

“Surrogacy-An Ebullience Through The Seraphic Wombs”

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ABSTRACT:

Surrogacy is often perceived as a labor of love. Nothing in the world is as divine as making babies which enlivens the lives of couples who are unable to reproduce on their own though the baby is delivered by a virtual stranger in general practice. Surrogacy is often chosen by the intending couple for fighting infertility. What arouses one’s interest is the issue of surrogacy, numerous pregnancies, etc. The Choice of a donor or a surrogate in today’s era is not something very effortless as it is a quite idiosyncratic process. Surrogacy is a well-known practice surrounded by sundry perturbing questions within its ambit itself. Today the interplay of the practice of surrogacy with that of human rights is observed to be a righteously leading-edge issue. With the new piece of legislation “The Surrogacy(Regulation) Bill, 2019 there are various debating questions coming up one such question being “ whether the provisions of the bill are a direct attack on the fundamental rights of women or not?”. The new bill urges to impose an embargo on commercial surrogacy thereby permitting altruistic surrogacy which is a welcoming one to few in the society. This article throws a light upon the hair-raising as well as scary provisions of the newly passed “Surrogacy(Regulation) Bill, 2019 and how it is debated as an onslaught on the fundamental rights assured by the Indian Constitution.

KEYWORDS:

Surrogacy, Infertility, Constitution.

INTRODUCTION-SIGNIFICANCE OF SURROGACY AND ITS TYPES:

The most influential aspiration that exists in almost all surviving creatures is the inclination of motherhood as propagation is always thought of as an ultimate purpose of creatures which could be very well understood by scrutinizing the ancient records of the Vedic Literature of India itself. Surrogacy in simple terms according to the Black Law dictionary is nothing but the procedure of bearing a child and delivering in place of another person¹. So, when does this procedure become significant? This becomes a very notable option for the couples facing infertility as we live in a country where Infertility is continuously seen as a social stigma. One question that pops up in every citizen’s mind is whether we are living in a country that is serving as a mother destination for commercial surrogacy?

¹ R.S Shamra, Social, ethical, medical & Legal aspects of surrogacy: an Indian scenario, INDIAN JOURNAL OF MEDICAL RESEARCH, (Nov, 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4345743/>.

When looking into the types of surrogacy in India, there are two general types of Surrogacy namely the natural or traditional surrogacy and gestational Surrogacy. There are even arrangements of commercial and altruistic surrogacy practiced in India just like how the same is witnessed in other countries. When it comes to commercial surrogacy it is noteworthy that the practice is not something that is restricted only to medical circles. The primary distinguishing factor between both is that in the case of altruistic surrogacy the surrogate is not paid any wages² on the other hand Commercial surrogacy is all about the compensation and the contract they enter into.

THE SURROGACY(REGULATION) BILL, 2019-THE PATHWAY OF CONSTRAINING “REMUNERATION FOR WOMBS”:

The Surrogacy(Regulation) Bill, 2019 was introduced in the Loksabha in the month of July 2019, the same was passed by the Lok Sabha in the month of August, and by the month of November 2019, it was referred to a select committee. Dr, Harsh Vardhan the Minister of Health and Family Welfare in India introduced the significant Surrogacy(Regulation) Bill, 2019 in the Loksabha on July 15, 2019³. As elucidated by the bill Surrogacy is nothing but the procedure by which a woman gives delivery to a child for a couple with an object to hand over the child to the intending couple after its birth⁴. The peculiar feature about the bill is that it imposes a prohibition on commercial surrogacy with the main object of constraining the illicit commercialization of surrogacy thereby avowing altruistic surrogacy for the citizens of India and it also insists that only the couples who are married for five or more years can opt for it. Regulation of surrogacy in the country ensuring the protection of rights of both the child as well as the surrogate could be led by setting up boards by the States as well as Union Territories⁵. The bill has laid down various welcoming measures in terms of implementation in its various chapters such as Chapter I deals with the definitions part of terms such as who is referred to an abandoned child, altruistic surrogacy, clinical establishment etc, whereas Chapter II deals with the embargo and regulation of surrogacy clinics with Chapter IV elucidating its registration(The application for Registration must be in such form and manner as prescribed and shall also be accompanied by the prescribed fees and the same should be made to the appropriate authority) and Chapter III of the

² Kim Bergman, Altruistic motives for Commercial Surrogacy: It's not commoditization, GROWING GENERATIONS, (March 12, 2019), <https://www.growinggenerations.com/surrogacy-resources-for-intended-parents/altruistic-vs-commercial-surrogacy/>

³ The Surrogacy(Regulation) Bill, 2019, PRS LEGISLATIVE RESEARCH, <https://www.prsindia.org/billtrack/surrogacy-regulation-bill-2019>

⁴ The Surrogacy(Regulation) Bill, 2019, PRS LEGISLATIVE RESEARCH, <https://www.prsindia.org/billtrack/surrogacy-regulation-bill-2019>

⁵ Rajya Sabha: Surrogacy Regulation Bill 2019 Introduced, DD NEWS, (Nov 20, 2019, 8:50 am), <http://ddnews.gov.in/national/rajya-sabha-surrogacy-regulation-bill-2019-introduced>

Surrogacy(Regulation) Bill, 2019 deals with the most hair-raising part of regulation of surrogacy and the procedures which outlines the consent of the surrogate mother(it is mandatory that the surrogate mother must be informed of all the side effects and the effects which she will be facing after giving birth), number of embryos to be implanted and embargo of abortion(No surrogate mother except with regard to the conditions prescribed shall be compelled to abort at any stage of surrogacy by any clinic or organization etc). Boards such as surrogacy boards at National and State levels are laid down in Chapter V. The National Board shall be set up by the central government by notification in order to perform the functions and to exercise powers conferred on it. On the other hand, the State Board and the Union Territory board shall be constituted by the states and the Union Territories having legislature conferring upon it the powers and functions which shall be discharged by the boards respectively such as review, monitoring, etc. The bill also provides for the appointment of appropriate authority both by the central government and the state government. The bill also provides for various offenses and penalties in relation to the general transgression of provisions laid down by the act and instances when the commercial surrogacy is originated or brought into the picture. Under the new piece of legislation imprisonment up to ten years with a fine that may extend to one million in Indian Rupees could be imposed on anyone who intends to advance or execute commercial surrogacy⁶.

AN ONSLAUGHT ON THE RIGHTS OF WOMEN? EXAMINING THE REGULATION OF SURROGACY IN INDIA:

With the effect of Surrogacy(Regulation) Bill, 2019, the commercial surrogacy industry is observed to be at the hem of dropping the curtain which was once considered to be a huge business making platform. The most striking feature of the bill is with regard to the surrogate who needs to be the close relative of the couple. With the various provisions of the bill being highlighted above, this piece of legislation is also debated to be discerning couples who are elder, people who are unmarried, LGBT Community members etc as the attributes of the bill explicitly hampers the practice of surrogacy to the heterosexual couples only who are married within the ambit of rigid age ranges(26 to 55 years of age in case of a husband and 23 to 50 years of age in case of a wife, while the surrogate being married should be rigidly between 25 and 35 years of age)⁷. Article 21 of the Indian Constitution assures personal liberty which within its compass also includes the liberty of every individual to form their own reproductive choices.

⁶ Shonotra Kumar, India's Commercial Surrogacy ban is an assault on Women's rights, THE WIRE, (Nov 9, 2019), <https://thewire.in/law/surrogacy-ban-assault>

⁷ Shonotra Kumar, India's Commercial Surrogacy ban is an assault on Women's rights, THE WIRE, (Nov 9, 2019), <https://thewire.in/law/surrogacy-ban-assault>

This includes their right to bodily integrity and dignity as well. It has been accentuated by the Supreme Court Of India as well that the right to reproduction makes an elemental part of the right to life which is assured under Article 21 of the Indian Constitution. Thus when the reproductive choices of women are halted by the actions of the state, the very fundamental rights of the women are seen to be infringed. It is noteworthy to observe that it is not just Article 21 that has been breached by the provisions of the bill but also the very right to equality assured under Article 14 of the Indian Constitution. The screed of injustices just goes a big line. A cataclysm of views come to the front when sifting on the concept of surrogacy in different countries. There is no similarity or uniformness when it comes to the laws guiding surrogate birth in different countries as only a few nations espy this concept of surrogacy itself. The question as to whether surrogacy is legal or not varies from country to country. Countries such as France, Spain, Germany, Italy, etc forbids all forms of surrogacy that are witnessed. Whereas in countries like Denmark and Belgium etc surrogacy is authorized but no payment is made to the surrogate mother except for equitable expenses. Some states of the United States acknowledge Commercial Surrogacy to be legal⁸.

CONCLUSION:

Though the Surrogacy (Regulation) Bill, 2019 is recurrently exalted to be a brand-new piece of legislation commanding a ban on commercial surrogacy in India, it is at the same time debated to be a tory piece of legislation which includes hair-raising prying provisions. One cannot forget of this includible fact that the procedure of surrogacy for years has been a favorable fount of income to many women chiefly those who are coming from a very underprivileged or economically weaker background though this concept of surrogacy is seen to be scrupulously half-baked and eccentric to a few in our country. This does not mean that there is a dearth of dereliction in commercial surrogacy has its own omnifarious malpractices as well. Like every coin has two sides, there are two sides to this brand-new piece of legislation as well as attracting both the strong points and demerits.

⁸ Helier Cheung, Surrogate babies: Where can you have them, and is it legal?, BBC NEWS (Aug 6, 2014), <https://www.bbc.com/news/world-28679020>