

SURROGACY: A SOCIO LEGAL CHALLENGE BEFORE INDIAN LEGAL SYSTEM AN ANALYSIS

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“The umbilical cord was cut and they took him away.... It was just those nine months bond that haunted the Surrogate mother for the whole life”

-Rajashree

INTRODUCTION

“Mother is a term which defines the source of future generation”. Motherhood means a pain which is bear by the women to give birth to the child. Although , both people participate in the human generation but the creation credit goes to the mother .In all religion mother is required as source of love for the child .But there are some couple which are unfit to conceive baby have only two options :adopt a baby from any source or remain childless whole life.

In surrogacy, a woman gives the consent to transmit the pregnancy to another person, who will end up being the parent of the child. Subsequently, the urge of having child by the couples due to their infertility faces problem in married life or social life. There are women who are unable to transmit pregnancy due to loss of the womb or due to malignant tumor or causes like hypertension, dangerous skin infection or through elimination of the fetus. All these restrict the women to get pregnant.

As the surrogacy method is very popular all over the world. There has been a debate about the ethical aspect of surrogacy. In our Hindu culture, women are restricting from various elements and hence surrogacy culture will be unethical for some group of society. And for the liberal thinking of people it is the method through which childless couple will fulfill their dream of having their own child through the medium of surrogate mother.

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So, the surrogacy implies various reason to remain in headline due to its procedure and the benefit which is provided through surrogacy is a gift for the childless couple.

WHY SURROGACY?

Every woman all over the world want to have their own child. But the dream of having child is somehow not fulfilled by every woman. That why surrogacy method is adopted by the couples who have urge to become parent. And in surrogacy process, financial aid is also provided to the surrogate mother. But there has been world whether surrogacy should be adopted by the couple because of the future problem which can be generated through surrogacy.

According to Indian Culture, birth of a child take place after solemnization of marriage. In our Hindu Religion, child plays an utmost role in performing last rites of their parent so that they can go to heaven and remain in peace after death. In various parts of the state, childless couples specially women are considered as “BANJ” and are not allowed to enter into religious places and on festival occasion and on the baby shower of other women.

But as of now, due to globalization and modernization, surrogacy is encouraged by the childless couples to get offspring. But due to this surrogacy is also becoming a business for earning money out of it and trending as business idea in the market.

In earlier times also this method is adopted by the couples but the child at that time in not considered as legitimate child but with the growing period of time surrogacy become the most effective method to become parents. And the cost which is required for surrogacy can be afforded by the rich category or upper medium society and the expenses of surrogate mother is incurred by the couple and the name of the women will remain secret if the contract has been made between the couple and the surrogate mother.

Various couple from different countries comes to India for adopting method of surrogacy as in India there are large number of women who are ready for becoming surrogate mother for fulfilling the dreams of childless couples. Therefore, surrogacy method should be gained by the couples who does not have any other option for becoming parents.

SURROGACY IN SCIENTIFIC TERM:

To obtain Parenting, Surrogacy method can be done with two technique.

Firstly, the main strategy to conceive is manual sperm injection which is the conventional method and done in three steps. The surrogate mother, is injected with the organic sperm of the father and then after conceiving, the surrogate mother transmits the child in their womb for nine months and then give birth to the child. This technique is popular as “usual surrogacy “in which the women is unable to get pregnant and with the use of father sperm they have the chances to produce child through surrogacy.

Secondly, the method used in surrogacy for raising a child is to do vitro treatment. In this technique, there are five stages through which the child is raised through surrogate mother.

In first stage, the couple gives an egg and sperm to the specialist and after that, the specialist prepares the egg with the sperm through vitro treatment. Then, the prepared egg is injected into the surrogate mother. After that the surrogate mother conceive the baby for nine months and gives birth to the child.

This process is adopted because the spouse body is unable to prepare egg by the husband sperm or the spouse has an irregularity in his body. This technique is commonly known as “Gestational Surrogacy”³.

In all these methods pain has to bear by the women to carry the baby in the womb and various technique is used upon the women so that she can conceive through artificial methods and proper medicines are provided to the women during the period of pregnancy. These methods are generated after long period of experiment by the doctors upon the women body these methods are invented so that infertile women can become mother through these artificial means.

There are other myths in our Hindu religion through which a woman can get pregnant and can have its own child after following the procedure given by different pandits or pujaris or having fast and various families are ready to adopt black magic for becoming mother. But as there are no scientific reason behind it these methods are inappropriate to adopt and considered as illegal methods.

³ Oxford University , press U.K Edition 2012

COMMERCIAL AND NON – COMMERCIAL SURROGACY

When surrogacy was introduced, the technique is done within the families and companions. Relatives surrogates conceive offspring for their barren companions. Hence, the relatives are not paid for it, so it is called as non – commercial surrogacy.

On the other hand, in the recent couple of decades, there have been a pattern of commercialization of surrogacy. Surrogate mothers are benefited through financial aid.

Despite the fact that the commercial surrogacy is not accepted by the society in a positive way, this method is adopted to fulfill the demands or necessities of surrogate mother to meet in an exchange of surrogacy.

This is become a business for the middleman who connect the childless couples with the women who will be ready to become a surrogate mother in exchange of their requirement and the middleman also earns profit out of it with this method of surrogacy the aim is fulfilled but the objective behind it is lacking because generating child for other women is a sin in the eyes of a particular group of people.

Therefore, in 2015 the Indian government has banned commercial surrogacy and only legalese the entry of embryos for the research purpose only. The main reason behind the banning of surrogacy is the unethical practice by the clinics or due to lack in the legislation system, there are couples from different part of the countries made India as a surrogacy Hub which is against the law.

But due to noncommercial surrogacy the poor women who are unable to meet their requirement can earn some financial support through surrogacy and the medical support during the period of pregnancy is also provided to the surrogate mother. But this has also become a business for the wrongdoer which is unethical

As in commercial surrogacy only the dream of becoming the mother is fulfilled and no other aspect are to be determined while pregnancy but in noncommercial surrogacy various aspect like contract between the parties and surrogate mother is made and in case of any unknown situation who will be possible.

JUDICIAL PRONCEMENT

The reputation of surrogacy method is whispered all over the world. In India, although surrogate motherhood is gaining popularity and is rapidly increasing as a business. As there is a lacuna in the legislative system of India, the Indian Council of Medicine Research ⁴ has, made some guidelines for proper regulation in human reproduction technologies and for the substitute practices.

As there are no laws relating to surrogacy, the council of medical science (ICMR) in 2005⁵ generated guidelines for supervision but as they are non-statuary these guidelines can be violated.

As the commercial surrogacy was increasing day by day, the Law Commission of India in 2009 presented a report to government of India for the Rights and obligation to the parties of surrogacy.

The recommendation generated by the Law Commission of India are related to the contract surrogacy, the game plan should not be for commercial purpose. The surrogacy course must contain the money related help in case of death of the women and should also cover the insurance policy.

With the increase in adopting the surrogacy method, there is a need for proper regulation and supervision of clinics with reproductive technologies. The assisted reproductive technology (regulation bill) 2010 ⁶was introduced by the government. The Bill establish rights to a surrogate mother and also specify duties for the surrogate mother and also provide criteria for becoming a surrogate mother.

Therefore, in the recent period of time the government of India has taken various measures and implement various legislation for proper rules and regulation for surrogacy procedure and protection of surrogacy mother and surrogacy child.

⁴ The Indian Medical Council of Medicine

⁵ The ICMR 2005

⁶ The Assisted Reproductive Technology Bill 2010

CONCLUSION

Having their own child is the most precious gift for the couples and those who are deprived of this gift will always feel empty throughout their life. There are lakhs of couples who are childless due to infertility.

Surrogacy is a method through which the couples can fulfill their dreams of having their dreams of having their own child. The development in the medical science and with the social acceptance the surrogacy is adopted by large number of couples.

Surrogacy process may have different impacts on different culture having different values, social set up and religion. But the universal human rights have given full acceptance to surrogacy. Although the orthodox thinking remains the same that the surrogacy reflects the character of the women. However, not all perspective is same. For instance, the liberal feminist holds their rights on use of her body as her own free will.

As surrogacy raises a legal and human rights issues, the laws relating to surrogacy should be properly made so that there will be no confusion in the procedure of surrogacy.