

# Surrogacy-led migration: reflections on the policy dilemmas

Surrogacy-led  
migration

Akm Ahsan Ullah

*University of Brunei Darussalam, Bandar Seri Begawan, Brunei, and*

Faraha Nawaz

*University of Rajshahi, Rajshahi, Bangladesh*

157

Received 11 March 2020  
Revised 18 March 2020  
Accepted 4 June 2020

## Abstract

**Purpose** – There is abundant research on surrogacy; however, migration scholars have not addressed surrogacy-driven migration. Policies related to surrogacy and surrogacy-led migration are under-researched. The paper argues that surrogacy-led migration or fertility/reproductive migration constitutes a significant part of mainstream migration. The purpose of this paper is to reflect on the policy dilemmas in various countries.

**Design/methodology/approach** – A total of 9 surrogate mothers (4 from India; 2 from Thailand, 2 from Indonesia and 1 from Nepal) and 8 commissioning parents (2 from Japan; 4 from Europe; 1 from the USA; 1 from Australia) and 2 doctors (1 from India and 1 from Thailand) selected on snowball basis were interviewed between 2014 and 2016 by using a checklist.

**Findings** – The deficiency and inconsistency of laws regarding surrogacy facilitated the growth of the surrogacy market. Therefore, a uniform policy would help to define and improve the surrogacy and surrogacy-led migration management.

**Originality/value** – This paper demonstrates the interplay of surrogacy and mainstream migration. This is a fresh addition to the study of migration.

**Keywords** Surrogacy, Fertility, Reproductive migration, Commissioning parents

**Paper type** Research paper

## Background

The world has been experiencing fertility decline over the last five decades and in fact the global fertility rate has halved (Roser, 2020). For the first time in human history, the population growth in many resource-rich but population-deficient countries has fallen below the replacement fertility rate. In order to get the economy going, many resource-poor but population-sufficient countries opted for exporting work force to resource-rich countries. In order to meet the deficiency, a range of population mobility activities have taken place. In order to offset the fertility decline, a phenomenon called “surrogacy” – an arrangement, whereby a woman (the surrogate mother) agrees to bear a child for another person, who will become the child’s parent(s) after birth— began to grow since the last decade (Brinsden, 2003). In 1978, with the development of in-vitro fertilization (IVF) - a procedure by which a sperm and an egg are fertilized and grown into an embryo in a laboratory before being implanted into a womb (Davies *et al.*, 2012) – allowed it. This enabled “gestational surrogacy” or conception outside the body (Weis, 2017). As the market grew, couples willing to have babies, mostly from the Western world began to show interest in Asia as a place for finding cheap surrogate mothers (Lasker, 2011). The authors call the phenomenon in which



© Akm Ahsan Ullah and Faraha Nawaz. Published in *Public Administration and Policy*. Published by Emerald Publishing Limited. This article is published under the Creative Commons Attribution (CC BY 4.0) license. Anyone may reproduce, distribute, translate and create derivative works of this article (for both commercial and non-commercial purposes), subject to full attribution to the original publication and authors. The full terms of this license may be seen at <http://creativecommons.org/licences/by/4.0/legalcode>

Public Administration and Policy  
Vol. 23 No. 2, 2020  
pp. 157-171  
Emerald Publishing Limited  
1727-2645  
DOI 10.1108/PAP-03-2020-0014

thousands of parents are moving to other countries to rent wombs “surrogacy-led migration” or “fertility migration”. These terms will be used interchangeably in this paper.

The first baby conceived through IVF was born in 1978 and such technology has revolutionized alternative family building strategies (Fasouliotis and Schenker, 1999; Eskew and Jungheim, 2017). As IVF gradually became known, many mothers who failed to conceive resorted to it. The Centre for Disease Control and Prevention (CDCP) estimates that there are 6.7 million such women in the USA alone who had shifted from adoption to surrogacy (Jakeman, 2016). However, the process remains very expensive. Commercial surrogacy can cost up to US\$70,000 in the USA where it is legal except for the seven states where it is not permitted. The commoditized reproductive capabilities of a poor woman in South Asia, Latin America, or Eastern Europe can cost as little as US\$12,000 (Smith and Bromfield, 2017). This is one of the reasons why couples are willing to outsource to another country, and it has prompted fertility migration.

Today, IVF accounts for millions of births worldwide, and 1-3 percent of all births every year take place in the USA and Europe (Chandra, Copen and Stephen, 2014). Anecdotal estimates suggest that 1,000 surrogate pregnancies take place in the USA every year (Rodrigues and Meyersohn, 2010; Eskew and Jungheim, 2017). It is unknown how many people undertake migration for IVF. Although surrogacy is not a new phenomenon, the scarcity of research on the procedure and fertility migration is obvious. The surrogacy issue has prompted many countries in Asia and beyond to change their policies (Chandra, Cohen and Stephen, 2014). An Indian gestational surrogate (see conceptualization section) receives an average of between US\$2,800 and US\$5,600 on top of which the commissioning parents pay all medical bills, broker fees, expenses etc. which amounts to around US\$12,000. This is far less than in the USA where it can range between US\$70,000 and US\$150,000 (Lee, 2009).

The vast sums of money in the surrogacy market make surrogacy a tempting option for many marginalized potential surrogate mothers. Pande’s (2009; 2010a; 2010b) research with Anande, a city in India, and about 89 percent of them were living below the poverty line.

In the past two decades, surrogacy has become a global phenomenon. For thousands of years, women have nominated others to give birth on their behalf (Svitnev, 2006). However, technological advances such as IVF, weakening of cultural restrictions and the trend for having children later have fuelled a recent boom in surrogacy. There are no precise figures on how many children are involved, but as far back as 2012 the surrogacy industry was worth an estimated US\$6 billion a year (Fenton-Glynn, 2019). This reflects the vastness of the market.

A global trade between aspiring families from developed countries and women from developing countries has led to surrogacy or fertility migration. With controversies and debates gathering intensity, many countries declared commercial surrogacy illegal (Table 1). However, where one market closes, another opens in order to meet the growing demand for surrogacy. Twine (2011) expects a burgeoning surrogacy industry to emerge elsewhere other than Asia such as in Ukraine, where egg donation is already incredibly common among poor women. Others expect to see more surrogacy in Greece, where economic turmoil has left more women without much needed jobs (Alderman, 2017) and the laws on surrogacy are ambiguous. This raises questions about the reproductive rights of the marginalized women and how to institute effective regulation and oversight.

Mignot (2017) touches on some interesting issues, for example, the factors that are driving aspiring couples to resort to surrogacy, i.e. the drop in mortality rate has reduced the number of orphans and the number of abandoned children, the lifting of the stigma of illegitimacy and the implementation of social and child support policies. Members of the rising middle class now adopt the orphans and abandoned children in the origin countries domestically. Therefore, the decline in the number of such children worldwide has prompted them to go for

Country	Altruistic surrogacy	Commercial surrogacy	Legal guardian of the surrogate child
Armenia	Legal	Legal	Intending parent(s) (surrogate may not have a biological link to the child and there has to be a biological link to at least one of the intended parents).
Australia	Legal (except Northern Territory)	Illegal	
Austria	Illegal	Illegal	
Belgium	Legal	Illegal	Surrogate (transfer of guardianship through adoption)
Brazil	Legal - restricted	Illegal	
Canada	Legal (except Quebec)	Illegal	
Chile	Unregulated	Unregulated	
Colombia	Unregulated	Unregulated	
Czech Republic	Unregulated	Unregulated	
Denmark	Legal	Illegal	Surrogate
Estonia	Legal	Legal	
Finland	Legal (traditional surrogacy only)	Legal (traditional surrogacy only)	
France	Illegal	Illegal	
Germany	Illegal	Illegal	
Georgia	Legal	Legal	Intending parent(s)
Greece	Legal - restricted	Legal	Intending parent(s)
Hungary	Legal	Illegal	
India	Legal	Legal (only for Indian citizens)	
Iran	Unregulated	Unregulated	
Ireland	Legal	Illegal	Surrogate (transfer of guardianship through adoption)
Israel	Legal - restricted	Legal - restricted	Surrogate (transfer of guardianship through court order)
Italy	Illegal	Illegal	
Japan	Unregulated	Unregulated	Surrogate
Kazakhstan	Legal	Legal	Intending parent(s)
Latvia	Legal	Illegal	
Malaysia	Legal	Illegal	Surrogate
Netherlands	Illegal	Illegal	Surrogate (transfer of guardianship through adoption)
New Zealand	Legal	Illegal	
Nigeria	Unregulated	Unregulated	
Norway	Illegal	Illegal	
Pakistan	Illegal	Illegal	Surrogate
Peru	Unregulated	Unregulated	
Poland	Unregulated	Unregulated	Surrogate
Portugal	Legal	Illegal	Intending parent(s)
Romania	Unregulated	Unregulated	
Russia	Legal	Legal	Surrogate if it is her egg Intending parent(s) otherwise
Serbia	Illegal	Illegal	
South Africa	Legal	Illegal	Intending parent(s) (if surrogate has a biological link to the child she has 60 days to change her mind)

(continued)

**Table 1.**  
Surrogacy Laws by Country

**Table 1.**  
Surrogacy Laws by  
Country

Country	Altruistic surrogacy	Commercial surrogacy	Legal guardian of the surrogate child
South Korea	Unregulated	Unregulated	Surrogate
Spain	Illegal	Illegal	
Sweden	Unregulated	Unregulated	Surrogate
Switzerland	Illegal	Illegal	Surrogate
Thailand	Legal - restricted	Illegal	Intending parent(s)
Ukraine	Legal	Legal	Intending parent(s)
United Kingdom	Legal	Illegal	Surrogate (transfer of guardianship through adoption or order)
Uruguay	Legal	Illegal	
USA	Legal in most states	Illegal	Intending parent(s)
Venezuela	Unregulated	Unregulated	
Vietnam	Legal - restricted	Illegal	

**Source:** Adapted from [Cuddy \(2018\)](#)

surrogacy ([Gibbons and Rotabi, 2012](#)). Therefore, to some, surrogacy is a substitute for child adoption.

Surrogacy has come under academic investigation in the last two decades. However, hardly any research has been conducted to look into policy dilemmas and how surrogacy is linked to migration. A search of the literature demonstrates the paucity of research on the issue. Some available studies are clearly based on a limited number of subjects ([Centre for Social Research, 2012](#)). The ambiguity of policy related to surrogacy and related consequences prompted many countries including India to reform their policies. Due to the existing deficient policies, parents (both surrogate and commissioning) who suffered emotional struggle as their child's status became stuck into a limbo due to legal glitches and failed to find redress. The authors argue that surrogacy-led migration or fertility migration forms a significant part of mainstream migration. The authors further argue that there are severe deficiencies in governing fertility migration and other related issues. This paper intends to identify these deficiencies and their potential consequences.

### Objectives and methodology

This paper aims at looking into the interplay between surrogacy and population mobility and related policies as well as the dilemmas the commissioning and surrogate parents go through. The surrogate mothers relinquish the baby at or soon after birth; the commissioning mother/parents secure the baby. This research tries to understand the impact of fertility decline on migration and the primary reasons for many women in Asia to register their interest to become surrogate mothers.

This research is based on empirical data. Surrogate parents, commissioning parents and doctors who performed surrogacy and a few policy makers were interviewed. A total of 9 surrogate mothers (4 from India; 2 from Thailand, 2 from Indonesia and 1 from Nepal) and 8 commissioning parents (2 from Japan; 4 from Europe; 1 from the USA; 1 from Australia) and 2 doctors (1 from India and 1 from Thailand) selected on snowball basis were interviewed between 2014 and 2016 by using a checklist. The authors will present some of the most important interview excerpts in the texts as appropriate to support our argument. Qualitative techniques were applied to analyse data. Surrogacy is still performed in a clandestine manner. In the absence of a surrogate register and a list of medical centres and agencies offering surrogacy, it is impossible to draw a random sample of surrogates. Investigating surrogacy is

---

all the more difficult given the very large number of clinics and agencies involved (Centre for Social Research, 2012).

### Surrogacy conceptualized

Surrogacy refers to a situation where a third-party woman carries a baby for another on the (often legal) understanding that she will give the baby to pre-arranged parents (Brinsden, 2003). Surrogacy arrangements are of two types: traditional and gestational (Corderoy, 2013). In the traditional category, the surrogate mothers are also the genetic mothers who provide the ovum and gestate the child. Traditional surrogacy can be performed through either intrauterine insemination or through IVF. Gestational surrogacy is made possible by IVF. In gestational surrogacy arrangements, surrogate mothers gestate the child, but both the ovum and sperm are obtained from either the intended parents or third-party donors, so they are not genetically related to the child (Nelson, 2013). From a marketing perspective, surrogacy arrangements are again of two types: altruistic and commercial. In altruistic surrogacy arrangements, surrogates receive compensation for reasonable medical and legal expenses but no extra compensation, are permissible in a number of jurisdictions because the surrogate does not profit from her gestational services while commercial surrogacy is about commodification of the womb (London, 2012). The former may be legally acceptable, while the latter is prohibited or even criminalized in many countries (London, 2012; Corderoy, 2013).

Assisted Reproductive Technologies (ARTs) and In-Vitro Fertilization (IVF) and surrogacy have today become highly commercialized. Some countries such as the UK do not allow individuals to profit much from egg or sperm donations. In the USA, egg donors are compensated for up to US\$10,000. Steiner (2013) noted that the landscape of the reproductive technology has changed drastically. Earlier, nobody knew about egg freezing or talked about surrogates, and a uterine transplant was still extremely experimental. These kinds of technological advancements further the idea that "everyone who wants a baby deserves one," which in turn reminds the aspiring couples about surrogacy (Steiner, 2013).

### Surrogacy and fertility migration

Fertility migration has increased and gained popularity in recent years (Mohapatra, 2012). The fertility migration involves any travel to seek commercially provided ARTs, which can include IVF, pre-implantation genetic diagnosis, gamete procurement, or a host of other services (Deonandan, 2015). When commissioning parents cross an international border to engage in paid surrogacy, they are participating in "fertility tourism" or "cross-border reproductive care" (CBRC) (Matorras, 2005; Inhorn and Patrizio, 2009). Though it is difficult to be sure about the dimension and direction of fertility migration, the authors envision the volume by the worth of the global industry of commercial surrogacy, which is estimated at approximately US\$6 billion annually (Smaerdon, 2008).

The number of couples travelling from wealthy to lesser wealthy nations is growing for the purposes of seeking health care of all types (Meghani, 2011), including surrogacy. While the exact number of commissioning parents is unknown, anecdotal evidence places it in the hundreds of thousands to several millions per year (Helble, 2011). The number of those specifically seeking reproductive services globally is unknown, but is likely in the tens of thousands in Europe alone (Wittaker, 2011) and in the hundreds of thousands in Asia. India's surrogacy boon began in 2004 when a grandmother delivered her daughter's twins (Sharma, 2012). While many Indian ART clinics are reluctant in promoting their surrogacy services to foreign clientele, international clients are still attracted to India in search of surrogate mothers (Deonandan *et al.*, 2012).

The authors asked one respondent what triggered her intention to be a surrogate. The answer was simple:

Money. My husband has been sick for a long time. The situation came to a point that we decided to stop our kid from going to school. The time had come to decide on being a surrogate. I had no idea about it, although one of my friends told me about it long ago. But I did not pay any attention to that. My necessity forced me to know more about it. My husband was not so sure, and was worried that neighbours, friends and relatives might look down upon us. An agent explained everything about it. It offered a good amount of money. This was, in fact, very high as compared to our context.

Similar answers came for the same kind of question irrespective of the country. It is quite understandable that nobody chooses to be surrogate for trifling reasons.

The authors were lucky to find a few commissioning parents. The research assistants worked hard to make them available for interview. It has to be acknowledged that the authors did not find commissioning parents from diverse backgrounds (race, sexual orientation, culture and economic standing) as the authors would have preferred. Therefore, the responses from this group did not vary much. Most common answers were that the wives were reluctant to have babies primarily due to their preoccupation with career and life. An interruption of a year or two for giving birth could lead to considerable cost in terms of their career, e.g., compromising seniority.

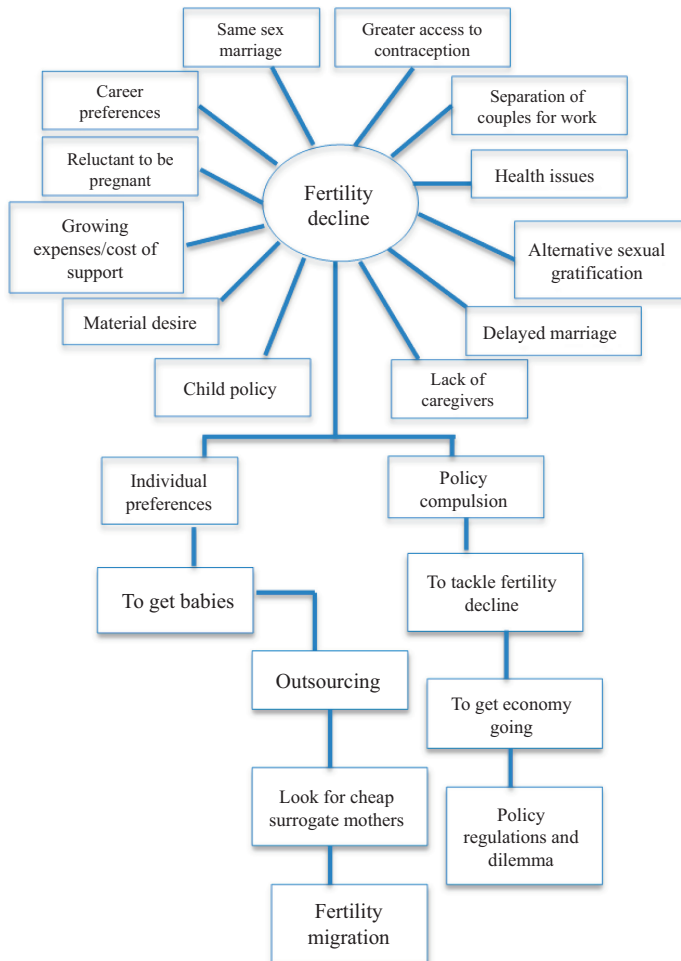
Millions of European citizens want surrogacy services, but they are not able to access it in their own country due to high cost and legal issues. In an interview, one European commissioning couple explained what made them look for surrogate mothers elsewhere.

... In our own country, we were not sure about the laws regarding surrogacy services. Some friends provided us with information about it, and the costs were very high for us. We also thought it would be better not to have any scar on the body [stretch mark during pregnancy], and to impact our career through pregnancy. This in fact prompted us to look for surrogate mothers outside our country. This means a lot to us because we were able to get a surrogate mother at a lower cost than in our own country, and there was no impact on our careers and body. In addition, we enjoyed traveling to Asia. . .

Fertility migration is shaped by a combination of legal restrictions, motivations of aspiring parents and the level of quality of services drawing patients to foreign countries (Nygren *et al.*, 2010). The motivations involve lower costs of services abroad, the opportunity to bypass the wait list or the barriers related to domestic legal issues. Cross-border care can be complex (Hanefeld *et al.*, 2014). Data from five agencies that specialize in international surrogacy showed that the surrogacy market grew nearly 1,000 per cent between 2006 and 2010 (Hague Conference on Private International Law, 2012). In India, approximately half of the 25,000 children born from surrogacy in 2012 were for foreign parents (Rozée *et al.*, 2016). Since commercial surrogacy in the world is growing, international adoptions have declined (Scherman *et al.*, 2016; Mignot, 2017).

There is a global demand for surrogacy. More than 160 million European citizens want these services, but they cannot access them in their own country (Twine, 2011). Until the 1970s, sterile Western couples who desired for a child but could not have one of their own could usually adopt a child in their home country. As contraceptive practice grew (Figure 1) and induced abortion became legal in the West, fewer and fewer children were unwanted and abandoned by their birth parents and the number of domestic adoptable children declined (Mignot, 2017). There is a myriad of factors that lead people to use a surrogate mother. The most common is the fact that one or the other, or sometimes both of a couple, have fertility problems or are homosexual. Although around one in seven UK couples have fertility issues at some point, in 92 percent of cases, they resolve themselves after two years of trying to become pregnant naturally (Templeton, 2000). According to the authors' understanding, Figure 1 as below tends to note how fertility decline prompts fertility migration.

Surrogacy is usually chosen as the preferred option if the couples are male homosexuals or if the female partner is unable to carry a child due to problems with her uterus or because she does not want to pass on a genetic defect (Kleinpeter, 2002).



**Figure 1.**  
Fertility Decline and Fertility Migration

While adoption can be an option for some, it is often expensive, and it entails an extremely long process, especially for unmarried and homosexual couples as many legal systems do not allow them to adopt, and many couples opt for some biological connection with the child (Loran and Leslie, 2009; Ullah and Huque, 2014; Ullah and Alkaff, 2018). More critically, options for adopting children are narrowing dramatically.

How have surrogacy issues generated a concept of fertility migration? At the advent of the surrogacy industries, migration began with Asian expatriate couples who could not conceive, and returned to Asia to find an Asian woman who would carry their child (Malhotra and Malhotra, 2009). For example, many of the Indian diaspora decided to use surrogate mothers and/or egg donors, and then travelled to India to find surrogates with South Asian genetic traits and cultural practices (Malhotra and Malhotra, 2009). Several factors persuade people in search of a surrogate mother to travel mostly to India, Sri Lanka, and Thailand from Europe, North America, Japan and Korea. About 65 per cent of the respondents reported that they (one or other or both couples) had fertility problems. 12 percent were homosexuals and

30 per cent said that they were too busy to carry a baby. Many of them reported that adoption could have been an option, however, it was an expensive and lengthy process. Many couples wanted biological connection with the child. Once a couple is convinced that they are not able to conceive naturally, they go for surrogacy in Asia.

The authors asked the same questions on psychological issues to all the surrogate mothers: "How was it like when you had to give up the child you carried?" She responded:

... I remember a doctor did some test and discussed my feelings about it. The report was fine but when I gave my child away it felt like I was dying.

It was, however, good that it took a long time for the commissioning parents to get the baby due to some new regulations in the country.

Most surrogate mothers have similar impressions about the social stigma. When asked, "What was your pregnancy like?", the answer was:

It was a mixed feeling of hesitation, fear, love etc. My relatives and friends still have no idea about surrogacy. They think it was impossible for me to get pregnant without having sex with a foreigner.

Some Asian countries (such as India, Nepal, Indonesia and Thailand) have become preferred destinations for the commissioning parents. The belief that Asian women generally do not drink alcohol or smoke tobacco makes them confident that they are less likely to risk the baby through these harmful behaviours (Carney, 2010). As the market grew, Western couples became interested in finding a cheaper surrogate mother in many destinations. Much of this interest in India intensified due to the marketing skills of agencies or brokers who arrange everything from flights to negotiating with the clinics and surrogate mothers. Of the British who go out of the country to look for surrogate mothers, 38 per cent go to Thailand, 15 per cent to the USA and 5 per cent to India (Campbell, 2015; Alarcao *et al.*, 2019).

### Policy dilemmas and challenges

As surrogacy becomes increasingly popular, the insufficiency of surrogacy laws and regulations and their clarity has given rise to confusion (Pyrce, 2016). As a result, the baby Gammy controversy remained unresolved. Baby Manji's case is still relatively unknown. Many countries have adopted a wide array of regulatory approaches toward surrogacy, from criminalization, to strict prohibition, to leniency. This signals one fact that there are grey areas in respect of surrogacy regulations and policies.

The question of whether a woman has the right to "rent out" her womb has crucial ethical and policy implications. This leads us to ask another question: if a marginalized woman is paid money to do something by a wealthy party, is that an economic coercion or is this choice under a free will? When the surrogate mothers relinquish the baby (according to the agreement) to the commissioning parents, how do they deal with their psychological issues/trauma? The surrogate conceives purposefully with the intention to relinquish the baby and not to keep it as part of her family. What happens if they have a stillborn baby? If the child is born with Down syndrome, how would they (both surrogate and commissioning parents) deal with it? Do these women, then, really know what they are getting into? Are they exercising their agency i.e. free and full consent? Many of them face complications in the family feud over the decision to be surrogate. All these, in fact, make the surrogacy issue extremely complicated.

There are reports that some agencies and brokers give the surrogates little to no money and even lie to them about what will happen to the baby after birth. Some women believe that their child is being taken away to be educated in a developed country and will eventually return (Bromfield, 2010). The many physical and emotional trials that the surrogates go through are important to take into consideration in dealing with surrogacy and related laws.



The social stigma intensifies the pain they suffer. Rural people still cannot believe that someone can get pregnant without sex (Pande, 2009; 2010a). Sex beyond wedlock is socially and religiously unacceptable in most of the developing countries. Therefore, surrogate mothers often hide their pregnancy from their friends and family (Lee, 2009) and are often forced to live in hostels so that the social parents can control the women's movements, food intakes, medications etc.

The above issues are not trivial in surrogacy. However, the deficiency in legislation dealing with those issues is obvious (Bromfield and Capous-Desyllas, 2012). Another problem is that legislations around surrogacy differ widely from one country to another, and are shaped by history, culture, religion and social values (Berend, 2012). In countries like Germany and France, surrogacy is seen as violating the dignity of women, using them as the means to someone else's end, hence the practice is considered illegal (Crozier, 2010) (Table 1). Some other countries like the UK view surrogacy as a gift from one woman to another, and allow it on an "altruistic", expenses-only basis. Others still, for example, Russia and Ukraine, permit commercial surrogacy, viewing it as an expression of a woman's autonomy to engage in surrogacy of their own free will (Donchin, 2010; Gallagar, 2010; Nawaz, 2019).

One mother said:

... my husband agreed to this and only then I signed the agreement. I handed over all the money to him. After a year I gave birth to the baby, my husband decided to divorce me. His primary complaint was that I have become old now.

The authors asked if she felt any change in her life due to surrogacy. The answer was amazing:

Yes, it has changed me as a person by the way that I am more caring about other people's feeling. I now know different people have different feelings, needs and wants. We should be respectful for them. Going through the surrogacy process was an eye opener. I felt how much they were aspiring for a kid and failed to have one. I felt I have somehow tried to make a difference. I am proud that I could bring a smile to someone's face. To me, this is a way that can change others' life in the most beautiful way. I spent many nights crying silently for the baby. At the same time I felt great. I brought a life to the world and gave away to another mother.

Policy makers have their arguments for regulating the surrogacy process. One of the policy makers said, "We really need to take the culture, religion, stakeholder, political system and our tradition into consideration to allow such practice." Surrogate mothers could later experience a range of health issues for the rest of their life, and this may become a burden on the state.

The Society of Obstetrics and Gynaecology in Japan currently prohibited surrogacy after concerns were raised over safety, custody battles and distress caused during the process (Blackburn-Starz, 2006). The debate reflects the growing sympathy of the public for infertile couples, and it follows that a doctor enabled a grandmother to carry the child of her daughter who was unable to give birth herself after undergoing cancer treatment (Blackburn-Starz, 2006).

The well-known controversy about "Baby Gammy" had immediate effects for parents intending to use surrogacy for childbearing. Baby Gammy and his twin sister were born to surrogate a mother in December 2013 in Thailand. The baby had Down syndrome and became known as baby Gammy. He was left with the surrogate mother in Thailand, while his twin sister was flown with the commissioning parents to Australia. The case caused uproar when it was claimed the commissioning parents had abandoned Gammy in Thailand because he was born with Down syndrome. Some were stopped at the airport on their way out with their babies, as they needed approval from the Thai family court (Hague Conference on International Private Law, 2012). Thailand enacted a law preventing foreigners from seeking

commercial surrogacy in Thailand or from Thai women. Nepal introduced similar restrictions. Indian clinics stopped allowing surrogacy arrangements with foreigners in August 2015. While Vietnam in 2015 passed a law legalising altruistic surrogacy for relatives, it too aims to prevent commercial surrogacy (Wilson, 2017).

Fertility migration creates significant legal dilemmas. While some countries recognize the surrogate as the legal parent, others allocate parenthood to the commissioning parents from the moment of birth - a clash of laws meaning children can be left stateless, with neither country recognising them as citizens (Hinson and McBrien, 2011).

In the 2008 landmark baby Manji case, a child born to an Indian surrogate was left in limbo after the Japanese commissioning parents got divorced before Manji was born. Neither the surrogate nor the intended mother wanted custody of the baby. The commissioning father, who did want the child, was not allowed to adopt as a single person under Indian law. As a result, it was unclear who the legal parents were, and what the child's nationality was (Points, 2008). However, at the time, Japanese law did not recognize surrogacy, and Indian law would not allow a single man to adopt a child. The case underlined the extent to which policies on adoption and parentage continue to be slow to adapt to the circumstances presented by the new paradigm of ART (Gibbons and Rotabi, 2012). If the child does return home with the commissioning parents, the authorities in that country must decide whether to give effect to the agreement that took place overseas and allow them to become the legal parents in their home jurisdiction.

After the controversies over babies Manji and Gammy, the issue of determining their parentage and citizenship becomes critical. It could be resolved by referring to the mother or father. However, ART makes parentage more difficult to determine. There are several methods for determining parentage based on marital, genetic, functional, and intentional relationships, and each state develops its own formal definition of parenthood through legislation (Abrams and Piacenti, 2014). At times, immigration policies appear to be incompatible with the surrogacy context. Citizenship is acquired under two principles. The first is *jus soli*, or "the right of the soil." It extends citizenship to people born within the borders of a country (Donner, 1994). The second principle of citizenship acquisition is *jus sanguinis*, or "right of the blood" (Ullah, 2018; Ullah and Azizuddin, 2018) under which, citizenship is gained by descent and is determined by the nationality of one or both parents. The existence of surrogacy "forces" the states to redefine the notion of descent and to determine the extent to which citizenship can be transmitted along "artificial" blood lines (Hartnell, 2006; Ullah and Azizuddin, 2018). The "commodification" of the body is not a new issue, similar as prostitution, "baby-selling" and organ sales all commoditize body parts, sex and/or reproductive processes, which have been in existence for centuries if not millennia. These acts all raise questions to do with who owns the body and its processes and who has the right to decide what individuals can do with their own biology (including selling it) as well of course as issues surrounding coercion, consent and choice. Intergovernmental body the Hague Conference on Private International Law (2012) is currently looking into the possibility of forming an internationally agreed set of rules for authorities to recognize the parenthood of children born abroad through surrogacy. However, it may be difficult to reach international consensus due to the widely differing attitudes towards surrogacy.

### Conclusion

This paper contributes to the existing discussion on fertility and migration by providing an analysis of the effect of fertility decline. Debates on surrogacy have polarized public attention and led to intense social debates (Frydman, 2016). The predictable rise in Western demand for commercial surrogacy will likely provoke political debate both in the global North and South

because it impacts power relations. Despite surrogacy being permitted in the UK, it too has seen a steady rise in individuals traveling abroad for surrogacy (Jadva *et al.*, 2019). As it turns out, even in South Asian contexts, where surrogacy was socially stigmatized, most surrogate mothers viewed it positively, as a well-paid job that enabled them to improve their living conditions (Rozée *et al.*, 2016).

Many parents (both surrogate and commissioning) have experienced difficulties in taking away children due to emotional ties and legal complications. This leaves both parties in a difficult situation in terms of their changing relationships with the family, husbands and the society as a whole. Many suggested that the policy should be changed, and surrogacy-led international mobility should be restricted, and some countries changed their policies. In fact, banning foreigners from using surrogacy services does not really resolve the problem (Rudrappa, 2015). When one country bans surrogacy, another may be available for practicing it. As a result, international commercial surrogacy moves to new countries. This means that in view of fertility decline, surrogacy has become an inevitable response. Hence, it is important to establish international policies and regulations to ensure that surrogacy is in the children's interest – the same way The Hague Convention made sure that international adoptions do not result in child trafficking. Some countries are also found to restrict foreigners from travelling for surrogacy due to xenophobia.

Rudrappa has found, however, that national policies and regulations are specifically designed to support surrogates. Although India is known as a popular destination for western couples seeking surrogates, only about 10 to 15 surrogacy clinics specifically work with international couples (Rudrappa, 2015). The fundamental problem in developing policies regarding international surrogacy is the lack of data on its extent, distribution, and participants, even in well-resourced, well-monitored jurisdictions, such as the EU (Brunet *et al.*, 2013).

To conclude, the inconsistency of laws around the world facilitated the emergence and strengthening of the surrogacy market. Differences in policies and regulations make it impossible for states to regulate the practice effectively. Surrogacy can provide the joy of a longed-for child, but at the same time it opens the door for the exploitation of the most vulnerable. As surrogacy gains popularity, these legal and ethical dilemmas will only become more pressing, underlining the need for designing and implementing effective public policies to facilitate the process as well as protect all stakeholders.

## References

- Abrams, K. and Piacenti, R.K. (2014), "Immigration's family values", *Virginia Law Review*, Vol. 29 No. 4, pp. 629-709.
- Alarcao, V. *et al.* (2019), "Fertility, Migration and Acculturation (FEMINA): a research protocol for studying intersectional sexual and reproductive health inequalities", *Reproductive Health*, Vol. 16 No. 1, pp. 1-13.
- Alderman, L. (2017), "After economic crisis, low birthrates challenge Southern Europe", *New York Times*, 16 April, available at: <https://www.nytimes.com/2017/04/16/business/fewer-children-in-greece-may-add-to-its-financial-crisis.html> (accessed 10 March 2019).
- Berend, Z. (2012), "The romance of surrogacy", *Sociological Forum*, Vol. 27 No. 4, pp. 913-936.
- Blackburn-Starz, A. (2006), "Japan to consider surrogacy law reform", *BioNews*, 23 October, available at: [http://www.bionews.org.uk/page\\_12891.asp](http://www.bionews.org.uk/page_12891.asp) (accessed 12 March 2019).
- Brinsden, R.P. (2003), "Gestational surrogacy", *Human Reproduction Update*, Vol. 9 No. 5, pp. 483-491.
- Bromfield, N. (2010), "Global surrogacy in India: legal, ethical and human rights implications of a growing 'industry'", *Rewire News*, 11 June, available at: <https://rewire.news/article/2010/06/11/stateless-babies-legal-ethical-human-rights-issues-raised-growth-global-surrogacy-india/> (accessed 9 March 2019).

- Bromfield, N. and Capous-Desyllas, M. (2012), "Underlying motives, moral agendas and unlikely partnerships: the formulation of the U.S. trafficking in Victims Protection Act through the data and voices of key policy players", *Advances in Social Work*, Vol. 13 No. 2, pp. 243-261.
- Brunet, L. *et al.* (2013), "Comparative study on the regime of surrogacy in EU Member States. Brussels: European Parliament", available at: [http://www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2013/474403/IPOL-JURI\\_ET\(2013\)474403\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2013/474403/IPOL-JURI_ET(2013)474403_EN.pdf) (accessed 9 March 2019).
- Campbell, D. (2015), "More and more childless Britons head overseas to find surrogate mothers", *The Guardian*, 14 March, available at: <https://www.theguardian.com/lifeandstyle/2015/mar/14/childless-britons-increasingly-surrogate-babies>.
- Carney, S. (2010), "Inside India's "Rent-a-Womb" business", *Mother Jones*, available at: <http://motherjones.com/politics/2010/02/surrogacy-tourism-india-nayna-patel> (accessed 10 March 2019).
- Centre for Social Research (2012), "Final Report: Surrogate motherhood - ethical or commercial", available at: <https://archivefda.dlib.nyu.edu/bitstream/2451/34217/2/Surrogacy-Motherhood-Ethical-or-Commercial-Delhi%26Mumbai.pdf> (accessed 10 March 2019).
- Chandra, A., Copen, C.E. and Stephen, E.H. (2014), "Infertility service use in the United States: data from the National Survey of Family Growth, 1982-2010", *National Health Statistics Reports*, No. 73, National Center for Health Statistics, Hyattsville, MD.
- Corderoy, A. (2013), "More parents defy law with overseas surrogacy", *The Sydney Morning Herald*, 14 September, available at: <https://www.smh.com.au/national/more-parents-defy-law-with-overseas-surrogacy-20130913-2tq94.html> (accessed 9 March 2019).
- Crozier, G. (2010), "Protecting cross-border providers of ova and surrogacy services?", *Global Social Policy*, Vol. 10 No. 3, pp. 299-303.
- Cuddy, A. (2018), "Where in Europe is surrogacy legal?", *Euronews*, 13 September, available at: <https://www.euronews.com/2018/09/13/where-in-europe-is-surrogacy-legal> (accessed 10 March 2019).
- Davies, M.J. *et al.* (2012), "Reproductive technologies and the risk of birth defects", *The New England Journal of Medicine*, Vol. 366 No. 1, pp. 803-813.
- Deonandan, R. (2015), "Recent trends in reproductive tourism and international surrogacy: ethical considerations and challenges for policy", *Risk Management Health Policy*, Vol. 8 No. 1, pp. 111-119.
- Deonandan, R., Loncar, M., Rahman, P. and Omar, S. (2012), "Measuring reproductive tourism through an analysis of Indian ART clinic websites", *International Journal of General Medicine*, Vol. 2 No. 5, pp. 763-773.
- Donchin, A. (2010), "Reproductive tourism and the quest for global gender justice", *Bioethics*, Vol. 27 No. 7, pp. 323-332.
- Donner, R. (1994), *The Regulation of Nationality in International Law*, Transnational Publishers, Irvington-on-Hudson.
- Eskew, A.M. and Jungheim, E.S. (2017), "A history of developments to improve in vitro fertilization", *Missouri Medicine*, Vol. 114 No. 3, pp. 156-159.
- Fasouliotis, S.J. and Schenker, J.G. (1999), "Social aspects of assisted reproduction", *Human Reproductive Update*, Vol. 5 No. 1, pp. 26-39.
- Fenton-Glynn, C. (2019), "Surrogacy: why the world needs rules for 'selling' babies", *BBC News*, 26 April, available at: <https://www.bbc.com/news/health-47826356> (accessed 15 May 2019).
- Frydman, R. (2016), "Surrogacy: yes or no?", *Fertility and Sterility*, Vol. 105 No. 6, pp. 14-45.
- Gallager, M. (2010), "Why do parents have rights? The problem of kinship in liberal thought", in Goodwin, M.B. (Ed.), *Baby Markets: Money and the New Politics of Creating Families*, Cambridge University Press, Cambridge and New York, NY, pp. 164-176.
- Gibbons, J.L. and Rotabi, K.S. (Ed.) (2012), *Intercountry Adoption: Policies, Practices, and Outcomes*, Ashgate, Surrey.

- Hague Conference on International Private Law (2012), *A Preliminary Report on the Issues Arising from International Surrogacy Arrangements*, Hague Permanent Bureau, The Hague, Netherlands, available at: <https://assets.hcch.net/upload/wop/gap2012pd10en.pdf> (accessed 14 May 2019).
- Hanefeld, J., Smith, R., Horsfall, D. and Lunt, N. (2014), "What do we know about medical tourism? A review of the literature with discussion of its implications for the UK National Health Service as an example of a public health care system", *Journal of Travel Medicine*, Vol. 21 No. 6, pp. 410-417.
- Hartnell, H.E. (2006), "Belonging: citizenship and migration in the European Union and in Germany", *Berkeley Journal of International Law*, Vol. 24 No. 1, pp. 330-400.
- Helble, M. (2011), "The movement of patients across borders: challenges and opportunities for public health", *Bull World Health Organ*, Vol. 89 No. 1, pp. 68-72.
- Hinson, D. and McBrien, M. (2011), "Surrogacy across America: both the law and the practice", *Family Advocate*, Vol. 34 No. 2, pp. 32-36.
- Inhorn, M.C. and Patrizio, P. (2009), "Rethinking reproductive 'tourism' as reproductive 'exile'", *Fertility and Sterility*, Vol. 92 No. 3, pp. 904-906.
- Jadva, V., Gamble, N., Prosser, H. and Imrie, S. (2019), "Parents' relationship with their surrogate in cross-border and domestic surrogacy arrangements: comparisons by sexual orientation and location", *Fertility and Sterility*, Vol. 111 No. 3, pp. 562-570.
- Jakeman, A. (2016), "Putting a price on reproduction: the global surrogacy market", available at: <https://www.newsecuritybeat.org/2016/09/putting-price-reproduction-global-surrogacy-market/> (accessed 12 May 2019).
- Kleinpeter, C.B. (2002), "Surrogacy: The Parent's Story", *Psychological Reports*, Vol. 91 No. 1, pp. 135-145.
- Lasker, S.P. (2011), "Infertility treatment in developing country", *Bangladesh Journal of Bioethics*, Vol. 1 No. 2, pp. 3-4.
- Lee, R. (2009), "New trends in global outsourcing of commercial surrogacy", *Hastings Women's Law Journal*, Vol. 20 No. 2, pp. 278-280.
- London, C. (2012), "Advancing a surrogate-focused model of gestational surrogacy contracts", *Cardozo Journal of Law and Gender*, Vol. 18 No. 2, pp. 391-393.
- Loran, B.K. and Leslie, B.A. (2009), "Termination of parental rights proceedings: legal considerations and practical strategies for parents with psychiatric disabilities and the practitioners who serve them", *Psychiatric Rehabilitation Journal*, Vol. 33 No. 2, pp. 144-145.
- Malhotra, A. and Malhotra, R. (2009), "Commercial surrogacy in India – bane or boon", available at: <http://www.reunite.org/edit/files/articles/COMMERCIAL%20SURROGACY%20IN%20INDIA-BANE%20OR%20BOON.pdf> (accessed 21 May 2019).
- Matorras, R. (2005), "Reproductive exile versus reproductive tourism", *Human Reproduction*, Vol. 20 No. 12, pp. 35-71.
- Meghani, Z. (2011), "A robust, particularist ethical assessment of medical tourism", *Developing World Bioethics*, Vol. 11 No. 1, pp. 16-29.
- Mignot, J.F. (2017), "Will international adoption be replaced by surrogacy?", *N-IUSSP*, 20 March, available at: <http://www.niussp.org/article/will-international-adoption-be-replaced-by-surrogacy-ladoption-pour-autrui-va-t-elle-replacer-ladoption-internationale/> (accessed 21 May 2019).
- Mohapatra, S. (2012), "Achieving reproductive justice in the international surrogacy market", *Annals of Health Law*, Vol. 21 No. 1, pp. 190-210.
- Nawaz, F. (2019), *Microfinance and Women's Empowerment in Bangladesh: Unpacking the Untold Narratives*, Springer, The Netherlands.
- Nelson, E. (2013), "Global trade and assisted reproductive technologies: regulatory challenges in international surrogacy", *Journal of Law, Medicine and Ethics*, Vol. 24 No. 2, pp. 241-42.

- Nygren, K., Adamson, D., Zegers-Hochschild, F. and de Mouzon, J. (2010), "Cross-border fertility care – international committee monitoring assistant reproductive technologies global survey: 2006 data and estimates", *Fertility and Sterility*, Vol. 94 No. 1, pp. e4-e10.
- Pande, A. (2009), "'Not an angel' not 'a whore': surrogates as 'dirty workers' in India", *Indian Journal of Gender Studies*, Vol. 16 No. 3, pp. 141-173.
- Pande, A. (2010a), "Commercial surrogacy in India: manufacturing a perfect mother-worker", *Signs*, Vol. 35 No. 4, pp. 969-992.
- Pande, A. (2010b), "At least I am not sleeping with anyone: resisting the stigma of commercial surrogacy in India", *Feminist Studies*, Vol. 36 No. 2, pp. 292-301.
- Points, K. (2008), *Commercial Surrogacy and Fertility Tourism in India: The Case of Baby Manji*, The Kenan Institute of Ethics, Duke University, Durham, NC, available at: <https://web.duke.edu/kenanethics/CaseStudies/BabyManji.pdf> (accessed 21 May 2019).
- Pyrce, C. (2016), "Surrogacy and citizenship: a conjunctive solution to a global problem", *Indiana Journal of Global Legal Studies*, Vol. 23 No. 2, pp. 925-952.
- Rodrigues, A. and Meyersohn, J. (2010), "Military wives turn to surrogacy: labor of love or financial boost?", *ABC News*, October 15, available at: <https://abcnews.go.com/GMA/Parenting/military-wives-surrogates-carrying-babies-love-money/story?id=11882687> (accessed 21 May 2019).
- Roser, M. (2020), "Fertility rate", *Our World in Data*, available at: <https://ourworldindata.org/fertility-rate> (accessed 9 May 2020).
- Roze, V., Unisa, S. and De La Rochebrochard, E. (2016), "Gestational Surrogacy in India", *Population and Societies*, No. 537, pp. 1-4.
- Rudrappa, S. (2015), *Discounted Life: The Price of Global Surrogacy in India*, New York University Press, New York, NY.
- Scherman, R., Misca, G., Rotabi, K.S. and Selman, P. (2016), "Global commercial surrogacy and international adoption: a brief comparison of similarities and differences", *Adoption and Fostering*, Vol. 40 No. 1, pp. 20-35.
- Sharma, S.D. (2012), "Surrogacy – blessing of motherhood or curse to motherhood", *Indian Journal of Research*, Vol. 11 No. 1, pp. 155-158.
- Smerdon, U.R. (2008), "Crossing bodies, crossing borders: international surrogacy between the United States and India", *Cumberland Law Review*, Vol. 39 No. 1, pp. 15-85.
- Smith, K.R. and Bromfield, N.F. (2017), *From Inter-country Adoption to Global Surrogacy*, Routledge, London and New York, NY.
- Steiner, L.M. (2013), *The Baby Chase: How Surrogacy is Transforming the American Family*, St. Martin's Griffin, London.
- Svitnev, K. (2006), "Legal control of surrogacy – international perspectives", available at: [http://www.jurconsult.ru/publications/ethical\\_dilemmas/13\\_Legal%20control%20of%20surrogacy%20-%20international%20perspectives.pdf](http://www.jurconsult.ru/publications/ethical_dilemmas/13_Legal%20control%20of%20surrogacy%20-%20international%20perspectives.pdf) (accessed 9 May 2019).
- Templeton, A. (2000), "Infertility and the establishment of pregnancy – overview", *British Medical Bulletin*, Vol. 56 No. 3, pp. 577-587.
- Twine, F.W. (2011), *Outsourcing the Womb: Race, Class and Gestational Surrogacy in a Global Market*, Routledge, London and New York, NY.
- Ullah, A.A. (2018), "The intersections of migration and governance in Bangladesh", *South Asia Journal*, Vol. 26 October's Special Issue, pp. 45-55.
- Ullah, A.A. and Alkaff, S.N.H. (2018), "Biological remittance among migrant workers: social ramifications in the Philippines and Indonesia", *Journal of Asian and African Studies*, Vol. 53 No. 6, pp. 896-916.
- Ullah, A.A. and Azizuddin, M. (2018), "South Asian student migration to Nordic countries: changing initial motivations", *Asian Profile*, Vol. 46 No. 1, pp. 73-87.

- 
- Ullah, A.A. and Huque, A.S. (2014), *Asian Immigrants in North America with HIV/AIDS: Stigma, Vulnerabilities and Human Rights*, Springer, Holland.
- Whittaker, A. (2011), "Cross-border assisted reproduction care in Asia: implications for access, equity and regulations", *Reproductive Health Matters*, Vol. 19 No. 37, pp. 107-116.
- Wilson, A. (2017), "How Asia's surrogate mothers became a cross-border business", *South China Morning Post*, 4 June, available at: <https://www.scmp.com/week-asia/society/article/2096675/how-asias-surrogate-mothers-became-cross-border-business> (accessed 9 May 2019).

### About the authors

Akm Ahsan Ullah is an Associate Professor in Geography, Environment and Development, the University of Brunei Darussalam (UBD). His research portfolio includes work at the Southeast Asian Research Centre (SEARC), City University of Hong Kong, University of Ottawa, McMaster University, American University in Cairo, Saint Mary's University, University of Ottawa, Dalhousie University, and Asian Institute of Technology (AIT), Thailand. In his home country Bangladesh, he was a Research Coordinator of Plan International, an international organization focusing on child and rural development. His research areas include population migration, human rights, development, environment and health policy. Dr Ullah has published 50 articles in refereed journals, 40 book chapters and 15 books. Akm Ahsan Ullah is the corresponding author and can be contacted at: [akmahsanullah@gmail.com](mailto:akmahsanullah@gmail.com)

Faraha Nawaz is an Associate Professor of Department of Public Administration, University of Rajshahi, Bangladesh. She obtained first class honours at both bachelor and master levels, and gained PhD degree from Flinders University, South Australia. Her research interests are on gender equality, poverty, human rights, social justice, gender-based violence, women's empowerment, women in labour market and household economy, NGOs in development, public policy analysis. She has published refereed articles in national and international journals, book chapters and a book. She is an active member of international professional groups and networks such as NAPSIPAG, ISTR, EROPA, NZSAC, Dev Net, IPPA and AWID. She is a recipient of prestigious awards including gold medals, Charles Wallace award, Dev net Research award from New Zealand, Malaysian scholarly award etc. She was an international fellow at Watson Institute for International and Public Affairs, Brown University, USA, an academic visitor in Oxford University (CSASP).

---

For instructions on how to order reprints of this article, please visit our website:

[www.emeraldgrouppublishing.com/licensing/reprints.htm](http://www.emeraldgrouppublishing.com/licensing/reprints.htm)

Or contact us for further details: [permissions@emeraldinsight.com](mailto:permissions@emeraldinsight.com)