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Stateless babies: Born into a world without citizenship

By Lomi Kriel

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Four-year-old Medhavi Modi has large, dark eyes and a tiny dimple when she smiles, which is often. At bedtime, she likes her father to point out the many constellations in their vast South Asian sky.

Like many little girls her age, she loves pink dresses and nail polish. But in the eyes of the law, Medhavi isn't a child. In fact, she doesn't even exist.

Caught between a complicated set of Indian and U.S. immigration laws, she's not an American citizen like her biological father. But she's also not Indian, which is where she was born through in vitro fertilization using donor eggs and a gestational carrier, and where now, as a citizen of no country, she's trapped.

Medhavi is part of what reproductive rights advocates say is a growing number of so-called stateless babies, a consequence of the increased popularity of assisted reproductive technology abroad and of the different ways across the world in which citizenship is granted.

"She's in legal limbo through no fault of her own," said her 42-year-old father, Maulik Modi, who lived in Houston for nearly two decades until he was forced to return to India to care for her.

U.S. Rep. Ted Poe, R-Humble, and the State Department are working to resolve Modi's quandary. Though the complex case might seem unique, immigration and reproductive rights lawyers say it reflects a disconnect between existing law and science that's impacting the record number of American couples who are seeking reproductive assistance abroad to have children. They say a web of inconsistencies in current immigration law poses significant pitfalls, especially for gay male couples, single fathers and mothers using donor eggs and gestational carriers in foreign countries.

"Science continues to advance much faster than the law changes," said Gary Endelman, an immigration attorney who specializes in reproductive issues at the Houston-based FosterQuan, one of the nation's largest immigration firms.

A terrible plight

Modi came to the U.S. from India as an exchange student in 1991 and finished his undergraduate degree at the University of Texas. He met his first wife, who is also from India, at the University of Houston, where both were completing master's degrees. The two fell in love and married. They were hired on H-1B visas, or professional visas for specialized jobs. Later they'd be sponsored for legal permanent residency through Modi's employer.

But then they discovered she couldn't have children. They considered adoption, but it's a difficult process, especially for immigrants. India had just legalized commercial surrogacy and the decision seemed to make the most sense. Their child would look like them.

Their first baby, a son, was born in 2004, with an egg donor and a gestational carrier. They didn't have problems bringing the boy home to Houston. That's because a child is automatically granted a green card if the permanent resident mother has the baby in her home country and returns to the U.S. within two years of the birth.

Though she did not carry her son, Modi's wife was listed as the birth mother on the boy's birth certificate, which is not an uncommon practice for some surrogacy clinics, many of which have strict confidentiality agreements.

The couple decided to have another child through the same process. But it took three years and six attempts before Medhavi was conceived.

Then, three months before Medhavi was born, Modi's wife filed for divorce and said she didn't want to be involved in the girl's life. She couldn't be reached for comment and her divorce attorney didn't return calls. She has stayed in Houston with the couple's son.

Since custody wasn't an issue, Medhavi wasn't mentioned in the divorce proceedings, so legally she doesn't exist in the U.S. She was born in September 2009 and the next month Modi became eligible for U.S. citizenship. Several months later, in June 2010, he became a citizen, right after his divorce was finalized. It was only then that he realized his daughter was in a terrible plight.

A complete shock

The U.S., along with much of the western hemisphere, recognizes birthright citizenship. You are a citizen of the country in which you are born. By contrast, much of Europe, Asia and Africa defines citizenship as something that is handed down from parents to their children.

Since Modi is now a U.S. citizen, the Indian government considers his daughter one too. But because he was a legal permanent resident at the precise time of her birth, and only became a citizen a few months later, the U.S. government doesn't view his daughter as a citizen.

He also wasn't eligible for the same immigration benefit extended to his ex-wife, which is how his son received a green card. Immigration law views fathers much differently from mothers, and it's easier for women who are legal permanent residents or American citizens to gain legal U.S. status for their children than it is for men.

Legal experts say the Supreme Court has consistently, and as recently as 2011, upheld such a double standard, arguing that children are more likely to have a "close and continuing relationship" with the U.S. if their mothers, rather than their fathers, have strong American ties.

"They felt that the mother has the primary responsibility for taking care of the child, and that if the mother is a citizen, it's more likely that there'll be a feeling of closeness and attachment to the United States," said Endelman, the immigration attorney.

"There's definitely a gender bias," he added.

Of the discovery, Modi said: "It was complete shock."

His elderly parents had been caring for Medhavi while he completed his citizenship process. But now he was faced with what he likens to a Sophie's choice: leaving his 6-year-old son with his ex-wife in Houston to care for his daughter, who couldn't leave the country.

"It was extremely heartbreaking," he said. Still, cradling Medhavi back in India, "her smile told me I did the right thing. When she looked at me, I knew I couldn't lose her."

Too many loopholes

Stateless children have become increasingly common as more and different types of parents opt for reproductive assistance abroad, lawyers say. Though there's no way to know exactly how

many, a record 65,179 babies were born in U.S. clinics through assisted reproductive technology in 2012. That's double the amount from a decade ago, according to the Centers for Disease Control and Prevention. As 19 states have legalized gay marriage, more gay and lesbian couples also are seeking such assistance to have children.

"At least once a month, I hear of a situation like this, primarily from India," said Catherine Tucker, a New Hampshire reproductive lawyer who serves on the American Bar Association's assisted reproductive technologies committee. The country has become a hub for international surrogacy, which brings in more than \$400 million a year.

The U.S. State Department has tried to respond. In February it revised its policy to allow certain American mothers to pass on citizenship to their children regardless of whose egg was used for conception.

Reproductive advocates and immigration attorneys, however, say too many loopholes still exist that exclude the foreign-born children of American parents from possessing citizenship.

"Having children is a human right, whether you're fertile or infertile," Modi said. He has since remarried, but wants to return to Houston to be close to his son.

Most pressing is the need for legal status for Medhavi, who cannot even leave India on vacation, as she doesn't qualify for a passport from any country.

"My daughter deserves an identity," Modi said. "She's a living human being."

<http://www.houstonchronicle.com/news/houston-texas/houston/article/Stateless-babies-Born-into-a-world-without-5557134.php?cmpid=twitter-premium&t=16d2a16772b2e7d3f0>