

“Surrogacy- The Silver Lining”

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INTRODUCTION

Nature has given the excellent ability to reproduce a real existence inside women and each woman values the experience of parenthood. Right to procreation is an intrinsic right of a person. The longing for kids among couples is an all worldwide desire. Parenthood is a life changing and everlastingly remunerating experience. The torment and distress of not satisfying the wish of parenthood is boundless. The study of infertility treatment has pushed ahead significantly. Each general public over the world has given essential significance to the organization of family. At the point when two people meet up and go into a marital bond, another family appears and such family gets total with the introduction of their young ones. From the primitive times, young ones are considered as a need for the continuation of the family ancestry and a source of happiness for the guardians. Psychologists believe that birth of an infant makes a bond between the life partners which can assist distressing relationships with sustaining over the long run.

Unfortunately because of different reasons, a huge segment of the general public can't have their kid. Research has expressed that one out of six couples have such issues. The nonappearance of a young ones considered as a shame to the family. There are numerous examples where the incapability to have a kid prompted marital breakdown. The failure to have a kid which is known as infertility in medial terms is a worldwide issue. As indicated by the WHO Report the rate of infertility over the globe including India is around 10-15 percent.

A few types of infertility which were viewed as untreatable in the past have curable arrangements today. Till as of late the main answer for childless couples was adoption. The progress in medical science especially in the field of artificial human regenerative innovations (ART) has acted the blessing of such people and furnished them with different choices to bring forth a hereditarily related youngster. There are different alternatives in ART like manual semen injection, In-Vitro preparation, embryo transfer and so on. Among all the techniques surrogacy has gotten popular.

INDIAN HISTORY OF SURROGACY

Hindu mythology additionally offers examples of surrogacy and reflects the secrecy that still surrounds surrogacy practice. In Bhagavata Purana, Vishnu heard Vasudev's prayer importuning Kansa not to murder all children being born. Vishnu heard these petitions and had an embryo from Devaki's womb and transferred it to the womb of Rohini, another spouse of Vasudev. Rohini brought forth the infant Balaram, sibling of Krishna, and furtively brought up the kid while Vasudev and Devki revealed to Kansa that the kid was brought into the world dead.¹

In the Mahabharat, Gandhari didn't deliver a child rather conveyed a semi strong material which was partitioned by Maharishi Vyas into 100 pieces and planted them in various pans. Hence, the 100 Kauravas were born. Additionally, Maharishi Bhardwaj saw a heavenly fairy coming out of water in the wake of having a shower and seeing such an ebeautiful woman, he felt perceive and kept his semen in pot utilized for yagna called Darona. This is from where Dronacharya was conceived and named after the vessel. A great many years after the scriptural occasions in 599 AD, the 24th Trithankar, Mahavira, was brought into the world after an embryo had been transferred from one womanss womb to another. He is one of the key figures of the Jain Mythology. Devananda, spouse of a Brahmin named Rishabdeva cocieved him. The divine beings, keenly, transferred the embryo to the womb of Trishala.²

The world's second and India's first IVF infant, Kanupriya, false name Durga, was brought into the world 67 days later on October 3, 1978, through the endeavors of Dr. Subhas Mukherjee and his two partners in Kolkata. The introduction of baby Kanupriya (otherwise called Durga), through the novel procedure was set apart by gigantic debate.

CONCEPT AND MEANING OF SURROGACY

Surrogacy is not just a title but a furtherance degree in the field of scientific and a biological advancement for reproduction with the utilization of womb of woman to reproduce a child by being a substitute woman. It has furnished possibilities for couples with fertility disorder willing to have biological child. So, the concept of Surrogacy and a surrogate mother is a blessing to those infertile couple.

The word 'surrogate' is originated from a Latin term surrogates meaning "a woman performing an act in place of another woman." Surrogacy basically means giving birth to a child not by his/her own legal mother but by some other woman. When the couple is not medically fit or there is any other impossible condition or when the legal mother is not able to conceive or cannot get

¹ Jasdeep Kaur, "Surrogacy: A Paradox regarding Motherhood rights with Special Reference to India" ; Vol.II No.1,2012 The Legal Analyst(113 to 121) at 114.

² www.indiaparenting.com.

pregnant. So a surrogate mother is appointed to become pregnant, gestate and give birth to a child and then transfer the child to the infertile couple legally and physically.

TYPES OF SURROGACY

GENETIC/ PARTIAL/ TRADITIONAL/ NATURAL SURROGACY- In this type of surrogacy , the intended father or donor's sperm gets artificially fertilized with the egg of that surrogate woman , who then carries and delivers the baby to the couple. So in this process, the surrogate mother is the genetic mother and the mother who raises the child after birth becomes the legal mother. ³

GESTATIONAL/ FULL SURROGACY- In this type for surrogacy the sperm and the egg are of the intended couple and the embryo is only implanted into the surrogate mother. There is no genetic relation of surrogate mother with the child. ⁴

Surrogacy is further divided into two types- (on the basis of financial compensation)

ALTRUISTIC SURROGACY- The surrogacy in which no financial compensation is given to the surrogate mother except the medical fee required while raising the embryo. This surrogacy is mostly seen between the close friend and relatives of the intended couple. ⁵

COMMERCIAL SURROGACY- It is that type of surrogacy in which a monetary compensation is also provided to the surrogate mother with the medical fee. ⁶

PRESENT SITUATION OF SURROGACY IN INDIA AFTER SURROGACY REGULATION BILL 2020

- The bill prohibits commercial surrogacy but allow altruistic surrogacy.
- Banning of commercial surrogacy – The infants are the gifts of a god, which should not be used for commercial purposes. Law and society both have given the newly married couple a right to reproduce and grow their generations. Commercial surrogacy since 2002 developed into a very fast business especially in India because India is commercializing surrogacy in the most least rates as compared to USA and China.

³ www.tcog.com.

⁴ www.tcog.com.

⁵ www.tcog.com.

⁶ www.tcog.com.

Surrogacy which should be performed as a blessing to the less fertile couples rather than a commercial contract with the biological function to the woman's body.

- A married woman aged between 25 to 35 years, who is already a mother can help in surrogacy or can play a role of surrogate mother only once in her life time. Woman must be a close relative of the intended couple.⁷
- Altruistic surrogacy is only permitted, in cases where the couple or either member of the couple is suffering from fertility disorder which is proven by a certificate from the district medical board.⁸
- There should be also a proof of marriage of atleast five years and the couple should be an Indian citizen, with the wife aging between 23 to 50 and husband between 26 to 55. Most importantly, couple should not be having any existing biological child still if they have an existing biological child than the child should be physically and mentally challenged or suffering from any fatal disease, which has no cure.⁹
- Surrogacy procedure should be only performed in surrogacy clinics registered under the Surrogacy (Regulation) Act, 2019.
- If any individual is caught advertising, exploiting the surrogate mother or selling, procuring or obtaining human embryo's for surrogacy or for conducting sex selection for surrogacy then he would be liable for imprisonment of either description which can extend upto 10 years, or with of Rs.10lakhs, or with both.¹⁰
- As per the Medical Termination of Pregnancy Act, 1971, there is no role in case of abortion of a foetus of the intending couple rather the consent of the surrogate mother is only required.
- After the birth of the surrogate child, the intending couple becomes the child's biological and legal guardians.
- The surrogate mother should be awarded with the insurance coverage for a period of sixteen month including post delivery complications for performing surrogacy.¹¹
- There should be proper National Surrogacy Boards for advising the central government on policy related matter of surrogacy in laying down the code of conduct of surrogacy clinics and supervising the proper functioning of state surrogacy boards.¹²

WORLDWIDE CONSIDERATION OF SURROGACY LAWS

⁷ Rajyasabha.nic.in/Report of the Select Committee on The Surrogacy (Regulation) Bill,2019.

⁸ Rajyasabha.nic.in/Report of the Select Committee on The Surrogacy (Regulation) Bill,2019.

⁹Thelawmentor.org/introduction of the Surrogacy (Regulation) Bill,2019.

¹⁰ rajyasabha.nic.in/Report of the Select Committee on The Surrogacy (Regulation) Bill,2019.

¹² rajyasabha.nic.in/Report of the Select Committee on The Surrogacy (Regulation) Bill,2019.

Most nations that permit surrogacy have made laws to manage it, consequently likewise ensuring the privileges or rights of the surrogate while nations like Britain, America, Australia, Netherlands and Denmark are among those where altruistic surrogacy is legitimate. Nations, for example, France, Germany, Italy, Spain, Portugal and Bulgaria preclude all types of surrogacy.

United Kingdom:

- Commercial surrogacy isn't legal in the United Kingdom.
- The surrogate is the child's legal parent during childbirth.
- Legal parenthood can be transferred by parental request or adoption just once the child is born.¹³

United States of America:

- In the United States of America surrogacy laws fluctuate from state to state.
- Surrogacy liberal states permit both commercial and altruistic surrogacy.
- Arkansas, California, New Hampshire are famous surrogacy friendly states.
- New York doesn't permit commercial surrogacy.
- Michigan prohibits totally all surrogacy agreement

Canada:

- Canada's assisted Human Reproduction Act allows just altruistic surrogacy.
- Surrogate moms might be repaid only for approved expenses.
- All surrogacy courses of action are unlawful in Quebec in Canada.

Armenia, Georgia, Kazakhstan, Russia and Ukraine permit both altruistic and commercial surrogacy. Kenya, Malaysia and Nigeria don't forbid surrogacy however have no conventional law to control the surrogacy. Czech Republic, Colombia, Chile and Hungary are among nations with unregulated surrogacy. Surrogacy is prohibited in Cambodia, Denmark, France, Germany, Italy and Spain and some other nations.¹⁴

In any case, an absence of universally recognized laws makes challenges for aspiring parents In situations where intended parent go to surrogacy accepted nation, it is difficult as well as a long effort to take a surrogate infant back to their nation of origin. This is because of various surrogacy laws in the nation of origin and the nation where the child is born. Numerous specialists contend that a worldwide agreement like the Hague adoption convention could give consistency across nations in this manner making the procedure more streamlined.

¹³ [rajyasabha.nic.in/Report of the Select Committee on The Surrogacy \(Regulation\) Bill,2019](http://rajyasabha.nic.in/Report of the Select Committee on The Surrogacy (Regulation) Bill,2019).

¹⁴ [TheLawMentor.org/introduction of the Surrogacy \(Regulation\) Bill,2019](http://TheLawMentor.org/introduction of the Surrogacy (Regulation) Bill,2019).

SUGGESTIONS AND RECOMMENDATIONS

- The greatest concern should be towards the **'freedom of choice'** whether the reason behind surrogacy can only be infertility.
- The bliss of surrogacy should also fall on the homosexual and single parents.
- The conditions arising socially, physically, emotionally need to be also looked upon for the welfare and safety of both the surrogate mother and the child
- A second thought needs to be drawn on the reproductive rights of a woman irrespective of its nationality, status or age.

CONCLUSION

The bill has looked upon various measures that was needed in this burning hour, like prohibition of commercial surrogacy was necessary as after some years, India would have earned a lot only from this 'womb- renting' business. Although the judicial rule of India had already recognized reproductive rights of humans as a basic right but not in the name of commercial surrogacy. Apart from that surrogacy is quite favorable to those facing fertility disorders and also a way far much better possibility than adoption. As infertility rate is rapidly increasing day by day in the urban area so this method could very useful in curing these types of problems.

From this method of having a legal child gives courage to the intending couples that **'SURROGACY IS HOPE.'**