
SURROGACY AND ISSUES INVOLVED: A STUDY WITH SPECIFIC REFERENCE TO SURROGACY REGULATION BILL, 2016

Dr. Shivani Goswami

Associate Professor, GGS IP University, Dwarka Delhi

Eshaan Bhardwaj

Student, VIPS, GGS IP University, Dwarka Delhi

Abstract: Renting a womb or surrogacy is not the norm of today's society. It has existed and is very much ubiquitous. The question relating to surrogacy has always brought frown and scowl on the faces of people at large. In spite of the fact that surrogacy has provided hope and has actually brought exuberance on the faces of many down in the mouth and melancholic couples, the idea of surrogacy is not taken in good spirits in most of the countries including India. This is specifically with regard to commercial surrogacy which in fact is banned and proscribed in number of countries as it involves number of issues, ethical as well as unethical. Presently, in India, Surrogacy Regulation Bill, 2016 is pending which again talks about banning of commercial surrogacy. As stated that surrogacy is a boon and bliss for childless couples, but at the same time the agonies and anguishes of the surrogates and the number of factors and issues involved in it cannot be overlooked and lose sight of. The paper would be mainly focusing on the issues involved with respect to surrogacy with special focus on Surrogacy Regulation Bill, 2016.

Keywords: Commercial Surrogacy, Deplorability, Issues, Women.

Introduction: Meaning: The word surrogate has its origin in Latin term 'Surrogatus', which means a substitute. A surrogate is a woman who agrees to bear the child, bear all the pain of delivery and delivers the child after its birth to another person may be for fiscal or non-fiscal reason. Surrogacy is considered to be a boon and bliss for people who are unable to produce child may be for health or other compelling reasons. It is done for (commercial) or without money (altruistic).

Of late it is seen that commercial surrogacy has been in news due to the exploitation of the browbeaten and oppressed woman. Number of countries have banned and proscribed commercial surrogacy as it is felt that poor and susceptible women are exploited and tormented in the said surrogacy. There is no iota of doubt that with regard to the surrogacy, barring few cases, where women actually rent their womb voluntarily, in endless number of cases, women may be on account of the compelling conditions or circumstances are forced to produce baby for another person and are pestered and beleaguered. With regard to surrogacy numbers of issues are involved, to name a few.....

- a) Ethical Issues.
- b) Jurisdictional Issues
- c) Religious Issues
- d) Health Issues
- e) Legal Issues

Ethical Issues: Commercial surrogacy often leads to exploitation and mistreatment of the woman. Pecuniary problem is one of the major reasons where the woman is forced to undergo this ticklish and cumbersome process. In our Indian society, it has always been stated that a woman should tie the nuptial knot first and then should become pregnant. Pregnancy of an unmarried woman could never have been conceived and envisaged. However, incases on surrogacy, unmarried women are made to become pregnant and that to for monetary purposes. Doesn't it lead to commercialization of a very pious thing which we as Indians have always bragged of and conceited? Then, People have often

equated surrogacy with the goods. Like the goods are purchased, similarly in cases on surrogacy the baby is also sold and purchased. This is an act of baby selling and baby purchasing. According to Elisabeth S. Anderson, Commercial Surrogacy treats children as commodities because, according to the legal contract, they are essentially the "Product" that comes from the paid labor of the Surrogate Mother. This is ethically questionable because it distorts traditional parental concerns with financial concerns. The rights of the child, Anderson argues, who has basically been used as an object of barter between two parties, are automatically called into question. Further, the relationship between a child and mother comes into existence the moment woman conceives it and it is very difficult to sever such a bond, such a relationship. Women are known to develop varying degrees of affection to their fetus during pregnancy. During the time of pregnancy a close bond, tie and relationship is established between the mother and the fetus. The bond is so closed that when child is born, the mother can easily identify her child from its aroma and whiff. The hormone oxytocin plays a crucial and vital and important role. It is a response prompted, elicited and activated by skin to skin contact and eye gazing, which promote further psychological, psychosomatic and physiological bonding. However, in surrogacy the story is otherwise. Additionally, in cases on surrogacy, there is always an ever hanging sword on the couple who had taken the child after its birth. In such cases, there is always a possibility of interference from the side of the surrogate which becomes an obstacle for development of harmonious relationship between the child and the parents. Designer babies and gender biasedness are other issues in surrogacy which are contemptible and are not acceptable.

Jurisdictional Issues: In cases on surrogacy, jurisdictional issues have always created quandaries and problems. How can one forget Baby Manji's case, where after the birth of the child, the father was not allowed to take the child to Japan because of jurisdiction and citizenship issues etc? After lot of fight back and thrash about and then by the decision of the Apex court, the paternal grandmother was allowed to take the child. Thus, even after the birth of the child, issues relating to jurisdiction do arise in the cases where the surrogate mother and intended parents belong to different countries. Even though the child is born, still he/she belongs to nobody and there are so many issues relating to the jurisdiction.

Religious Issues: Surrogacy in Islam: Amongst Muslims, as far as Shias are concerned, surrogacy is permitted but the same thing is not permissible and is proscribed amongst Sunnis. According to them, even if there is no physical contact between the surrogate and the commissioning father, keeping of the sperm of the man who is not the husband of the woman into her is the case of adultery or zina. According to them, Quran 58:2 says, "Their mothers are none but those who gave birth to them." Thus, according to them mother is the one who conceives, keep the child for full term in her womb and delivers the child. Shiite scholars argue that in context of Quran 58:2, the if it's a case of adultery, child simply belongs to the mistress bearing the child, not the errant father. Accordingly, it is allowed for a surrogate to carry another woman's fertilized egg, so long as it came from a married couple. Moreover, a number of Shiite scholars conclude that it is lawful for a surrogate's own ova to be fertilized by the husband's sperm, although most allow this only if the husband and the surrogate enter into a temporary polygamous marriage.

Surrogacy in Buddhism: Amongst Buddhist, there are no such teachings which provide that treatments in cases on infertility are immoral or decadent. As such surrogacy is completely allowed as it does not make surrogacy a moral obligation or commitment. There is no force on the couples to procreate.

Surrogacy amongst Hindus: Amongst, Hindus since ancient times, there are so many cases which suggest that surrogacy was very much prevalent amongst Hindus since those times. In the present scenario, although surrogacy is not seen in good light due to conservative and gullible society but is very much practiced. So many women because of impoverishment bear the child of another person's for the sake of money. It is seen as a medical treatment, rather than an infringement upon religious beliefs.

Health Issues: Health of the surrogate woman is one of the major issues involved in cases on surrogacy. In order to attain more success rate, multiple embryos are implanted in the uterus of the surrogates causing a great risk to her life and the life of the unborn babies.

For ex. “ [i] in the U.S., surrogates are given no more than two embryos for their safety, whereas in India, surrogates are implanted with upto five embryos in order to increase the chances of pregnancy”. Multiple pregnancies results in increased cases of complications and impediments. She may suffer from miscarriages, early labour pains, premature delivery, malformation and disabilities of the infant, high blood pressure, multiple abortions etc. Apart from this, no legal provisions regarding maintenance and security of health issues of surrogate mother and no guarantee of any compensation to her in case of death during pregnancy are provided. Further, the drugs that are given to the surrogate during pregnancy have its own side effects which again pose risk to the life of mother and the baby. Some of the common side effects of drugs that are administered to her are depression, vomiting, chest pain, body ache, asthma, bone and muscle ache, giddiness, negative feelings about themselves, nausea, insomnia, breathlessness, thyroid abnormalities, ovarian cysts, weight gain, renal impairment etc. to name a few... The surgeries that are involved in surrogacy and IVF may result in death of the woman and the foetus also.

Legal Issues: In India, there is no law to deal with the issues relating to the surrogacy. So many Bills did not see the light of the day. The latest bill i.e. Surrogacy (Regulation) Bill, 2016, basically bans commercial surrogacy in order to protect poor and feeble woman. Under the bill, surrogacy clinics are required to be registered and have to maintain records of 25 years. Surrogacy is opened only to the infertile couple married for the period of 5 years. Surrogate mother is required to be a married woman and should be a close relative. Only heterosexuals' couples are allowed. Foreigners no more are allowed to come for surrogacy in India under the present bill. The bill also talks about penalty for violating the provisions.

Undoubtedly, the bill has many sycophantic and saluting provisions, but the thing to be pondered over here is, will it get passed in its present form, seeing the past scenario? Even if it gets passed, will commercial surrogacy come to an end? Won't People devise their own means and will do it in an underground and sealed manner, thus resulting in more exploitation of women. A business which is thriving, booming and blossoming so much of money cannot come to halt and standstill abruptly. Moreover, some of the provisions of the Bill do not seem to be feasible and tenable. Getting a close relative of the person and that too she will agree is a very herculean task. Moreover, in all cases on surrogacy, it is not that women are exploited. There are catenae of case where the women have on their own accord opted for surrogacy in order to get their dreams fulfilled. Providing only the relative of the person as a surrogate will put an end to their long term dreams. Apart from this, there are other lacunae also which cannot be losing sight of under the Bill. Though the issues discussed above have been taken care of under the present Bill but the bill seems to be more of a fancy thing than the practicability and feasibility. It is submitted that the bill should be drafted in a much more practicable manner which can be applied to all and one keeping in mind the intended parents, surrogates and surrogate child.

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