Research Paper Law

Introducing a New Form of Bonded Labour Arising from Commercial Surrogacy:- Special Reference to India

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ABSTRACT

Commercial Surrogacy has rise a new form of BONDED LABOUR where Surrogate mother were well treated for 9 months in the surrogate hostel so that she can deliver a healthy child and once the motive of the Reproductive Clinics is fulfilled, then nobody is going to bother about the surrogate mother health. Somewhere, it has increased the trafficking of women as traffickers can earn money by supplying women to reproductive clinics. Even some time they are forced by their family members to become a surrogate mother so that she can earn money for her family, which is again violation of Article 23 of Indian Constitution. India has become a favorite destination for foreigner who wants to have child through Commercial surrogacy. As we do not have any law to control the business of the Reproductive Clinics, what we have is a proposed bill i.e. Assisted Reproductive Technology Bill, 2010.

KEYWORDS Bonded Labour, Surrogate Mother, Egg donor

INTRODUCTION

Before going to the depth of the topic, I would like to explain you about what surrogacy is. Surrogacy is another process of Assisted Reproductive Technology by which one can carry the baby of others until the birth of the child. In non-professional language, Surrogacy is a process where womb of the other women is taken on rent for delivery of a child of a medically unfit couple. Surrogacy is different from Test tube baby. However, there is one similarity between this two that both surrogacy and test tube baby are done through the process of Assisted Reproductive Technology. Surrogacy can be of two types:-

1) Traditional Surrogacy: - It is a process by which the sperm of the donor or the sperm of the father are artificially inseminated in the women. By this process, the women got pregnant and she carries the foetus for 9 months. Here in this process the women being treated as biological mother of the child because it is her ovum, which was fertilized with the sperm of the donor or the sperm of the father.

2) Gestational Surrogacy: - Here in this case the fertilization is done through In Vitro Fertilization in short through IVF. In this process, the ovum and sperm of the parents are taken and fertilized through IVF. Once the embryo is formed then it is being transferred to the surrogate mother. The surrogate mother carries the baby in her womb till birth. Here, in this case the surrogate mother is not the biological mother of the child because the ovum that is used for the fertilization does not belong to her. Moreover, because of this most of the couple, who wants to have their own baby, goes for Gestational Surrogacy as the baby genetically will not be attached to the surrogate mother.

Many Countries allow Gestational Surrogacy on Commercial basis like India, United States and some Countries do not allow it like Netherlands, France, Canada, Hungry.

India because of it low cost, Modern medical facility with no strict laws to regulate this Reproductive Industries and of course for easily available of surrogate's mother becomes a favorite place for Commercial Surrogacy in International Market. Many couples from India and from aboard used this process to have their own baby because of these favorable conditions.

In Commercial Surrogacy, the childless couple pays the Reproductive clinics to hire a surrogate mother who can carry their child for 9 months to till birth. All the medical expenses were borne by the couple until the birth of the child.

Thus, there is a huge demand of Surrogate mother in the Medical Clinics or Reproductive Industries, who can become surrogate mother for the needy couples. Here comes my research question, 1) whether the amount receive by the surrogate mother is sufficient for the process of Commercial Surrogacy? 2) Whether the surrogate mother can be called as bonded labor?

In this research, I have tried my best to find out the answer of the above research questions and surprisingly the answer of my first research question is NO and for second question, it is YES. Even though bonded labour is abolished through by **Bonded Labour System (Abolition) Act, 1976** and by **Article 21 and Article 23 of Indian Constitution**, but still some where it is prevalent in our society.

ECONOMIC EXPLOITATION

For commercial Surrogacy, both the parties have to sign an agreement with each other i.e. Intended couple with the Medical Clinic and Medical Clinic with the Surrogate mother and this agreement is known as Commercial Surrogacy Agreement. It is to be noted here that in practice the agreement signed between intended parents and medical clinics contains about the terms and conditions of the Commercial Surrogacy including the fee payments for the entire procedure, which also includes the medical expenses of the surrogate mother. But in reality, Hospital authority never gives the actual payment which they take from the intended parents for the surrogate mother. Even there is no fixed fees for Commercial Surrogacy. Thus, the Reproductive Clinics charges very large amount from the intended couples. And the fees vary from couple to couple depending on the status and nationality of the couple. But the amount which surrogate mother receives from the clinics is very less in compare to service which she is giving to the clinics and off course to the intended parents by renting her womb. Thus, by this way the right of the Surrogate mother were violate and they were economically exploit by the clinics. As the surrogate mother, hardly get 1-2 lakhs fees from the clinics for delivering the child of the intended couples, where the Clinics charges more money from the intended couples for the surrogate mother.

For Commercial Surrogacy, the surrogate mother from the poor families is in danger because broker and the clinics exploit their rights and even sometimes they were forced to become the surrogates mother. As the surrogate mother were

not aware of the fact that how much amount the

Clinics use to charge from the intended parents for surrogate mothers, so this is a positive point for the clinics to exploit the surrogate mother.

Ranjana Kumari, Director of Social Research said that in most of the cases relating to Commercial Surrogacy it is found that the surrogates mother are being exploited. And according to her it's a high time to introduced the **Assisted Reproductive Technologies (ART) Bill ,** to protect the surrogates mother, child and the genetic parents. Thus, the pending ART Bill, 2010 should be passed immediately.

In India because of the absence of surrogacy law it is found that, sometimes during pregnancy due to any complication if the surrogate mother dies or she had a miscarriage in that case neither the hospital and nor the genetic parents will be liable to pay them for that. Since, the payment, which was agreed for commercial surrogacy, was for the entire term period of pregnancy to still the birth of the child. So, in between this if anything wrong happened to the surrogate's mother then no one will be liable for it and the women will also not get any payment. In this way, the medical clinics and the brokers exploit the economic rights of the surrogate mothers.

As in India still now we had no rule and regulation for Surrogacy, so the surrogate mother in India are to sufferer a lot both mentally, physically and financially. Sometimes for the payment, she has to depend on the mediator and to doctors also.

This is all about the economic rights of the surrogate mother, which are exploits by the Reproductive Clinics and by the brokers also.

BONDED LABOUR

Another important thing which is to be mentioned here that, during pregnancy the surrogate mother has to stayed in the hostel provided by the reproductive clinic for nine months until the delivery of the child. An during their stay at hostel they are not allowed to go outside and also somewhere the family members were also not allowed to visit the surrogate mothers. Its means that they are treated like a bonded labour where neither they are getting there correct amount of the payment from the commercial surrogacy agreement and neither there life is secure through any medical insurance. Even their freedom of movement under Article 19 of the Indian Constitution is also restricted as they are confined in the Surrogate hostel for 9 months without meeting any dear one.

ABSENCE OF TRANSPARENCY

In commercial surrogacy, transparency is not there between surrogate mother and the reproductive clinics and between Intended parents and Reproductive Clinics because of which Reproductive clinics get chance to exploit the economic rights of the surrogate mother. Even another reason of taking undue advantage from the surrogate mother by the reproductive clinics is, that most of the surrogate mother are illiterate and they don't know there economic rights. So they never raise their voice against the violation of their economic as well as the constitutional rights.

Therefore, by this way Commercial Surrogacy has rise a new form of bonded labour where Surrogate mother were well treated for 9 months in the surrogate hostel so that she can deliver a healthy child and once the motive of the Reproductive Clinics is fulfilled, then nobody is going to bother about the surrogate mother health.

SUGGESTION AND CONCLUSION

This new form of **BONDED LABOUR** should be control immediately as somewhere it has increased the trafficking of women as traffickers can earn money by supplying women to reproductive clinics. Even some time they are forced by their family members to become a surrogate mother so that she can earn money for her family, which is again violation of Article 23 of Indian Constitution. In today's market, there is a huge demand of surrogate mother by the Reproductive Clinics. India has become a favorite destination for foreigner who wants to have child through Commercial surrogacy. As we do not have any law to control the business of the Reproductive Clinics, what we have is a proposed bill i.e. Assisted Reproductive Technology Bill, 2008 that is still pending and its need certain amendments in it to protect the rights of the Surrogate mother.

Dr. Roel Schats, chief medical officer of the IVF centre of the VU Medical Centre, goes so far as to argue for Commercial Surrogacy "It is a form of modern slavery to use an Indian woman as a breeding machine without the benefit of any form of care".

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