



Surrogacy bill in India: A boon or predicament

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Abstract

Sterility has been considered for centuries as a divine punishment and childless people are analysis as deficient. In common terms surrogacy is the practice where by one woman bears a child for another with the purpose that the child should be hand over after the birth. The concept of surrogacy is very old in India. Surrogacy in India is expected to be 445 \$ million a year industry and it is growing even more. The present study are analyzed the current trends of surrogacy in India and underline the optimistic and pessimistic inspections of surrogacy in India. The proposed law needs appropriate debates in the framework of legal, social and medical aspects.

Keywords: sterility, divine punishment, childless people

Introduction

Sterility is a problem since time everlastingly. As per broad categorization infertility can be of two types i.e. biological and social. Biological infertility is a circumstance when a couple cannot reproduce due to certain physiological reasons, whereas social infertility means, the society doesn't allow certain group to become parents. Sterility has been considered for centuries as a divine punishment and childless people are analysis as deficient. Infertility leads to moral distress and a lower social status. For pronatalist countries, like India where children are greatly ideal, parenthood is culturally obligatory and childlessness within society is deplorable, the Assisted Reproductive Technologies (ARTs) are swiftly globalizing.

Surrogacy is a method of supportive reproduction. The word surrogate instigates from Latin word surrogates (substitution) which means "to act in the place of". Further the very word surrogate means "substitute". In common terms surrogacy is the practice where by one woman bears a child for another with the purpose that the child should be hand over after the birth. According to Artificial Assisted Reproductive Technique procedures surrogacy is an "agreement in which woman consent to a pregnancy, attained through assisted reproductive technology, in which neither of the gametes belong to husband, with the intent of carrying it to term and give the child to the couple for whom she is acting as surrogate. The Indian culture and legal system diverge from the rest of the world. The concept of surrogacy is very old in India. The concept of surrogacy is identified by the Indian culture when the World's second and India's first IVF (in vitro fertilization) baby Kanupriya was born in Kolkata on 3rd, Oct, 1978. India has materialized as a primary International destination for surrogacy and became a popular choice for couples from developed nations because of the much lower costs implicated in renting a womb. Surrogacy in India is expected to be 445 \$ million a year industry and it is growing even more. On the other hand, some of grave problems have also developed in the relative to the citizenship

and the parentage of the new born infant in India. These issues have some very serious consequence, these concerns are very imperative in the Indian context due to a mounting market of commercial surrogacy and no strict rules to normalize and manage these issues.

Types of surrogacy followed around the world

Altruistic surrogacy: Surrogate mothers obtain no monetary rewards for her pregnancy of the child to the genetic parents excluding essential medical expenses. Commonly seen when the surrogate mother is a family member.

Commercial surrogacy: surrogate mother is rewarded over and above the needed medical expenses. It takes place when the surrogate mother is not allied to the mother.

Objectives and research methodology

The main objectives of the present study are analyzing the current trends of surrogacy in India and underline the optimistic and pessimistic inspections of surrogacy in India. The current study is descriptive in nature and used secondary data which is collected from various sources such as journals, reports and government proceedings. The data collected has been assessed and analyzed in order to convene the objectives of the study.

Surrogacy (Regulation) bill, 2016

- The Surrogacy Regulation Act, 2016 Clause 3, Sub clause ii states that " no surrogacy clinics, gynecologist, pediatrician, registered medical practitioner, human embryologist, or any person shall conduct, embark on, promote with or avail of commercial surrogacy in any form".
- It prohibits all forms of commercial surrogacy in India and on certain conditions altruistic surrogacy is permitted.
- The couples who have been married for at least five years and not having child and one of them is proven to have fertility related issues are allowed to seek surrogacy.

Married couples who have natural or adopted child, live-in partners, single people and homosexual person would not be entitled to opt for surrogacy.

- Foreign nationals, NRIs, OCIs etc. are not permitted to hire surrogacy in India and childless or unmarried women would not be permissible to be surrogate mothers.
- Surrogate mothers can only be close relatives, and they would be allowable only once to be a surrogate and rights of both the surrogate mother and children are protected as per the Bill.
- It prohibits Human Trafficking through surrogacy

specially incase of child trafficking and involving them in illegal activities like prostitution and human organ trafficking.

- In order to normalize surrogacy in India the Bill established National Surrogacy Board at the central and state level and appropriate authorities in the state and union territories.
- As per the draft bill, surrogates cannot give more than five live births counting her own children and she is not permitted to undergo embryo transfer more than three times for the same couple.

Table 1: International Laws related to Surrogacy

| Country | India | Netherlands | U.K | South Africa | Greece | Russia |
|--|--|---|---|--|---|--|
| Type of surrogacy allowed (altruistic or commercial) | Altruistic | Altruistic | Altruistic | Altruistic | Altruistic | Commercial |
| Payment to the surrogate | All Medical expenses and insurance coverage | Reasonable expenses related to IVF, pregnancy and delivery, expenses not covered by insurance, adoption, insurance and legal charges. | Reasonable expenses excluding payment for the benefit of the surrogate mother | Medical expenses and insurance coverage; Any loss of earnings for the surrogate mother due to the pregnancy. | Expenses related to the pregnancy, delivery and postpartum; Any loss of earnings for the surrogate mother due to the pregnancy. | No limit |
| Eligibility criteria for commissioning parent(s) | | | | | | |
| Requirement of being married | Yes | No (Single male/female allowed) | No (Includes intending parents living in a partnership) | No (Single male/female allowed) | No (Single woman allowed) | No (Single woman allowed) |
| Citizenship and/or residency | Citizenship | Citizenship | Permanent residence. | At least one of the commissioning parents needs to be domiciled | Domicile | No requirement |
| Existence of a medical reason | Must prove infertility i.e. inability to conceive. | Congenital absence of a uterus and any other medical condition | No requirement | Not able to give birth to a child and such a condition is permanent | Intending mother is unable to bear a child. | Gestation and birth of a child is impossible due to medical reasons |
| Eligibility criteria for surrogate mother | | | | | | |
| Age | 25-35 years | <44 years. | Not specified | Not specified | Not specified | 20-35 years. |
| Relation to commissioning parent(s) | Close relative | No | No. | No | No | No. |
| Requirement of being married | Yes | No | No | No | No | No |
| No of own children | At least one | At least one | No requirement | At least one | No requirement | At least one |
| No. of times one can be a surrogate | Once | No restriction | No restriction | No restrict | No restriction | No restriction |
| Consent of the partner | No provision | Not required | Not required | Require | Required | Required |
| Legal guardian of the surrogate child | Intending couple | Surrogate (Transfer of guardianship through adoption) | Surrogate (Transfer of guardianship through adoption if the intending parents are genetically related to the surrogate baby; or through a court | Intending parents | Intending parents | The surrogate mother, if she has provided her egg Intending parents if surrogate mother has not provided her egg |
| Imprisonment for engaging in C.S | Minimum 10 years | Maximum one year | Maximum three years | Maximum 10 years | Maximum 2 years | No provision |

Constructive standpoints

- It give more importance to surrogate mother health and life of the child by forbidding commercial surrogacy and woman are permitted to be a surrogate only once in her lifetime. It prevents exploitation of women especially of those who have no knowledge about their rights.
- It curtails child trafficking and illegal surrogacy by lay down the punishment and fine (10 years and upto 10 lakhs) for the enterprising of commercial surrogacy, abandonment of child, sell or import of a human embryo and egg donation.
- With the stringent provisions in the bill for surrogacy, Adoption can be one more alternative to comprehend the parenthood with which the joy of an orphan child and that of the couple can be make sure at the same time.
- While a successful pregnancy and a healthy baby born are, of course, the biggest advantages of undertaking an IVF procedure

Pessimistic inspections

- The problem of surrogate mothers, are even bad and unethical. The rural poor, illiterate women of are often convinced in such contract by their spouse or middlemen for earning money easily.
- In India, there is no condition of psychological screening or legal counseling for surrogates, which is mandatory in USA.
- After conscription by commercial agencies, surrogates are reallocated into hostels for the whole period of pregnancy for taking antenatal care. But their real reason is to safeguard them to avoid social disgrace of being outcast by their community.
- Surrogates spend the whole tenure of pregnancy distressing about their family. They are allowed to go out only for antenatal visits and are permitted to meet their family only on Sundays.
- Sometimes, in case of hostile outcome of pregnancy, they are not likely to be paid, and there is no condition of insurance or post-pregnancy medical and psychiatric support for surrogates.
- Rich career women who do not want to take the trouble of bearing their own pregnancy are resorting to hiring surrogate mothers.
- Lack of assortment guidelines of couples based their health, social economic background, family information, criminal records in past are inquired before they are acceptable to commission surrogacy.
- In the lack of such guidelines the surrogate child's wellbeing suffers substantial risk from being put under the responsibility of those who lack credibility or even be damaging to the child's security.
- Surrogates mental pressure to deliver a healthy baby also distresses them. Clinics and doctors' utter the terms, and the commissioning couples having the power of money, the surrogates are in a vulnerable position in between these sect of people.

Conclusion

India is a prominent for surrogacy tourism in the world and many well established infertility clinics were functioning in

the country. This sector engages in a set-up of many law firms, travel agencies and agents. Nevertheless there is no proper monitoring system in order to assess such activities. India, with an distressingly high maternal death rate, surrogacy direct to exploitation of poor women by rich people. The proposed law needs appropriate debates in the framework of legal, social and medical aspects. As per the conclusion, the government is required to critically reflect on endorse a law to regulate surrogacy in India in categorize to guard and guide couples looking for such options. Without a infallible legal agenda accomplishment couples will consistently be deceive and the surrogates exploited.

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