



Surrogacy in India: Present perspective and related issues

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ABSTRACT

The surrogacy (Regulation) Bill, 2019 was introduced by the Minister of Health and Family Welfare, Dr. Harsh Vardhan in Lok Sabha on July 15, 2019. The Bill defines surrogacy as a practice where a woman gives birth to a child for an intending couple with the intention to hand over the child after the birth to the intending couple. This paper has taken many issues related to surrogacy. This paper is based on secondary data and deep review of literature. There are issues like psychological and economic conditions of surrogate mothers which are never taken into consideration. There are few psychological issues which are related with surrogacy and surrogates. These issues are emotional attachment of surrogate mother with child, feeling of dissatisfaction, feeling of conflict, depression when surrendering the child, grief and even refusal to release the child, child's psychology gets affected. It was found from the study that the most common emotion or emotional problem which surrogates have faced during and before surrogacy was feeling of fear and there has always been a feeling of sadness among surrogates. On the other hand, very few surrogates feel trusty feeling for the commissioned parents. There are some legal issues which are related with the surrogate mothers and their rights. There is a lack of awareness about the contact of surrogacy, which is done between surrogates and commissioned parents. Then another legal issue related to surrogacy is the citizenship given to the child.

INTRODUCTION

Nature has provided us many gifts and motherhood and parenthood is one of the priceless gift. But many people are unable to enjoy this blissful feeling. As we know that infertility is increasing problem in our society. It is estimated by ICMR that 15 per cent of couples around the world are infertile. Now-a-days with the increase in medical technology, many new doors have been opened for childless couples. Surrogacy is one of its ways. So people are looking surrogacy as best way to enjoy

parenthood. The meaning of word surrogacy is "substitute" in Latin word. It is a process which is used in some cases where a woman is not able to conceive due to medical reasons, then the ovum of women is taken and is fertilize by semen of her husband in laboratory, and then it is implanted in some other women who acts as a mother.

There are certain reasons behind the emergence of any new concept in our society. For surrogacy there are following reasons which are majorly responsible. First reason is increasing infertility. According to ICMR

estimates that 15 per cent of couples around the world are infertile. India has an estimated 20-25 million infertile couples. Another reason is that many educated women are carrier oriented these days. They want to concentrate on their carrier and jobs rather going for pregnancy. Another reason that this process is more famous in elite class which influences the common people of the society. There are some examples of surrogacy cases in which came in limelight in recent past in Bollywood. Gauri and Shah Rukh Khan's son Abram, Sohail Khan's and Seema's second child Yohan and Kiran Rao and Amir Khan's son Azad are surrogate babies. It is also on rise because there is a feeling to parenthood among single parents and homosexuals of the society. There are two types of surrogacy. First type is Traditional surrogacy- This involves artificially inseminating a surrogate mother with intended father's sperm via IU IVF or home inseminating. Another type of surrogacy is Gestational Surrogate- When intended mother's egg and father's sperm are used to create an embryo that is transferred and carried by surrogate mother. Further, there are again two types of surrogacy according to payment mode, first is Altruistic surrogacy- When there is no money involved and the other one is Commercial surrogacy- When surrogate mother is being paid.

MATERIAL AND METHODS

This paper is based on secondary data. In depth review of literature has been done to write this paper. This paper is an attempt to present the persisting scenario of surrogacy in India and its overall impact on society and especially on surrogate mothers.

OBSERVATIONS AND ANALYSIS

Firstly we will look at the history of this process. It was found from the literature that first formal arrangement of formal surrogacy was found in 1976 in USA. The first paid traditional surrogacy agreement was conducted in 1980. The history and acceptance of surrogacy varies from country to country. Now we will look at the history and status of surrogacy in USA. Surrogacy Arrangements Act was passed in 1985. And after that, further development was made when in 2010, children who born through surrogacy abroad were allowed to become US citizen. In 2013, the HFEA updated its guidance on

surrogacy, creating specific forms and implementing a more flexible law for surrogacy. It was found from CSR report that approximately 25,000 babies were born in US from 1976 to 2007 and the cost of surrogacy ranges between US\$20,000 to US\$ 25,000. US allow but regulate surrogacy. Although, surrogacy is legal in UK, no commercial arrangements are allowed and surrogate mothers can only receive expenses- in thousands of pounds through the Surrogacy Arrangement Act- for medical and pregnancy related expenses. Most women become surrogate for altruistic reasons. It became legal in the United Kingdom since 2009. According to Human Fertilization and Embryology Act, 1990, only married couples can participate in surrogacy arrangement. Countries in European Union that bans all forms of surrogacy:

Germany, Sweden, Norway and Italy. In Eastern Europe, surrogacy is fully legalized in Russia and Ukraine. Foreign couples are allowed to pursue surrogacy arrangements in both countries. In the South parts of Asia, in 2008 (Under ART Bill) surrogate mothers may receive money for surrogacy process. Surrogate mothers are bound by law to give child to commissioned parents and birth certificate will have the name of genetic parents. Single parents are allowed to have child through surrogacy. Foreigners have to submit documents from their embassy that the child will be accepted in their country. It is found from the history of surrogacy that in Japan, there is no law to regulate surrogate births. It is also found that Gestational surrogacy is banned in China. In South Eastern Asia, it was found that there is no law in -Thailand, Malaysia and Philippines and all forms of surrogacy are banned in Singapore. In oceanic part of the world, it is found that since June 1st, 2010 in Queensland, altruistic surrogacy became legal under the Surrogacy Act, 2010. Assisted Reproductive Treatment Act came in 2008. It is found that Commercial surrogacy is banned in New Zealand. In Australia, the surrogate mother is considered by the law to be the legal mother of the child. Now we will look at the history of surrogacy in India. First baby born through surrogacy arrangement in India in June 23, 1994 in Chennai. Total cost of surrogacy procedure cost one third of the total package cost in other developed nations. It estimates that surrogacy is a flourishing \$450 million business and there are over 600 fertility clinics in India. The business volume of this trade in India is estimated to be around \$500 million and the numbers of

cases of surrogacy are believed to be increasing at a galloping rate.

It was estimated that if around 500 to 600 surrogate babies could be born throughout the world each year through surrogacy, then around 200 babies are from India. This shows the contribution of India in this sector. There are some reasons that why India is the first choice for the couples for surrogacy process. As India does not have any regulatory system for surrogacy so there are no legal formalities or legal problems in this process. Second reason is the cheap medical facilities which are available in India because the total cost of surrogacy procedure cost one third of the total package cost in other developed nations. And the surrogate mothers charge very less in India. Other reasons are Legal prohibition of surrogacy in some countries also leads people to come to India. Ready availability of women willing to rent their wombs. Cost of surrogacy process also varies from country to country. If we talk about cost of surrogacy in India then it is around Rs. 4-12 lakh depending on IVF clinic and the total ART (Assisted Reproductive Technologies) industry in India is worth over Rs. 25,000 crore. There are certain reasons which influence their decision of becoming surrogate mother. First is poverty and then comes unemployment, desperate need of the money for surrogate mothers, family relations, lack of education, lack of awareness about health etc.

A study was conducted by Centre for Social Research (CSR), Delhi on surrogacy and it was found that poverty was the main reason which influenced the surrogacy decision of surrogate mothers. In the same study, it was further found that education of surrogate mother is not much. Further a study revealed the work status of surrogate mothers before surrogacy arrangement and it was found that majority of respondents were housemaids. Many of the respondents, who were employed as housemaids or domestic help in both Anand and Surat (36.7% and 40%, respectively). In contrast, 20 per cent of them in Jamnagar were construction workers, another 20 per cent were working in hotels or restaurants and the rest of the 40 per cent were working as nurses or have assisted in the clinic/hospital work as mid wives or casual workers.

There is not any official data regarding the numbers of surrogate birth in India but some reports can tell us the estimated data of number of births of surrogate babies in India. About 150 gestational pregnancies in 2007 were

reported by society of assisted reproductive technologies. In the past couple of years, the number of births through surrogacy doubled with estimates ranging from 200 to 350 in 2008 alone. Further, the numbers of clinics engaged in the service are estimated about 3,000, 1,500 surrogacy births for domestic and overseas couples in 2010. This indicates a jump of 50 per cent in two years. India's average surrogacy success rate is 37.9 per cent. There an example of how much surrogacy is booming in India that there are some surrogate homes in India. One example is Surrogate house, Nadiad Ahemdabad, where 16 surrogates live under one roof under the supervision of Dr. Patel. There are certain misconceptions which are related with surrogacy process. Like, it is immoral and surrogate has to leave the home. Further people think that it is not available easily and it is a legal offence.

There are many positives aspects of this process following are some of them.

Firstly, it boon for childless couples. (20 to 25 million couples infertile in India) People who do not want to marry but want their own child. It increased medical tourism in India (Dr. Sudhir Ajja of Surrogacy India, a Mumbai-based fertility bank that has produced 295 surrogate babies-90 per cent for overseas clients and 40 per cent for same-sex couples - since it opened in 2007). It provides economic help to surrogate mothers. Next comes the amount which is being paid to surrogate mothers for this very process and the results of the study which was conducted in Punjab and Delhi found that the minimum amount paid to a surrogate was Rs. 1,10,000 and the maximum was Rs. 3,70,000. Five surrogates received payments in the range of Rs. 1,00,000 to Rs. 2,00,000, while four surrogates received payments between Rs. 2,00,000 and Rs. 4,00,000. Four of the surrogates whose remuneration was Rs. 2,00,000 and below were from Punjab, while four surrogates from Delhi received between Rs. 2,00,000 and Rs. 4,00,000. Surrogacy has increased medical tourism in India. The CII estimates that 1,50,000 medical tourists came to India in 2005, and it is estimated that the number of tourists increased to 450,000 by 2008 (A report by India Brand Equity Foundation and Ernst). If there are positive aspects of surrogacy, then there are negatives too. And the negative aspects of surrogacy are as follows. Women are becoming child producing machine, negative impact on women's health and it is creating black market and of baby selling and breeding farms. Surrogate motherhood

is likely to give rise to a new class of agents/intermediates (73.7% surrogates in Delhi were approached by agents whereas in Mumbai it was 73.21%, CSR report). It was found from the study that the surrogates were becoming surrogate mother for second time, so in that way, they are becoming child producing machine. However, 21.67 per cent in Anand and 2.86 per cent in Surat have already been surrogate mothers. From another study conducted by SAMA group, it was quite clear that majority of surrogate mothers gave birth to 3 to 4 child and majority of mothers were having two children prior to surrogate baby. Many surrogate mothers face many problems regarding their health during surrogacy. Some common health problems are dizziness, back problems, unconsciousness, lack of blood, weakness etc.

As there is no law regarding surrogacy in India but there is bill which is pending in our parliament since 2010. This bill is known as ART bill, according to which woman should be of 21 to 35 years of age, she should not have had more than five successful live births in her life, Woman should be medically examined and tested, declare in writing that she has not been the recipient of blood or blood products in the past 6 months allowed to undergo embryo transfer only three times for a couple and legal guarantee of protection to the parties involved in agreements between stakeholders. There are certain guidelines for the foreigners and nonresident Indian couples who come to India for surrogacy. The NRI couples required to submit an official document stating child will be 'accepted and permitted to enter the foreign country as the biological child of the commissioning couple.' They have to appoint a local guardian who will be legally responsible for taking care of surrogate till the child is delivered. Under process of surrogacy, women are making contract for using their body and it more like employed labour, in which no emotions are involved and the child born through this process does not know the real identity of his birth. It is quite clear from the study that some surrogates have left their work after becoming surrogate mother as they got enough money through surrogacy which they need for their livelihood.

There are few psychological issues which are related with surrogacy and surrogates. These issues are emotional attachment of surrogate mother with child, feeling of dissatisfaction, feeling of conflict, depression when surrendering the child, grief and even refusal to release the child, child's psychology gets affected. It was found

from the study that the most common emotion or emotional problem which surrogates have faced during and before surrogacy was feeling of fear, and there has always been a feeling of sadness among surrogates. On the other hand, very few surrogates feel trusty feeling for the commissioned parents.

There are some legal issues which are related with the surrogate mothers and their rights. There is a lack of awareness about the contract of surrogacy, which is done between surrogates and commissioned parents. Then another legal issue related to surrogacy is the citizenship given to the child. Because in some countries, there are controversies over surrogate children's citizenship whose birth is not in the same country. Another issue is whether the birth certificate and passport will be issued to the foreign couple at the time of immigration. It was found from the study that majority of the contracts of surrogacy does not include the aspects of money transactions. And in many cases, no contract has been signed under surrogacy. In some cases, language becomes the barrier between the understandings of contract by surrogate mother. It was also found from the literature review that surrogacy leaves a deep impact on the family life of surrogate mothers. Sometimes there are disagreements with friends and family of surrogate mothers and usually conflicts occur in husband-wife relationships. In some cases, it also affects mother child relationships.

It can be concluded that no doubt, surrogacy is a boon for childless couples, but in traditional society like India, this concept needs time to become a boon. Majority of Indian people take it like a curse. It can really become a boon if it is used in a right and proper way.

Conclusion:

Being the biggest market of surrogacy, many of the issues related to surrogacy and surrogate mothers have not been taken into consideration. These should be solved so that surrogate mothers could get support.

REFERENCES

- Brazier, M. and Cave, E. (2011). *Medicine, patients and the Law*. 5th Ed. London: Penguin.
- Central adoption resource authority Available from: <http://www.adoptionindia.nic.in>
- Imrie, S. and Jadvva, V. (2014). The long-term experiences of Surrogates: relationships and contact with surrogacy

families in genetic and gestational surrogacy arrangements. *Reproductive Bio Medicine Online.*, **29** (4): 424-435.

Jadva, V., Murray, C., Lycett, E., MacCallum, F. and Golombok, S. (2004). Surrogacy: The experiences of surrogate mothers. *Hum Reprod.*, **18** (10): 2196-21204.

Mason, J. and Laurie, G. (2010). *Law and medical ethics. 8th Ed.* Oxford: Oxford University Press.

Parry, B. (2018). Surrogate labour: exceptional for whom? *Econ. Soc.*, **47** : 214-33.

Soumya Swaminathan (2016). Why surrogacy bill is necessary?, "The Hindu, 2016 . 2. Surrogacy bill is long overdue. The Hindu Editorial, 2016 .

Unequal by law, Indian Express, column by Kapil Sibal, 2016 .

What's wrong with the Surrogacy Bill, Nidhi Gupta, and The Hindu Reads?

WEBLIOGRAPHY

ART Regulation draft bill 2010.:<http://icmr.nic.in/guide/ART%20REGULATION%20Draft%20Bill1.pdf>.

National guidelines for the accreditation supervision and regulation of ART clinics in India http://www.icmr.nic.in/art/art_clinics.htm

<http://www.mp.gov.in/health/acts/mtp%20Act.pdf>.

http://surrogacylawsindia.com/legality.php?id=%207 and menu_id=71 .

<http://www.timesonline.co.uk/toI/news/world/asia/article/7113463.ecc> .

The Associated Press (2007). India's surrogate mother business raises questions of global ethics 2007. <http://www.nydailynews.com/news/world/india - surrogate - motherbusiness -raises -questions -global -ethics - article -1.276982> .

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