

Centre of Biomedical Ethics and Culture

Bioethics Links

In this issue Sharmeen Khan discusses the possibility of creating a legal framework for surrogacy in Pakistan, and Rubina Naqvi provides an overview of surrogacy in Iran comparing Shia and Sunni religious view points. In a reflective piece, Mariam Hassan describes her personal journey into the world of genetics, while Anika Khan reports on the CBEC review conducted by an international team. Editor

Surrogacy in Pakistan: Legal perspectives

*Sharmeen Khan**

In 2005, a married couple of Pakistani origin living abroad decided to enter into a surrogacy arrangement with a Pakistani woman. The husband, Farooq, came to Pakistan, presumably entered into a *nikah* (marriage) with a lady called Farzana, and through an IVF process started a chain of events which would lead to the first court-decided case of surrogacy in Pakistan.

As soon as the baby was born, Farzana left the child with Farooq. However, a few days later, she decided to recover the child and filed a case against Farooq under the Code of Criminal Procedure (CrPC) section 491 (recovery of detainee) and the court awarded her custody. Farooq then moved the local Bench of the High Court where he stated that he had a contract of surrogacy; he also relied on the Guardian and Wards Act, 1890 and petitioned the court to be awarded guardianship under section 25. In raising this petition, he stated that he was wealthier than Farzana, being a practicing doctor. However, the court was not satisfied that wealth alone could be a ground of custody and since Farooq had not admitted to a marriage with Farzana, it decided that there was no link between Farooq and the child. Therefore, on merits, the court allowed the child to stay in the custody of

Farzana and also noted that surrogacy had no legal status in Pakistan.

Farooq appealed against this decision but in its Appeal Judgment (in November 2012), the High Court of Lahore upheld the two previous orders. In its reasoning the court stated that children belonged to “the bed” or conjugal relationship, and their custody rested with parents who admitted to having a marital contract with each other. Since Farooq denied that he was wedded to Farzana, he could not claim any rights over the *Continued on page 5*



Pablo Picasso's *Mother and Child*

*Pfizer, Regional Compliance Director-Africa, Middle East

Surrogacy and “third-party” donation in Iran: An overview

*Rubina Naqvi**

Assisted reproductive technology (ART) is the name given to a group of different methods used to help infertile couples. It includes removing eggs from a woman's body which are mixed with sperm to make embryos which are then put back in the woman's (or a surrogate's) body. ART techniques have advanced significantly in the past few decades.

Diverse legal, religious and social attitudes towards surrogacy exist in different countries. Within Islam itself, there are widely divergent views on the issue of surrogacy. In contrast to most Muslim countries, Shia Iran takes a permissive attitude towards surrogacy and the “third-party” donation of sperm and eggs. Beginning with the first IVF birth in 1990, Iranian society and its religious scholars have been largely supportive of infertility treatments. There are currently more than seventy infertility clinics in the country offering infertility treatments including surrogacy, embryo donation, and recently Preimplantation Genetic Diagnosis (PGD) screening and sex selection.

The majority of Sunni scholars consider surrogacy *haram* or forbidden since it involves introducing the sperm of a man into the uterus of a woman to whom he is not married. Third party donation, therefore, is considered adultery (with a small minority of Sunni scholars permitting surrogacy between two co-wives of the same husband). Sunni scholars also oppose surrogacy on the grounds that it turns the womb into a commodity and commercializes the act of giving birth which is sacred to marriage. On the other hand, most Shiite scholars have issued jurisprudential opinions (*fatawa*) that allow surrogate motherhood as a treatment for infertility, although only for legally married couples.

Ayatollah Khamenai, the supreme Iranian leader, allowed surrogacy on the condition that the resulting child must be recognized as the

child of the donor father. This works well if an infertile couple contributes the egg and sperm, and the embryo grows in the womb of a third party surrogate mother. But controversies could arise if the wife of the infertile couple wishes to carry the child, using the sperm of a third party donor. Her husband, in that case, would be considered only an adoptive father, and the third party donor would be considered the real father from whom the child may claim inheritance raising complex questions about kinship and the identity of the child. However, Shia jurists would not define this as adultery. According to Shirin Garmaroudi Naef, this striking difference in Shia and Sunni positions on surrogacy is rooted in a different conception of what constitutes adultery. In the Shia conception, adultery is a physical act involving actual bodily contact and not just a transfer or mixing of body cells. Rather, Shia scholars regard the practice of surrogacy as transferring an embryo or fetus from one womb to another, which is not forbidden in Shiite jurisprudence. Furthermore, in the Shia perspective, adultery breaks the family whereas donation (or surrogacy) protects it.

Donors or surrogate mothers in Iran are often closely related to the infertile couple with brothers, sisters and other relatives donating or becoming surrogates. Although there is generally no exchange of money in such cases, there is a wide debate in Iran about the issue of payment to surrogates in other cases. Surrogacy or reproduction through ARTs in Iran is not allowed for gay couples or couples who have not been legally married. However, married couples from other Muslim countries, including Pakistan, have availed the infertility treatments at Iranian clinics.

(References for this article are available in the online version of Bioethics Links, Volume 10, Issue 1)

*CBEC Faculty, Professor Nephrology, SIUT, Karachi

A journey through testing times

*Mariam Hasan**

"...burning with curiosity, she ran across the field after it, and fortunately was just in time to see it pop down a large rabbit-hole under the hedge. In another moment down went Alice after it, never once considering how in the world she was to get out again." (Lewis Carroll, *Alice in Wonderland*.)

Does autism run in your family? Why is your sister like that? Was she born that way? I have spent a life time answering these questions never knowing the answers myself. My youngest sister, Eesha, was diagnosed with autism when I was twelve and she was a three year old baby. Needless to say my earliest memories surrounding the words hereditary and familial weren't exactly pleasant, and they were often accompanied by a sense of confusion and a feeling of persecution. For the next few years Eesha remained a skeleton in the family closet. I entered the field of genetic research with this background baggage and rolled down the rabbit hole into the genetic wonderland filled with curiosity and wanting all sorts of answers.

My initial attempts at discussing genetic tests with families who had "pedigrees suggestive of a genetic predisposition" were clumsy and often awkward. I was scared of cancers and considered mutations a disease and had only begun adjusting into my role as a research officer who had a MBBS degree but was no longer a "doctor." I was taking consents for research that often had "bad" or confusing results and which many times translated into life-altering decisions for the research participants. I struggled and stumbled in the dark with Urdu explanations for genes, hereditary illnesses, single

nucleotide polymorphisms and other genetic paraphernalia for the next few years. I would love to say that eventually I had some genetic epiphany but of course that didn't happen; however, over time some things did change.

On a personal level, over the years as I have entered further into the joyous and heart aching journey of raising an autistic sibling, I have become grateful for her silent, gentle presence in my life. Over the years autism has changed too. It now has many names and shades and many genetic links have emerged through research. The unpredictable future of our unborn children sometimes still worries me and my siblings. We try not to remain complete hostage to such thoughts. On the professional front, my encounters with genetic research participants have certainly changed over the course of time. The 70 year old "Ammu," whom I met the other day, was concerned about passing on her cancer to her daughters just like she got it from her mother, but could understand only few things in my simplified genetics 101 lesson. She wanted to talk and my time was the only thing I could offer. She left with a pat on *Continued on page 8*



Dr. Mariam Hassan and Dr. Natasha Anwar taking a session on ethical issues in genetic screening and research during CBEC's Research Ethics Module, May 2014.

*PGD Alumnus, Clinical Researcher, Shaukat Khanum Memorial Cancer Hospital, Lahore.

International Team reviews CBEC as it turns Ten

*Anika Khan**

Inaugurated in October 2004, the Centre of Biomedical Ethics and Culture, SIUT in Karachi will turn ten years old this fall. The first (and still the only) such Centre in Pakistan, its stated objectives are to serve as an academic and intellectual resource for Pakistan and the region; to enhance national capacity in bioethics; to undertake socially and culturally relevant education and research; and to establish Pakistan's presence within the international bioethics community.

Following a request by Dr. Farhat Moazam, CBEC Chairperson, to Dr. Adib Rizvi, Director SIUT, a team of national and international educationists and scholars (see table) was invited to visit the Centre to assess its progress towards achieving its goals over the decade, its strengths, and areas requiring improvement. In addition, three renowned American scholars involved with CBEC since its inception were asked to provide, in writing, observations and comments about the Centre: Dr. Renee C. Fox, Professor Emerita of Social Sciences, University of Pennsylvania; Dr. Judith P. Swazey, Adjunct Professor, Boston University Schools of Medicine; and Dr. Paul Lombardo, Professor of Law, Georgia State University.

The review took place from April 28 to May 8, 2014 overlapping with the last sessions of CBEC's Public Health and Research Ethics Module. Reviewers met with CBEC faculty and were provided a written report and oral presentation about the Centre's educational programs, research activities, national and international involvement and collaborations. They interacted with students enrolled in the Postgraduate Diploma in Biomedical Ethics and Certificate Course programs and observed sessions taught by CBEC faculty and its alumni. Meetings were also arranged with

CBEC alumni in Karachi and via Skype with alumni based outside Karachi or in other countries. This provided reviewers an opportunity to get a feel of *Continued on page 8*

CBEC Review Team (in alphabetical order)

- *Dr. Aasim Ahmed: Chairperson, Bioethics Group, Aga Khan University, Karachi, Pakistan
- *Dr. Tasleem Akhtar: Professor Emeritus, Kyber Medical University, Peshawar, Pakistan
- *Dr. Rizwan Azami: Vice President, College of Physicians and Surgeons of Pakistan, Karachi, Pakistan
- *Dr. Alastair Campbell: Director, Centre of Biomedical Ethics, National University of Singapore, Singapore
- *Dr. Richard Cash: Director, International Health Research Global Health, Harvard School of Public Health, Boston, USA
- *Dr. Amar Jesani: Human Rights activist, Editor, Indian Journal of Medical Ethics, Mumbai, India
- *Dr. Fozia Qureshi (Coordinator): Chairperson, Department of Medical Education, SIUT, Karachi, Pakistan
- *Dr. Mala Ramanathan: Sociologist and Researcher, SCTIMST, Kerala, India



The Review Team conducting a Skype interview with PGD alumnus Dr. Shahid Shamim currently a faculty member of King Abdulaziz University, Jeddah, Saudi Arabia

*Senior Lecturer, Centre of Biomedical Ethics and Culture, SIUT, Karachi

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child. However, as Farzana was undeniably the mother, she was the child's rightful guardian. Further, the Court once again underlined the null and void status of a surrogacy contract as the law of the land did not recognize surrogacy. This ended a seven year legal battle on the custody of the child. (PLD 2013 Lahore 254)

What this case has served to illustrate is that a contract, whereby a woman (whether as a biological donor or as purely a gestational parent) carries a child for *another* couple, would neither be recognized as legal nor be enforceable in Pakistan. In fact, Pakistan like many other countries does not have a legislative framework that regulates surrogacy. Consequently, a surrogacy arrangement would be ignored and the court would rely on the Guardian and Wards Act, 1890 to award custody to a fit parent.

The question that then arises is whether there is a possibility of creating a framework of laws related to surrogacy in Pakistan. In order to fully answer that question (in line with the constitutional principles requiring that no law may contravene the Quran and Sunnah) we would have to determine the position held on surrogacy by the majority of Islamic jurists which is beyond the scope of this paper. However, what we can try and understand are the challenges that lawmakers may face should they try to develop such a framework.

The first challenge would be to determine who would be deemed the mother in a Court of Law. The question of fatherhood is not at stake as issues of surrogacy tend to revolve around the rights of the gestational/birth mother versus that

of the couple in the arrangement. In the Quran it is stated in Surah al-Mujadalah (58:2) “....their mothers are only those who conceived them and gave birth to them.” This clarifies that the mother will be deemed the woman who has given birth. Therefore, in cases where there are no questions of DNA, the surrogate mother would be the mother who physically carried and gave birth to the baby. However, in the case where the birth mother is separate from the donor egg mother and we do involve considerations of DNA, the above *ayat* (verse) does not provide a clear answer. It clearly stipulates that a mother is one that has both (a) conceived and (b) given birth. It does not address the situation of the conceiving mother being separate from the mother who gave birth. If the two are separate then either of them may be deemed a mother, a situation that may open a Pandora's Box of complexities: If either of them can be a mother, then can neither of them claim the right to motherhood?

The second challenge is that of the provisions of the *Hudood Ordinance* impacting the legitimacy of the arrangement. Surrogacy essentially involves questions that relate to the legitimacy of procreation outside a marriage contract. In absence of a marriage contract between a donor father and surrogate mother, the provision of Pakistan Penal Code dealing with *zina* (adultery) may also come in to play. In the case of *Farooq vs Farzana*, the honorable Judge stated that the child belongs to “the bed” and absent a lawful marriage, a question of adultery could have been brought into this equation. Given the legal history of *Continued on page 6*

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Pakistan, it would be challenging to establish the absence of coitus if someone outside the arrangement did in fact make an accusation. On the other hand, if a marriage contract does exist then the very concept of a surrogacy contract becomes irrelevant. The laws on marriage, its dissolution and the guardianship laws adequately provide for the custody of minors coming from a marriage.

The third, and I believe, the most significant challenge, is one that deals with the legitimacy of a surrogacy contract itself that is, a contract which would allow a woman to rent out her uterus. If a legislative framework is created that regulates a surrogacy relationship, can it be enforceable, and under what terms?

Surrogacy contracts, in countries where they are recognized, are often divided between commercial and altruistic. In Pakistan, the idea of a surrogacy contract on a commercial basis may be considered illegal because it would mean that the subject of the contract is a uterus. It may open up questions about the right of a person to rent out parts of their body and it may lead to exploitation, specifically in a country like Pakistan where there is a large economic divide and a history of bonded labor. Further, it would require a deeper analysis of an individual's right to rent out a body. Is it like providing manual labor? Or could it be equated to a form of prostitution?

Altruistic surrogacy, however, has a different basis from commercial surrogacy and one may imagine a situation where it may be considered legal in Pakistan. However, Pakistani courts do not always have the ability to gauge the true intentions

of parties and it would be difficult to establish that a surrogacy contract was indeed altruistic unless a relative has been a surrogate parent. We may draw an analogy to the Human Organ and Transplant Donation Ordinance of 2007 which prohibited all forms of commercial donation and only allows filial proximity for live donors.

Even in UK, where surrogacy is regulated, a surrogacy contract is unenforceable. This means that it is legal but should the surrogate mother decide to violate the contract, the other party would not be able to enforce it. In Pakistan, taking all the discussed factors into account, it seems that we will not be developing surrogacy laws anytime soon and any arrangement of this nature would have to be essentially a private one which would be legally unenforceable and would depend on the trust all parties have on each other. Further, it would need the added protection of legalizing instruments, such as a lawful marriage, which could create its own complications.

(References for this article are available in the online version of Bioethics Links, Volume 10, Issue 1)



CBEC faculty and students visited the Makli graveyard near Thatta this year. It is the world's oldest and largest necropolis and a World Heritage site. The ghostly shadows of three PGD students add to the mystique of the place

**First Ethics Grand Rounds at Nuclear
Medicine, Oncology and Radiotherapy
Institute (NORI), Islamabad
March 6, 2014**



The first Ethics Grand Rounds at NORI was organized and conducted by PGD alumnus Dr. Shazia Fatima (seen on far right), with assistance from CBEC faculty. Also seen are NORI faculty and CBEC alumni and students from Rawalpindi and Islamabad.

**Research Ethics Workshop, School
of Social Sciences and Humanities
NUST, Islamabad
March 7-8, 2014**



Drs. Farhat Moazam, Aamir Jafarey, and Riffat Zaman (from AKU) conducted a workshop entitled "Ethics in Psychological Research and Clinical Practice." It was organized through the Department of Behavioral Sciences, National University of Science and Technology, Islamabad.

**Second Ethics Workshop for Teachers in CBEC
June 20 - 21, 2014**

The growing interest in ethics education in schools has led CBEC faculty to organize ethics workshops for schoolteachers of primary and secondary grades. The focus of these workshops is on developing an understanding of ethics and how different methodologies can be used for bringing moral reasoning and critical thinking into classrooms. The June workshop, the second to be held on CBEC premises, employed discussions and group work to demonstrate how ethical enquiry can be encouraged among students and traditional and literary sources used to build character and foster values.

The workshop was developed and taught by Ms. Anika Khan while Dr. Bushra Shirazi and Dr. Aamir Jafarey covered

sessions on plagiarism and social media ethics respectively. Participants included twenty two teachers from ten English medium schools from all over Karachi.



School teachers are engrossed in a session with Ms. Anika Khan (standing far right) and Dr. Aamir Jafarey (standing left).

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my head and I was left humbly educated by her ability to see disease, disability and death as a natural flow of life and her complete acceptance of human genetic “imperfections.”

Over time, I have also learnt that doing genetic research means entering into a “relationship” with the research participant families. Besides the requisite information that I collect for research records, I hear about marital discords, the troublesome in laws, the *nafarman aulad*, (disobedient offspring) the *nalaik bahu*, (useless daughter-in-law) and every possible imaginable personal and family life issue, and often end up giving lots of personal advice. It's also often hard to be just laying out clinical options for risk reduction without mixing it with some subjective often paternalistic advice. Lastly, I believe, with the ever expanding “unknown” in genetic research, one of the greatest assets for a researcher is a certain amount of “genetic humility,” recognition of the inherent haziness of the genetic crystal ball and the fine line that separates prediction from pure speculation.

Eesha turned 26 last month. She gingerly accepted my hug but smiled widely at the birthday feast we had laid out for her party. I also recently came across an article about genetic testing of embryos to screen out genetic diseases. We all discussed it, perhaps might even consider it someday, but for now, whatever will be, will be...

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the “bioethics network” beginning to take shape through the Centre's alumni and to assess the impact of CBEC programs on individuals and institutions.

It is hoped that the Review Team report will help CBEC faculty in charting the direction for the next decade.



PGD 2014 and Certificate Course students from Kenya, Iran and Pakistan participate in a role play exercise on taking an informed consent during the Research Ethics Module, May, 2014.

CBEC introduces Certificate Courses, April 2014

In April of this year, CBEC introduced Certificate Course (CC) programs in Research Ethics and Clinical Ethics for healthcare related professionals. These will run concurrently with modules pertaining to these subjects organized for students of Postgraduate Diploma in Biomedical Ethics (PGD) and Masters in Bioethics programs. Enrolled CC students will attend all sessions with PGD students and be taught by the same faculty. The aim of the CC program is to provide an opportunity to professionals who are interested in bioethics but reside outside Karachi or Pakistan making it difficult for them to enroll in full length CBEC programs.

The first CC batch consisted of six students for Research Ethics held from April 28 to May 8, 2014. They included two from Kenya, one from Peshawar, one from Iran (attended part of the course) and two from Karachi.

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