

A Study on Ethics in Surrogacy & Its Immoral Aspects on Society

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Abstract

It is being witnessed that cases of surrogacy are rising day by day. Woman belonging to poor family are giving their womb on hire in exchange for monetary payment. They find it easy way to earn money. Indian women charge very ordinary amount for their service due to their weak negotiation skill and poverty. Therefore, India has been very popular hub for surrogacy but it is inviting many ethical problem and mal practices. There have been legal difficulties regarding citizenship of newly born child. So, there was danger of abandonment of child as well. Surrogacy is raising different issues related with exploitation of needy woman, harmful commercial aspect of surrogacy, treating woman as child producing machine, giving citizenship to such children conferring various rights to surrogate mother. Our article points out various surrogacy matters in India. It also mentions how the government of India has issues various timelines and regulations to regulate surrogacy.

INTRODUCTION

Surrogacy is a legal agreement in which other women agree to conceive baby for another couple who can become the parent that baby. Surrogacy is not new but it is being practiced for many years. The first time we found surrogacy is in “The Book of Genesis” The data on fertility of women in India according to WHO mention that about 186 million women globally are unable to conceive. There are numerous medical reasons for the biological incapability to conceive a child among couples, pushing them to restore to surrogacy services. Some unidentified endometrial factors

leading to repeated IVF failures also compel couples to go for surrogacy. Surrogacy helps 70% of incapable couples to become parents. India has become the desired spot for surrogacy. Many learned scholars have criticized the provision of surrogate motherhood, as it creates intolerable risks to women including psychological, physical, and symbolic risks. It is also considered unethical. Some analyzers affirm that surrogate women will be psychologically harmed by this process because she gets mental disturbance when she gives child up for adoption. Most of the surrogate mothers repent on their choice to beget a child for money for intended couple.

ORIGIN AND MODERN FORM OF SURROGACY

Concept of surrogacy has made its way due to age old belief and custom of society all over the world. In India we are dominated by patriarchal family where birth of children is necessary to carry on the legacy of their ancestors. It is believed that only son is authorized to perform last rites of his parents. But sometimes couple were not able to give birth to child even after long period of marriage. So, they resort to the practice of surrogacy whereby they use the womb of another female to beget a child after paying her some agreed amount.

CLASSIFICATION OF SURROGACY¹

Surrogacy is considered a very sensitive concept that has a wide-ranging influence over intended parents and hired mother. According to comfort level of parties, various types of agreement are made to give effect of this process. So, there are different categories of surrogacy which we have mentioned here in the following heads:

➤ Based on genetic material

- Financial transactions
- Relationships

➤ On the basic classifications

- **Formal surrogacy:** -In this arrangement all the conditions to be followed by all the parties are specified, in a written form. Because of this it is also known as contractual surrogacy.
- **Informal surrogacy:** -It is not contractual. There is a lack of lawful obligation for an enforceable contract. In this surrogacy, all time we found vagueness and uncertainty. These are impractical and not found in real life. If some dispute arises, it is a tough job to take action as conditions of the agreement are oral.

➤ **Based on arrangements**

- **Commercial surrogacy:** -It is the age of commercialization. Without money, nobody agrees to provide any service to other people. So, if surrogate mother charges money to give her womb on hire, it is called commercial surrogacy. This generally happens when such woman is not our relative but interested couple hires some other random female to carry a baby.
- **Altruistic surrogacy** – married couple who has been married for 5 year or above & have submitted that they can't bear baby due to their infertility will be allowed to hire surrogate mother. If surrogate mother does not charge any benefit in monetary term for conceiving the baby and to handing over the child to genetic parent. This is called Altruistic. In this type of surrogacy, only medical expenditure incurred during pregnancy are accepted by her. This situation is possible only when relative or friend voluntarily accept to help the couple by being pregnant for their child.

➤ **On another basis**

- **Traditional surrogacy:** -Earlier it was very popular technique of surrogacy. If female partner was unproductive, then male partner would cohabit with another woman and that woman will carry his baby. It was emotionally very difficult for the parent to adopt such procedure. But due to modern innovation in surrogacy, now without cohabitation, semen of intended father is implanted in the womb of woman and she conceives with his genetic material along with her own eggs. After the birth of child, she will give the baby to that couple. In this way she is biological & surrogate mother simultaneously.
- **Gestational Surrogacy:** -In this category, eggs of biological mother & semen of biological father are fertilized in laboratory. Thereafter fetus is inserted into the womb of hired mother who has agreed for this. After completion of pregnancy term, she would give birth to a baby and will hand over to the biological parents. It is also recognized as pure surrogacy as genetic material of intended parents is implanted into a surrogate mother who conceives the baby for the needy parents. Here, biological mother is different from surrogate mother.

SURROGACY AND ETHICAL VALUES

It has been proved that surrogacy is a boon to intended infertile couples. At the same time, in other

developing countries it is raising various controversial problems. So, it becomes necessary to consider the pro and cons of it. Following are the points against the surrogacy. Parent may change their mood to accept the baby. So, future of such baby is at stake. This poses very serious problem.²

1. **Exploitation** -Poor and needy women are lured to get ready for surrogacy. Wicked people take advantages of their poverty & trap them in their cheesy talks. These women are paid very less amount for their service. They are not given all medical facilities neither these women are medically insured. They are kept in solitary confinement till the birth of a baby. They are not allowed to meet their family member quite often. In this way these hired women are exploited a lot.
2. **Abandonment of Children** – During pregnancy many unpleasant situations may occur. There may be pre matured delivery, baby may be born with certain deformity and there may be separation between the couple. In such situation parents change their mood and do not accept the baby and future of such new born baby is at stake. This pose very serious problem and has to be dealt by providing them security from the beginning.
3. **Racket** - Certain rackets are working to arrange surrogate mothers for interested parents. They are exploiting poor and desperate ladies who are in need of money to make both ends meet. They charged very high amount from interested couples and in exchange give very less amount to those ladies. Sometimes they start blackmailing the couple too. Couple accepts all their unjustified demand as they remain worried for the safety of their surrogate child.
4. **Mental Harassment** – it is not easy for hired mother to be separated from their newly born child. But she is bound to hand over the child as per her agreement. No psychological therapy is provided to her so that she may recover the shock of this separation. After birth of child, purpose of needy couple is achieved. Therefore, they also ignore her disturbed mental health and do not help her in such crucial time.
5. **Health Problem** – During pregnancy, women are exposes to many risks and bear medical complexity. Sometimes it proves a fatal to their life. Surrogate mothers are forced to tolerate all these sufferings just for the money. After birth it is essential that child should breast fed for minimum 6 months & mother also require good care after birth of child. But surrogate mother is ignored and is not provided with good health facilities. So, it poses health hazards to these women.
6. **Commoditization of motherhood** – Now-a-days girls lead carefree life and follow ultra-

modern life style. They do not want to conceive baby as it would interfere in their routine life & they will lose physical attractiveness. So, they adopt shortcut method of surrogacy to fulfill their desire of having baby. Needy females are used to fulfill their needs of having babies. This is setting the trend poor woman is treated as a machine that will produce baby for petty financial gain.

LEGAL ASPECTS OF SURROGACY³

In certain countries, the cost of the surrogacy system is very high while in another country there are very strict legal regulations and in few other countries, surrogacy practices are even banned. Therefore, couples who wish for a child through surrogacy often search for countries that offer surrogacy at an affordable cost and with minimum legal complications. India is considered the most favored nation for foreign citizens to proliferate a child through surrogacy. This is because the expenses of surrogacy arrangements in India are very low in comparison to other countries. Some arrangement which has been taken by the government is as follows;

The Surrogacy (Regulation) Act, 2021

The Surrogacy Amendment Act makes many arrangements to maintain ethical values in surrogacy. Some of the important provisions are given below: -

1. It banned the commercial surrogacy. Nobody can hire the womb of another woman by luring them with financial gain. Clinic giving such facilities of hiring surrogate mother are not allowed.
2. This facility is available only to those couple who produce the certificate that they are infertile due to which they are unable to conceive.
3. For the couple, age of husband should be between 26 to 55 years and age of wife should be between 23 to 55 years. It is essential to seek the permission of Zila Medical Board. This board will give its acceptance when it is satisfied that due to infertility, couple cannot carry the baby on their own.
4. Even a widow & divorcee can seek the permission to give birth to a baby by resorting to surrogacy. But they should be aged between 35 to 45 years.
5. Surrogate mother would be eligible if she fulfills following conditions:
 - Her age should be between 25 to 35 years.
 - She has to give her written acceptance of her willingness to rent her womb.

- She can bear such surrogate baby once in her life time. However, if one attempt of surrogacy is not successful, she may take another three more attempts.
- All medical expenses incurred during pregnancy will be paid by needy couple but they are not permitted to give money for this surrogacy.⁴

JUDICIAL INTERVENTION

Judiciary has always played very dynamic role while addressing the issues related with surrogacy. Time to time, it has issued various guidelines in this reference. It has raised its eyebrow against the commercial surrogacy so that poor women are not treated as baby generating machine. Following cases shows the outlook of judiciary.

Baby Manji Yamada vs. Union of India,⁵ A Japanese couple entered into an agreement with Indian woman to act as surrogate mother. Before birth of a baby there was separation between couple. After the birth of baby Manji, Mr. Yamada wanted to take baby back to Japan, so he applied for birth certificate as it was necessary for Indian passport of Manji. But birth certificate requires name of mother and there were 3 mothers such as separated wife of Yamada, surrogate mother, egg donor. So, birth certificate was not issued. Ultimately application for passport was also rejected. In the end for the welfare of the baby, court ordered the parental grandmother to become legal guardian of Baby Manji.

Jan Balaz v. Anand Municipality AIR 2010,⁶ German couple was blessed with twins through a surrogate mother. But their country German did not recognize children as citizen of German as Law prevailing there does not allow surrogacy. So, couple applied for Indian passport. Gujrat High Court ordered that surrogate mother is to be recognized as their natural mother and these twins will be considered Indian Citizen. So, on this basis, passport can be issued in the name of twins. Court held that certain issues such as rights related with egg donor, surrogate mother & children born out through surrogacy have to be addressed properly.

CONCLUSION

It was a belief that the main object of marriage was to have children. Bearing a child in her womb is a blessing to a woman. Every male also desires to be father of a baby but sometimes due to medical problem couple was not able to bear children now this obstacle is also removed and one can be a parent of a child by the method of surrogacy. But it gave rise to category of commercial surrogacy which raised question of its legality. As a lot foreign couples were taken the service of Indian surrogate mother as these women agreed to provide their service for very less amount so

exploitation of needy women started. Moreover, many countries do not give citizenship to children born out of surrogacy. Therefore, the government is incessantly attempting to deal with the unethical and legal problems faced by the parents by doing amendments to the Surrogacy Act. So, we need proper law and its effective implementation to tackle of challenges arising due to such contract of surrogacy. We also hope that the amendment act proved helpful to maintain the social and ethical values of surrogacy.

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