

A STUDY OF SOCIO-LEGAL EFFECTS OF SURROGACY IN INDIA

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ABSTRACT

Ethnically and culturally, Indian civilization is formidable; economically, though, it is often seen as weak. The philosophy and concern for the residents' welfare in this society are held up as examples of its success. The obvious question that follows is how a culture based on such an idea could sanction the practice of uterine borrowing or leasing. Those who support commercial surrogacy do so because they value personal autonomy. Those who are against making this a business practice often cite ethical and moral concerns. Mankind has been created by God in a way that defies rational explanation. Creating offspring via sexual activity. However, if a reproductive technology is used instead of the conjugal act, the couples might easily become sexual objects. It is tough to see the worth in others, particularly in the unborn kid. Many infertile couples now have renewed faith in their ability to have a family, thanks to the enormous gift of science and technology to humanity. However, the reality is that it is more contentious than ethical. Surrogacy law is convoluted, varied, and mostly unresolved. Eight percent to twelve percent of couples throughout the globe struggle with infertility. . However, in India, infertility and childlessness carry a heavy social shame, particularly for women. In a patriarchal culture like India's, a woman's fertility determines her status, and her status as a woman is determined by her ability to have children. . Most individuals have strong opinions on problems of reproduction, parenting, and family, and these opinions are typically informed by their religious or moral beliefs. These beliefs are heritable and reflect the socially created nuclear family model, in which reproduction occurs only within the context of a monogamous relationship between one man and one woman.

KEYWORDS: Socio-Legal Effects, Surrogacy, India, Indian civilization, Surrogacy law

INTRODUCTION

There is ambivalence or uneasiness with human reproduction technologies that deviate from the genetic and natural process of producing human life because of the mystery, sacredness, and intimate nature of this genetic relationship. Surrogate motherhood is one way of human reproduction that defies deeply

held genetic beliefs about reproduction and family formation. The introduction of ART has given infertile couples new opportunities, but it has also created new societal tensions and moral quandaries. Infertile individuals and couples see in these technologies a chance to realize their for a child, which they expect to be



supported by the providers of the technologies and health care facilities, but the use of these technologies has sparked a heated debate among various interest groups in society, each with their own values, norms, and interests. . It has been argued that surrogacy is a new kind of slavery because it takes advantage of women, especially those from poorer socioeconomic backgrounds, and that it dehumanizes kids since it amounts to a new form of "baby-selling." . Despite widespread opposition, these methods are essential for establishing stable families and maintaining a functional society in the face of increasing technological demands. Surrogacy is nothing new; it has been around for centuries in one form or another. However, because to advances in medicine, new procedures have been developed that, when added to the age-old practice of surrogacy, have led to its current widespread acceptance.

Traditions from the past have evolved and expanded throughout the years to meet the demands of modern society. In addition, thanks to scientific progress, new ideas have emerged, surrogacy being one of them. As time went on, however, the practice became commercialized in response to rising demand for these technologies and the rising rate of infertility among couples, and the concept quickly gained popularity around the world, including in India. Which has emerged as the world leader in commercial surrogacy and is now the most popular location for such arrangements Surrogacy gained popularity in the United States initially. "The first documented surrogate pregnancy was recorded in 1976 but not for money". Elizabeth Kane, at 37 years

old, became the first genetic surrogate mother in 1980 when she gave birth to a boy. As the first paid surrogate in recorded history, she had created history herself. . The growing sophistication of human embryology procedures in the 1970s brought widespread public awareness to the use of commercial surrogacy as a solution to infertility. . However, with the infamous case of baby 'M'95 in the United States, when a surrogate mother refused to hand up custody of her kid to the parents with whom she had engaged into a contract, the practice's legitimacy came into doubt. .

While in 1993, in Chennai, India, the country's first non-genetic surrogacy took occurred, in 1997, a lady called Nirmala from Chandigarh agreed to bear a child for 50,000 Indian rupees so that she could afford medical care for her disabled husband. . Once surrogacy and the exchange/sale of eggs, embryos, etc. become more commonplace in India, more cases like Nirmala's and subsequent legal fights are inevitable. , There has been a dramatic increase in the number of commercial surrogacy cases in India since 2010, but because the industry is privately run, no central registry exists to keep track of them, and few are made public because of the sensitive nature of the issues they raise. Since Dr. Robert Edward and Patric Steptoe helped deliver Louise Joy Broan, the world's first baby conceived through in vitro fertilization, in 1978 in Oldham, England, it's reasonable to assume that commercial surrogacy is already commonplace in India. , On October 3, 1978, in Kolkata, India, the world's second IVF baby, Kanupriya alias Durga, was born. . However, a number of instances



published in the media during the end of the 1990s and the beginning of the 2000s signaled a revived public interest in surrogacy as a practice, highlighting some of its more problematic elements.

GROWING TREND OF THE PRACTICE OF COMMERCIAL SURROGACY IN INDIA

Even while surrogacy has been around for a while, it has exploded in popularity in recent years to become a multibillion dollar industry that transcends borders. The industry of commercial surrogacy in India is thriving. India has the resources to become a global leader in the commercial surrogacy market, with its abundant supply of highly trained medical professionals, lax regulations, and low costs. Medical tourism, of which commercial surrogacy is a subset, has been rebranded as reproductive outsourcing in India.

Commercial surrogacy in India, as well as other parts of India's medical tourism trade, has grown dramatically in recent years as a result of an increasing number of infertile couples from the United States, Great Britain, and other countries looking for surrogate mothers in India due to the relatively low cost of services provided there. "The confederation of Indian Industry predicts that commercial surrogacy will grow to a \$2.3 billion industry in India by 2012".

the evolution of outsourcing to India. There has been recent media coverage of the Indian cities of Anand, in the western state of Gujarat, and Mumbai, where surrogacy services are available. Surrogate mothers-to-be are more likely to go to India. Medical tourism has the potential to

increase by 25% yearly, bringing in Rs.100 billion for the nation. This is according to a survey by the Confederation of Indian Industry. . The media's use of comparable data also points to a rising medical tourism trend. Although surrogacy has been around for quite some time, it has just recently become a major international money-maker. Surrogacy firms market their services and generate a tidy profit by locating and contracting with surrogates. Surrogacy has become a lucrative business thanks to the demand from intending parents and the supply of willing surrogate mothers motivated by financial gain.

India is a more convenient place for infertile couples looking for commercial surrogates due to the little rules and government meddling in the market. There are currently no legally binding regulations or checks on the sector in India. The Indian Council for Medical Research established guidelines for the surrogacy industry in 2005, but these guidelines have no legal force. Because of the lack of a law regulating the practice, India has become a popular surrogacy destination for international couples. Since most nations outlaw commercial surrogacy arrangements, this trend is expected to continue. In the United States, the overall cost of working with a surrogate mother may reach \$80,000, whereas in India, the current cost is far lower at \$25,000 to \$7,000. Since the cost of surrogacy in India is far lower than in the United States, many American couples go there in search of a bargain. The availability of surrogate mothers and the accompanying medical infrastructure also contribute to the expansion of the commercial surrogacy



industry. Therefore, the surrogacy sector is expanding like crazy in India right now, despite the lack of any kind of regulation. Numerous clinics provide these services for profit, turning it into a business that may have negative consequences if there were no laws regulating it. Because of the many ethical and legal concerns raised by surrogacy, a robust legal framework is necessary for its regulation. Surrogacy procedures are becoming popular in India. Due to the inexpensive cost of surrogacy and medical care in India compared to developed nations, surrogate mothers are in high demand in the country. Fertilization, the surrogate's experience, and hospital delivery of the baby cost anywhere from \$10,000 to \$28,000, without including airfare, medical care, or lodging. When compared to the cost of the same surgery in the United Kingdom, the savings are substantial.

SOCIAL ISSUES INVOLVED IN COMMERCIAL SURROGACY IN INDIA

When it comes to options for dealing with infertility, surrogacy is by far the most divisive. Many of these debates have arisen because commercial surrogacy is becoming more common in India yet is not regulated by law. The frontiers of law and ethics are constantly being pushed by advances in medical technology. One such outcome is contemporary surrogate motherhood, made feasible by techniques like IVF and artificial insemination. Both proponents and detractors of surrogacy may be found in India and the rest of the nation. The ethical and legality of surrogacy raises a number of crucial problems, including whether or not the surrogate mothers are exploited. Or, is it

morally acceptable to get compensated for not having one's own kid born? These are some of the societal concerns that need to be examined in relation to commercial surrogacy. Those who disagree with commercial surrogacy often do so on moral grounds, arguing that the very nature of the business makes the procedure beneath human worth. They believe that having a kid via a surrogate breaks the sacred bond between a mother, father, and their child. Critics of commercial surrogacy argue that it reduces women to the status of "commodity," "machine," and "exploitive," and that monetary transactions replace human labor. They also pointed out that this behavior damages the family unit since it fosters a muddled parent-child bond.

Surrogacy, although controversial, does provide a humane answer to the challenge of conceiving a child when conventional methods fail. Given the alarming rise in infertility rates in modern society, surrogacy may be the only viable choice for some couples who want biological children. Having a child via adoption is a possibility for infertile couples, but for many, the desire to have a child with whom they share a genetic bond makes adoption an unsatisfactory substitute. It is also suggested that the enhanced possibility for choice afforded by surrogacy should benefit all individuals involved with a surrogacy partnership.

1. Morality of Commercial Surrogacy

There is also moral opposition to commercial surrogacy. Those who disagree with the practice of commercial surrogacy argue that it violates fundamental moral principles. There are



strong moral and ethical objections to surrogacy, including that it compromises the sanctity of marriage and the spiritual bond between a father, a mother, and their child, that it leads to baby selling and treats children as objects of sale, and that it interferes with the natural process of procreation. . Many people object to paying women to have children because they believe it is unethical, immoral, and against public policy. However, it could be argued that there is nothing inherently wrong with doing so. For example, in ancient Indian society, people used alternative methods for procreations when conventional childbearing was not an option. . It is stated that if males were paid for their services back then and it wasn't seen as immoral, then there's no reason to think it's wrong to pay a woman for acting as a surrogate mother now. On the one hand, society stigmatizes infertility, and on the other, critics try to prevent infertile couples from using assisted reproductive technologies like surrogacy on moral grounds, condemning the practice as immoral or unethical. If infertile couples are forced to live out their lives in stress and depression because they are denied the chance to start a family, who benefits? Unjust to prevent them from using this approach as a means of artificially establishing a familial lineage.

2. Commodification of Surrogate Child

The problem of commercialization also arises in the context of commercial surrogacy. Critics of commercial surrogacy often point out that it may be used to profit from the sale of children. In most surrogacy cases, the embryo belongs to the intending parents or one of the intending parents, and the child exists

because of the intending parents/couples, so it can be argued that the child does not belong to the women who choose or are hired to act as surrogates for them, but rather to the couple who conceived the child. Similar to the services provided by other women who transfer a limited use of their bodies to another person, such in employment contracts, a surrogate sells her services or labor in exchange for financial compensation in exchange for carrying another person's kid to term. Why shouldn't a surrogate be compensated for her services? After all, models, actresses, and maids are all paid for their time and effort, so why shouldn't a surrogate be? Considering the sacrifices surrogate moms make, it seems unjust that they should not be compensated for making the journey to deliver a child into the world.

3. Objectification/ commodification of Women

Commercial surrogacy has its detractors who argue that it reduces women's agency and promotes the sexualization of their bodies. Some people feel that surrogacy commercializes women's reproductive capacities. They went on to say that surrogacy is demeaning to mothers and transforms women into "breeder machines," drawing parallels between the two. . In addition, objectification refers to the practice of treating a person as if they are nothing more than a thing, and in commercial surrogacy, surrogate moms are seen as nothing more than tools for the commissioning parents to use in order to have a biological child. . Surrogacy is a controversial topic, although it is widely acknowledged that it enhances women's constitutional rights, including the right to privacy and the right to procreate, since it



allows them to exercise their freedom of contract and reproductive agency. Contractual pregnancies may be supported on the grounds that they promote the autonomy of surrogate mothers and women in general rather than considering women as objects of reproduction. The word "autonomy" is used to describe an individual's right to make choices about his or her own body. According to John Locke, who argued that people should be free to make decisions about their lives, surrogacy is morally acceptable since it serves no evil goal while still providing financial security for the surrogate mother. Therefore, parents have a right to the fruits of their labor¹²⁰, and the surrogate is merely expressing her right to privacy and independence by reaping the rewards of her hard work. It's important to remember that a surrogate is only doing her civic duty by assisting low-income families, and that this should not be seen as exploiting her reproductive talents.

3. Exploitation of Surrogate Mothers

Most critics of commercial surrogacy point to the fact that it exploits the women who agree to serve in the role of surrogate mother. The issue of whether or not commercial surrogacy constitutes exploitation therefore arises. Business surrogacy has been criticized by those who believe that paying surrogate mothers exploits their humanity and uses their reproductive organs and abilities for the benefit of the wealthy. This is made worse by the fact that there is a growing possibility that centers will sacrifice the safety of their Indian women in order to compete for more clients. One argument against commercial surrogacy is because it leads to the exploitation of women from

lower socioeconomic backgrounds. These women, the argument goes, would do everything to get a hand out of poverty. However, it is maintained that a person is exploited if she agrees to a transaction that is hurtful or unjust to her, and she does so because the other party uses some feature of her character or circumstances against her. One could argue that commercial surrogacy is not inherently exploitative, but that the practice itself can be exploitative if it is carried out dishonestly or with insufficient information being provided by the mediators who arrange for the whole arrangement in the absence of any legal framework where all the norms regarding the compensation, procedure, and terms of surrogacy contracts are to be mentioned. There is no moral ambiguity in rewarding a surrogate mother for her services since commercial surrogacy helps those in need on both sides. Critics of commercial surrogacy believe that the financial transaction involved in surrogacy amounts to economic exploitation of women.

NEED FOR REGULATION OF THE PRACTICE OF COMMERCIAL SURROGACY IN INDIA

In India, the surrogate mother and the commissioning parents enter into a legal contract outlining the terms of their surrogacy agreement. Nonetheless, a slew of social and legal complications might arise as a result of a surrogacy relationship. These include concerns like claiming paternity, citizenship, immigration, adoption, birth certificates, DNA testing, and more. Once the surrogate mother signs the contract, she must abide with its terms. Under the contract's terms and conditions, the commissioning parents are released



from responsibility for any issues that may occur afterwards. However, these stand-ins are used improperly. Surrogate mothers sometimes have little room to negotiate remuneration since the clinic acting as mediator chooses how much of the overall payment paid to the clinic by the commissioning parents should go to the surrogate's mother.

There is no legislation to handle surrogacy cases and no professional body to oversee the business's ethics or accredit the institutions in India, which leads to a number of social and legal complications. There is no governing organization in place to ensure the quality of infertility clinics in the state, and no legislation has been established requiring them to register. Health services that capitalize on cultural needs and on people's poverty, like the infertility business, are part of an uncontrolled private health care system that prioritizes profit above necessity. , It may lead to surrogate moms being exploited since there are no regulations governing the remuneration given to surrogates, and so agencies can swindle surrogates by giving them a pittance for their services. Therefore, commercial surrogacy's negative impacts must be mitigated by stricter legal oversight in India. In the lack of legislation or regulation, the delicate topic of surrogacy has become a free for all for unscrupulous middlemen who seduce and force uneducated and destitute women into surrogate parenthood, and there is a risk that children born via surrogacy may be abused. . Because to the legality of surrogacy in India, an impoverished surrogate mother like me would be able to provide for my family by renting out my

womb to those who cannot have children biologically. To reduce the negative impacts of surrogacy and maximize their usefulness, financial and health-related rights must be better protected, which is why commercial surrogacy must be legalized in India.

CONCLUSION

In the present day, surrogacy has become a blessing for mankind. It provided infertile couples who are unable to have children naturally a viable choice. It gives those prospective parents who are childless the option, if they so desire, to have a genetically related kid. Today's medical science helps infertile couples, couples of the same sex, and couples who are fertile have a child who is genetically related to them via ART in different forms. Today, conception is no more a natural act due to changes brought about by medical technology and advancements in the field. At the moment, it can be accomplished artificially via a variety of methods. if natural reproduction is not an option. The term "assisted reproductive techniques" (ART) refers to these methods. They include a variety of treatments, and surrogacy is one of the ART techniques used to aid in child conception. Undoubtedly, ART in general and surrogacy in particular are a blessing for childless couples who were unable to have a child of their own due to biological or other limitations. Due to the participation of a third party in the reproduction process, it is quite contentious. It will always be preferable than adoption. Unlike adoption, there is a biological connection between the couple and the kid through surrogacy. There could be some clashing interests between the intended parents and the



surrogate mother. A surrogate mother may exhibit maternal instincts for a kid and may assert some parental rights. This can result in conflicting interests. On a number of moral fronts, surrogacy is also denounced as being abhorrent to human dignity. The use of women's reproductive abilities for profit is seen as a commodity that may be bought and sold on the open market like other things.

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