.

In case the intended couples are NRIs or foreigners, the legislation makes provision for them to appoint a guardian to be legally responsible for taking care of the surrogate during the gestation period till the child is delivered to the foreigner or foreigner couple. But, there is no clarity on who can be the local guardian and the guardian's exact responsibility. Also, the role of the local guardian in case of any mishap to the surrogate or the child does not find a mention in the legislation.

The legal parentage of children born through surrogacy has not been adequately tackled and situations where the intended couple no longer want the child, split up, pass away or abandon the child have not been addressed. The process of handing over the child from the surrogate to the intended parents has also not been adequately addressed. The legislation also clarifies that the name on the birth certificate will be that of the genetic parents, thus equating the term with intended parents/parent. Such a clause, although protecting the anonymity of the donor, presumes that the intended parents will also be the genetic parents.

The Bill states that a woman may act as a surrogate for three successful births in her lifetime, including a maximum of three attempts at pregnancy for a particular couple. This takes the number of times she can undergo IVF cycles to a high figure, thus jeopardising her physical and mental health. Along similar lines, the Bill permits a woman to donate her eggs six times in her life, at intervals of three months, which again could be hazardous for her health. But an important aspect of the maximum number of eggs that can be retrieved in each IVF cycle is still left untouched in the legislation, thereby completely leaving it in the hands of the providers to decide on this.

Surprisingly, semen banks have been made quite an important player in the ART industry and are supposed to provide not only donor semen but also donor oocytes and surrogates. Egg or oocyte retrieval from a donor, unlike semen collection, is a

complicated process and calls for sophisticated equipment as well as expertise. The process of equipping semen banks for these procedures is not clear. Moreover, semen banks have been permitted to advertise and make payments to donors and then source them to the ART clinics. The legislation is silent on the regulation of the semen banks in spite of giving them important roles.

The document is still ambiguous on certain key areas like the maximum age of women who can opt for ARTs (while mentioning the minimum age to be 21 years), the eligibility of persons from different sexual orientations for accessing these technologies, and listing the disorders/diseases that a gamete donor and surrogate need to be screened for. Certain other clauses also call for an explanation of the rationale behind them, like prohibiting the use of sperm or eggs from a relative or a known person, prohibition of genetic surrogacy, and the role envisaged for the semen banks. The Bill is weak on the operational realities of the processes it aims to put in place and contradicts itself at several places.

However, the drafting of the Bill should be looked at as a positive step towards regulation of this burgeoning industry. But the ICMR must not rush into finalising the Bill till a wider debate across the country, at various levels and regions, has been conducted and their responses incorporated. The Bill should be kept open for public critique for at least a period of six months, during which all concerned groups can adequately articulate their suggestions.

Reference

1. Ministry of Health and Family Welfare, Government of India, Indian Council of Medical Research. The Assisted Reproductive Technology (Regulation) Bill & Rules - 2008. [Draft]. New Delhi: MOH&FW, ICMR; 2008. [cited 2008 Dec 30]. Available from: http://icmr.nic.in/art/Draft%20ART%20(Regulation)%20Bill%20&%20Rules%20-%202008-1.PDF