

Editorial

Tuesday, July 30, 2019

Babysana's death and its questions

Babysana's death has raised a lot of question, not just on how she died but also on how things are in the hostels and private schools of Manipur. When it comes to the investigation of the case, another post mortem has been done and JAC formed on this matter is still demanding the state for concrete action. JAC has said that the government should hand over the case to CBI as soon as possible. The demand to hand over the case to CBI points to the fact that nobody has faith in the state police to work honestly in this matter or any other matter. Given the controversies on how the case was handled initially, the allegation that the family of the deceased and police were informed later, the mistrust of the authorities in the state on this matter seems justified. However, the demand for handling the case to CBI is not entirely free from issues. We have seen many cases which were given to CBI and were dumped into oblivion after the movement turns cold with time. These are the immediate matter concerning the death of the child and what we must do regarding the case.

The questions that we must pursue other than how she died are on how children of this society are doing in these private schools and hostels. These questions have to do with the implementation of Acts and regulations that have to do with private schools and hostels. When it comes to the regulations of hostels in the state, National Commission for Protection of Child Rights (NCPCR) has released a guideline for the regulation of these residential spaces for the safety and security of our children. Manipur Commission for Protection of Child Rights said years ago that it will also frame state specific guidelines on the matter based on the national one. However, neither the national guidelines were implemented nor the state specific one which MCPRC promised came out.

To make the matter worse, the state does not have a regulation on private schools also. An act called Manipur Private School Act was passed in 2017 but the act has not been implemented. It is said that private school owners have opposed the implementation. According to Manipur Private School Act 2017, all the private schools must possess the registration certificate. In order for the registration to take place, the registering authority must ensure criteria lay down in section 2 of this act. Some of the criteria laid down are:

"There is adequate financial provision for continued and efficient maintenance of such institutions as prescribed by the competent authority." This clause means that the institution applying for registration must show that they have enough money for sustaining the school. The clause also say that "the site for the building, playground and garden proposed to be provided and the building in which the institution is proposed to be housed conform to the rules prescribed." The school building and premises action to Section 2 must have "adequate facilities with due regard, safety and hygiene." Do these schools who are members of All Manipur Recognized Private Schools' Welfare Association fulfill these criteria? Furthermore, the section also says that "the teachers, tutors and non-teaching staff are qualified, adequate and adequately paid according to the standards and norms prescribed by rules under this Act" and "the fees to be charged is not disproportionate to the facilities provided and does not exceed limits prescribed by rules under this Act." The act provides space for the government to interfere in how much the school management is paying the school teachers and staff and there is also a cap on the amount that the school takes from children as fees. It is only after these criteria and many more according to Manipur Private School Act 2017 are fulfilled, the registering authority must give the registration certificate.

It is quite logical for the private schools to oppose this act. However, we must not be concerned of what the shopkeepers of education are saying. The question is about the children in our society. Now a young girl has turned up in a school premises in mysterious circumstances, couple of years ago a school boy was beaten to death because his father was unable to pay the fees. There are many cases of corporal punishment surfacing in social and mainstream media in these schools. Given these, Manipur Private School Act 2017 and NCPCR guidelines for hostels must be implemented.

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By-Inamul Haq

Colonialism is a relation between two or more groups of unequal power in which one controls and rules the other and tries to impose its cultural order to the subordinate groups. In a narrow sense, the colonialism stands as formal political control of a territory and population by special administrative apparatus and with an ideology justifying such control. The ideology includes the dominated population as different and divides them in an idiom of race. It is initiated by military force and the subordinate group often resists with violence (McBride, 2016). Similarly, in 1947, when India and Pakistan were separated, the question of Kashmir emerged. The choice of Kashmir was colonized, and both the countries fought on table as well in ground to claim Kashmir as their part. Without going into detail, everyone knows that what was the choice given to the people of Kashmir. Along with

choice, it was also recommended to keep in the mind the geography as well as demography. However, the choice remained in documents rather than practice. It is also remarkable that Kashmiri people mostly politicians also contributed in its colonization. As Frantz Fanon clearly states in his book "The Wretched Earth" that a native of colonized is responsible for bringing a colonizer into existence first and later on starts agitating his existence. Relating Fanon to Kashmir, the natives are also responsible for the colonization. The politicians of Kashmir are changing their colour after every interval. In Kashmir they keep one narrative and outside Kashmir, they have another. colonial world is divided into two parts: one is comfort zone, which is reserved for those, who are helping in the process, they remain mere puppets, who are working and acting on the signals of their master. The another one is the diving line and its frontiers are covered by barracks and

soldiers. In this situation, the policeman/army man are the officials, instituted go-between, the spokesman of the settler. Such forces are more powerful than anyone and they are present everywhere and are also frequent in their actions in order to maintain contact with the natives. Besides that, they are creating a fear by their weaponry and behaviour. These agents of the state are speaking the language of pure force.

Fanon further argues that a man in colonial rule is always desirous and the colonizer knows it well. While applying it to the state of Jammu and Kashmir. The picture is visible and society had witnessed that middle class person are becoming elite class in a short span of time. There are thousands of individuals who do not earn but having luxurious life. Where does the money comes from? While on the other side, the colonizer make mass relationship with the colonized in which force is being used to show off exhibitionist. His occupation

reminds the individual that I am slave forever. In this relationship, the colonizer keeps the anger alive in their subjects by depriving them from basic rights and trapped him in the chains of colonialism. From 1990's, the Kashmir valley witnessed the more violence in the form of killings, torture, detention, disappearance and so on. All these methods are common in the colonialism and such laws are implemented that keeps legal system salient. These laws were termed as emergency laws and these are amended from time to time according the condition of the people. The recent approach of India towards Kashmir is the sign of colonial rule. The highway ban, militarisation, internet ban, detention of political opponents are the visible signs through which colonial rules are imposed on the people, so that to break their will. Besides, the violations are being justified on the name of emergency by citing different article from international humanitarian laws.

Will surrogacy law be really effective in India ?

By: Raju Vernekar

Now the Surrogacy (Regulation) Bill, 2019, which seeks to ban hiring of womb by infertile couples, has been introduced in the Lok Sabha once again and will go through usual rigmarole by the time it is converted into the act.

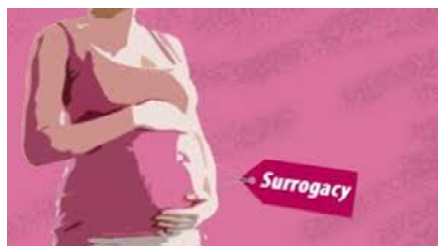
The government had prohibited surrogacy for international citizens in 2015. Then the Surrogacy (Regulation) Bill 2016 was introduced in Lok Sabha on 21 November 2016. It was referred to Parliamentary standing committee on 12 January 2017 and the committee submitted its report on 10 August 2017. But the bill could not get the nod.

In fact the Indian Council of Medical Research (ICMR) had issued guidelines to regulate surrogacy arrangements in 2005. The guidelines specified that the surrogate mother cannot donate her own egg for the surrogacy and that she must relinquish all parental rights related to the surrogate child. Subsequently the ICMR had prepared a draft Assisted Reproductive Technology (Regulation) Bill in 2008. However it did not see the light of day in Parliament.

In the intervening period several Bollywood personalities went ahead and had children through in-vitro fertilisation (IVF) and surrogacy. However most of the cases relate to the period before the Surrogacy (Regulation) Bill, 2018, was passed.

The list of Indian celebrity couples include: Aamir Khan and Kiran Rao (December 2011), Shah Rukh Khan and Gauri Khan (May 2013), Farah Khan and Shirish Kunder (On February 11, 2008) and Sohail and Seema Khan (June 2011) who took the route of surrogacy. A miscarriage and uterine complications were some of the reasons advanced. In the recent past, Sunny Leone and Daniel Weber gave birth to twins through surrogacy and named them Asher Singh Weber and Noah Singh.

The latest to join the list is Tusshar Kapoor and Karan Johar. The unmarried Tusshar Kapoor became father of a boy on Jun 28, 2016, through surrogacy using IVF. Karan Johar became father of twins born from surrogacy on 9 March, 2017. Ekta Kapoor became a mother on January 27, 2019, when Ravie Kapoor was born through surrogacy. All the while a broken law existed and there had also been no follow up from the authorities. All these years, low costs for medical treatment and easy availability of women willing to rent their wombs had made it convenient to anybody, to have a



child through surrogacy. Notwithstanding an attempt to bring in regulation, the industry is thriving and the number of clinics offering these services, which was nearly 59 in 2001, has shot up by over 700 by now.

Now the proposed bill provides for constitution of surrogacy boards at national and state levels. Besides the intending couples should not abandon such a child under any condition. The commercial surrogacy is banned and only close relatives are permitted to act as surrogates to infertile couples for "ethical altruistic" reasons.

Only Indian couples who have been legally married for at least five years would be allowed to opt for surrogacy. The bill seeks to "allow ethical altruistic surrogacy to the intending infertile Indian married couple between the age of 23-50 years and 26-55 years for female and male, respectively. A woman will be allowed to act as a surrogate mother only once and should be a close relative of the intending couple and should be an ever-married woman having a child of her own. Altruistic surrogacy refers to an arrangement in which a woman volunteers to carry a pregnancy for intended parents without receiving any monetary compensation in return.

The offences and penalties under the bill include: (i) undertaking or advertising commercial surrogacy; (ii) exploiting the surrogate mother; (iii) abandoning, exploiting or disowning a surrogate child and (iv) selling or importing human embryo or gametes for surrogacy.

The penalty for such offences is imprisonment up to 10 years and a fine up to 10 lakh rupees. The Bill specifies a range of offences and penalties for other contraventions of the provisions of the Bill.

Those who have adopted the solution of surrogacy in the international arena include: Ricky Martin (the Puerto Rican singer), the late pop star Michael Jackson, actress Nicole Kidman, Footballer Cristiano Ronaldo, actress Sarah Jessica Parker, Singer Sir Elton John, Oscar-winning actor Robert De Niro and actress Lisa Ray.

The different laws to control surrogacy prevail in different countries. While commercial surrogacy is prohibited in India, Netherlands, UK, South Africa and Greece, it is allowed in Russia. By and large there is a provision of to pay medical expenses, provide insurance cover and give compensation for any loss to surrogate mother exists in India, Netherlands, UK, South Africa and Greece. In Russia there is no limit on such compensation.

The intending couple is a legal guardian of the surrogate child in India, South Africa and Greece. In Netherlands and UK, surrogate is the legal guardian and guardianship can be transferred through adoption. In Russia, the surrogate is a legal guardian if it is her egg otherwise intending parents are the legal guardians. In India commercial surrogacy attracts 10 years imprisonment. The situation elsewhere is: Netherlands-Maximum one year,

UK-Maximum three months, South Africa-maximum 10 years, Greece-Maximum two years. In Russia there is no provision for punishment.

Eligibility criteria for commissioning parents:

Eligibility criteria for commissioning parents: India (couple must prove infertility), Netherlands (absence of uterus or any other condition), UK (no requirement), South Africa (if intending mother is unable to give birth to a child and if is such condition is permanent), Greece (inability to give birth to a child. Russia (If gestation and birth of a child is impossible due to medical reasons).

Eligibility criteria for surrogate mother:

Eligibility criteria for surrogate mother: India-close relative, age 25-35 years, Netherlands-No condition of close relation, age limit up to 44 years, In UK, South Africa and Greece, there is no condition that surrogate should be a close relation and there is no specification of age. In Russia too there is no condition of close relation. However 20 to 35 years is the age specified for surrogate mother.

Marital status of surrogate mother: India-surrogate mother should be married. However no such condition exists in Netherlands, UK, South Africa, Greece and Russia and single woman allowed to lend her womb for surrogacy.

Requirement of Children: In India, Netherlands, South Africa and Russia, the surrogate mother should have at least one child. However there is no such requirement in UK and Greece.

No of times one can be a surrogate mother:

In India one can be surrogate mother only once. However there is no such restriction in Netherlands, UK, South Africa, Greece and Russia.

Consent of the partner:

Consent of the partner: India- No provision. While no consent of partner is required in Netherlands and UK, the consent is required in South Africa, Greece and Russia.

