



STUDY ON LUCRATIVE SURROGACY IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

After introducing the topic briefly, it clarifies the meaning and concept of Surrogacy. Thereafter, the paper has put forth various definitions of Surrogacy. It also discusses the three different kinds of surrogacy followed by the discussion of its historical background. The history has been discussed in both Indian and World context in the paper, after which it mentions a discussion on commercialization of Surrogacy in India. The paper also mentions about the Surrogacy Super Mart prevalent in India. Thereafter, various moral and ethical issues relating to surrogacy have been discussed. Further it discusses the law relating to surrogacy in India. The Judicial response in India regarding surrogacy has also been discussed followed by the discussion of legal issues on surrogacy.

KEYWORDS : Surrogacy, Total Surrogacy, Surrogate Mother, Gestational Mother

INTRODUCTION

Nature has bestowed the beautiful capacity to procreate a life within women and every woman cherishes the experience of motherhood. Right to reproduction is an innate right of an individual. The desire for children among couples is a universal phenomenon. Parenthood is a life changing and eternally rewarding experience. The pain and agony of not fulfilling the dream of parenthood is immeasurable. The science of infertility treatment has moved forward by leaps and bounds. Every society across the world has given primary importance to the institution of family. When two individuals come together and enter into a matrimonial bond, a new family comes into existence and such family becomes complete with the birth of the children. From the ancient times, children are considered as a necessity for the continuation of the family lineage and a source of happiness for the parents. The advancement in medical science particularly in the field of artificial human reproductive technologies (ART) has come to rescue of such individuals and provided them with various options to beget a genetically related child. There are various options in ART like artificial insemination, In-Vitro fertilization, embryo transfer etc. Among all the methods surrogacy has become popular.

MEANING AND CONCEPT OF SURROGACY

Surrogacy, has emerged as a new level of scientific advancement for reproduction with the usage of womb of a woman to reproduce children for another woman. One of the most efficient methods to overcome both biological and social infertility is 'surrogacy.' Surrogacy has provided opportunities to have a genetically related child to the couples who are unable to reproduce through artificial reproduction and in vitro fertilization. Surrogacy has become an attractive alternative for couples and individuals who wish to have a child biologically related to them.

DEFINITIONS OF SURROGACY

According to **Black's Law Dictionary**, 'an agreement wherein a woman agrees to be artificially inseminated with the semen of another woman's husband.'

In Medical parlance- the term surrogacy means using of a substitute in place of natural mother.

TYPES OF SURROGACY

In Genetic/ Partial Surrogacy, woman's egg either through artificial insemination or less often by natural intercourse is fertilized by the sperm of the male partner of the couple desiring the child (commissioning father). Here the surrogate

mother is the genetic mother of the child and the commissioning mother plays the role of social and legal mother. This type of surrogacy is also called as Partial Surrogacy or Traditional Surrogacy.

Total surrogacy is where the surrogate's egg is fertilized with the sperm of the donor or with the commissioning father.

In Gestatory/Gestational Surrogacy, the egg and semen are obtained from the commissioning couple (or from anonymous donors), and the resultant embryo is subsequently implanted into the surrogate or carrying mother. Here, the surrogate mother has no genetic link with the child. This type of surrogacy is also called as **Full Surrogacy**.

In Altruistic Surrogacy financial compensation is not given to the surrogate mother, though the commissioning parent may provide fees and costs to the surrogate mother in bringing an embryo to the term. This type of surrogacy is mostly common among family members or close friends. The typical reason given for why no financial compensation is needed is that, in this type of surrogacy, the decision to be a surrogate stems from love, not from personal gain or even avarice. While the language of generosity is often employed in the other type of surrogacy – **commercial surrogacy** – the surrogate is financially compensated beyond expenses associated with the pregnancy. That is, the surrogate is paid for her gestational services.

INDIAN HISTORY OF SURROGACY

Hindu mythology also offers instances of surrogacy and reflects the secrecy that still surrounds surrogacy practice. In Bhagavata Purana, Vishnu heard Vasude's prayers beseeching Kansa not to kill all sons being born. Vishnu heard these prayers and had an embryo from Devaki's womb transferred to the womb of Rohini, another wife of Vasudev. Rohini gave birth to the baby Balaram, brother of Krishna, and secretly raised the child while Vasudev and Devki told Kansa that the child was born dead.

COMERCIALIZATION OF SURROGACY IN INDIA

It is hard to imagine the child as commerce. Babies, after all are the product of love, not money, a conception that occurs far away from any commercial activity. Commercial surrogacy, or "wombs for rent," is a growing business in India. Critics have described the popularity of surrogacy arrangement in India as 'baby booming business', 'womb on hire', 'baby firm', 'parenthood by proxy'. Surrogacy has turned a normal biological function of a woman's body into a commercial

contract. Surrogate services are advertised, surrogates are recruited and operating agencies make large profits. The commercialization of surrogacy raises fears of a black market and baby-selling, breeding farms, turning impoverished women into baby producers and the possibility of selective breeding at a price. In India surrogacy is becoming a booming industry due to the fact that surrogate mothers are easily available and the entire cost of this method is very less as compared to other countries. A high demand of surrogates has been witnessed in India because of the comparative ease with which the foreigners can find surrogate mothers. Non-intervention of law had made surrogacy a knotty issue in India.

THE SURROGACY SUPER MART

- **Surrogate Charges: INR 1,00,000-3,50,000:** This fee varies across various cities, IVF clinics and the third party (recruitment agents) involved. To claim this, surrogates need to be "healthy", married, have at least one child and be "mature enough" to understand/handle the surrogacy. Specific demands can be made by parents. For instance, Israeli couple do not want Muslim women. Some couples want to ensure that the women do not smoke, drink and are "religious minded." Clinics can also be choosy: not all will agree to do surrogacy for gay couples.
- **IVF Procedure Costs: INR 66,000:** Some IVF packages include up to 4 embryo transfer attempts. So, a surrogate could be implanted with about 3-4 embryos to ensure pregnancy.
- **Egg Donor (Indian) INR 1,80,000 Extra:** Highly qualified, postgraduate, fertile, fair complexioned egg donors can demand up to Rs. 50, 000.
- **Surrogate Compensation: INR 2,0000-3000 for food.** This varies across cities. Some surrogates say they get even lesser than INR 2,000. Some parents send across gifts, for the surrogate, cloths for her children, religious texts and songs and also end up offering any other monetary help.
- **Other add-ones:** Spa packages, Agra tours, airport pick-up, drop." Also, the sources to the said article states that fertility clinic costs, other costs are approximate figures. The said article also gives figures of complete packages offered by some of the fertility clinics and medical tourism agencies.

MORAL AND ETHICAL ISSUES RELATING TO SURROGACY

Some of the moral and ethical issues relating to surrogacy are as follows:

- Harm to Surrogate Mother
- Interest of the Child
- Surrogacy Degrades the Dignity of Woman
- Surrogacy has been equated with Prostitution
- Surrogacy has been compared to Exploitation of Poor Women
- Surrogacy is Playing the Role of God
- Attachment with the Gestational Mother
- Involvement with the Gestational Mother

LAW RELATING TO SURROGACY IN INDIA

The legal aspect of surrogacy varies from one jurisdiction to another jurisdiction. The international approach to surrogacy has been divided into three aspect- Free market, regulated and prohibited. Some jurisdiction completely bans surrogacy declaring commercial surrogacy as an criminal offence, while on the other hand some jurisdiction allows surrogacy on limited grounds of altruism. The law relating to surrogacy differs from one jurisdiction to another. Some jurisdiction completely bans surrogacy declaring commercial surrogacy as a criminal offence, while on the other hand some jurisdiction allows surrogacy on limited grounds of altruism.

JUDICIAL RESPONSE TO SURROGACY IN INDIA

The substantial issue of surrogate arrangement was

presented before the Supreme Court of India in **Baby Manji Yamada's** case, in this case a Japanese couple entered surrogacy contract pursuant to which Baby Manji was born to the Indian surrogate mother. The commissioning father Mr. Yamada tried to secure travelling document to take the baby to Japan. But the Japanese Embassy in India refused to grant Maniji a Japanese passport or visa as the Japanese Civil code did not recognize surrogate children. Mr. Yamada then tried to file for an Indian passport for Maniji, which requires a birth certificate for its issuance. Further, a birth certificate according to Indian law requires the names of both mother and father. In the present case facts, Mr. Yamada was genetic father but ambiguity for authorities arose in case of mother's name because Baby Maniji had three mothers- commissioning mother, the anonymous egg donor, and the surrogate. Thus, authorities refuse to grant a birth certificate because legal mother status was uncertain. Consequently, even the Indian passport was refused. The court instead of giving any decision, ultimately directed the petitioner, the baby's parental grandmother, to the National Commission for Protection of Child Rights for further directions.

RECOMMENDATIONS

- Developing nations that permit commercial surrogacy might nonetheless better protect the negative reproductive rights of their female citizens.
- Negative rights violation can and should be addressed by the state that permits commercial surrogacy through a strengthened commitment to women's empowerment, which it can demonstrate by improving the conditions of vulnerability that make such offers so difficult for female citizens to refuse.
- Positive reproductive rights must be employed to the end of securing the social, material and potential tools by which all women will truly be able to make reproductive decisions free from coercion.
- Further, for those countries that continue to prohibit commercial surrogacy within their borders, there is the option to introduce prohibitions that apply extraterritorially.

CONCLUSION

Since the ancient times, surrogacy has been a method for begetting a child. A technology made contraception easier and less expensive; a market emerged to fulfill this demand. Profitable surrogacy protects the reproductive entitlements of infertile women but its criminalization violates the human right. Developing nations that permit commercial surrogacy might nonetheless better protect the negative reproductive rights of female citizens. Regulating the surrogate practice towards mutually beneficial ends is a key direction. Lack of adequate regulation will contribute to the maintenance of a global black market of surrogacy services, with considerable risks and exposure of women to trafficking, exploitation, coercion. Legal contracts need to evolve as to safeguard the interests of surrogate mothers, taking into consideration the inescapable fact that surrogacy decisions are taken under certain personal circumstances, which might change over time.

REFERENCES

1. Sharma RS, Bhargava PM, Chandhiok N, Saxena NC. New Delhi: Indian Council of Medical Research-Ministry of Health & Family Welfare, Government of India; 2005. National guidelines for accreditation, supervision & regulation of ART clinics in India.
2. "Surrogacy". The Center for Bioethics and Culture. Retrieved March 27, 2019.
3. Ramskold, Louise Anna Helena; Posner, Marcus Paul (2013). "Commercial surrogacy: how provisions of monetary remuneration and powers of international law can prevent exploitation of gestational surrogates". *Journal of Medical Ethics*. 39 (6): 397–402. doi:10.1136/medethics-2012-100527. ISSN 0306-6800. JSTOR 43282765. PMID 23443211.