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Surrogacy Regulations

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ABSTRACT

This research project deals with the regulations, legality, and problems of surrogacy in India. One of the significant application of assisted reproductive technology is surrogacy, in which a woman bears a child for another couple. It has developed into a vital medical service for couples who are incapable of becoming parents on their own. Surrogacy is unpopular in many parts of the world due to the complicated social, potential benefits. India is well-known for surrogacy facility, it has passed the Surrogacy Regulation Act, 2021, which intends to outlaw commercial surrogacy and encourage selfless surrogacy for which there is no compensation other than the surrogate mother's medical costs.

The practice of surrogacy was first made public in 1980. and were authorized in India in 2002. However, as the year went on, the Government of India became aware of certain shortcomings and improper use of commercial surrogacy. In response, the Indian Council of Medical Research established some rules to stop the abuse of surrogacy. A number of changes were made to the bill as time went on. 2015 saw the outlawing of commercial surrogacy by the Indian government, which also prohibited foreign nationals, or NRIs, from engaging in the procedure. A 2012 UN survey said that India, also referred to as the Cradle of the World, was proclaimed the "World Capital of Surrogacy".

Keywords: *Surrogacy, Commercial Surrogacy, Surrogate Mother, ART (Assisted Reproductive Technology).*

I. INTRODUCTION

The word "surrogate" comes from the Latin word "Subrogare" which means "substitute," or "someone appointed to act in place of another." Accordingly, a surrogate mother is a woman who bears a kid either from her own egg or from the implantation of a fertilized egg from a different woman in her womb.

According to the Artificial Reproductive Technique (ART) Guidelines; surrogacy is an "arrangement in which a woman agrees to a pregnancy, achieved through assisted reproductive technology, in which neither of the gametes belong to her or her husband, with the intention of carrying it to term and handing over the child to the person or persons for whom she is acting as surrogate; and a 'surrogate mother' is a woman who agrees to have an embryo generated

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from the sperm of a man who is not her husband, and the oocyte for another woman implanted in her to carry the pregnancy to full term and deliver the child to its biological parents”

II. HISTORICAL BACKGROUND

Since ancient times, the practice of surrogacy has been mentioned. This method, which prevented an otherwise certain divorce, was permitted by Babylonian law and customs. In The biblical Book of Genesis tells the story of Sarah's servant Hagar becoming pregnant for her childless husband Abraham. The idea of surrogacy can also be found in Hindu mythology, where Balram, although born in Rohini's womb, is considered the elder brother of Lord Krishna and the son of mother Devaki. Reproductive services have been offered for a cost from middle age onward.

A lawyer named Noel Keane founded the first surrogacy agency in America in the late 1970s or early 1980s. He went on to establish numerous other organizations that complied with the regulations governing surrogacy arrangements. It is noteworthy that on October 3, 1978, in Kolkata, India, Kanupriya alias Durga, the world's second and India's first IVF (in vitro fertilization) baby, was born. This occurred approximately two months after the baby was born on July 25, 1978, in Great Britain. From this point on, we can see that the field of assisted reproductive technology is developing quickly.

III. CLASSIFICATION OF SURROGACY

Law distinguish surrogacy between:

- i. Traditional Surrogacy
- ii. Gestational Surrogacy

Traditional Surrogacy (where the surrogate is genetically related to the child)

- With traditional surrogacy, a genetic link that would not have been feasible with a donated egg can be created if the surrogate is related to one of the intended parents. Traditional surrogacy may provide the desired genetic link to intended parents who are a heterosexual pair, a same-sex couple, or a single male where the lady is unable to use her eggs.
- Traditional surrogacy might be the ideal option for intended parents who can't find an egg donor they prefer, don't want an anonymous donor, or want to lower their surrogacy costs.

Gestational Surrogacy (where the surrogate has no genetic connection to the child)

A surrogate mother carries the fetus and gives birth to the kid in a pregnancy in which the genetic mother donates the egg that is fertilized. In-vitro fertilization, or IVF, creates the embryo that is then transplanted into the surrogate mother. Since the surrogate mother is pregnant with the intruding father's sperm, she becomes both the genetic and gestational mother of the kid, who is a mix of the commissioning father and the surrogate mother, traditional surrogacy may be referred to as partially or genetically contracted motherhood.

IV. COMPENSATION FOR SURROGACY

(A) Commercial Surrogacy:

- In a commercial surrogacy arrangement, the surrogate receives payment in exchange for bearing and delivering the kid. Usually, a surrogacy agency or the intended parents arrange the payment with the surrogate.
- Beyond the payment of medical costs, the surrogate receives compensation in commercial surrogacy. In addition to paying for the surrogate's time, effort, and any related difficulties.
- Around the world, commercial surrogacy has different legal statuses. While some nations allow commercial surrogacy entirely, others might have limitations. Commercial surrogacy is prohibited in India.

(B) Altruistic Surrogacy:

Altruistic surrogacy is a type of surrogacy in which the surrogate receives no financial compensation for bearing the child other than what is necessary to cover her medical costs and other appropriate pregnancy-related costs.

Altruistic surrogacy is a surrogate agreeing to carry a child because she wants to assist another individual or couple in becoming parents. Only medical bills, travel expenditures, and other direct pregnancy-related costs will be covered by the payment.

Altruistic surrogacy is accepted and legally allowed in India. Compared to commercial surrogacy, altruistic surrogacy is universally accepted and legally allowed.

V. LEGISLATIVE AND JUDICIAL VIEW ON SURROGACY IN INDIA

ICMR GUIDELINES, 2006: The Indian Council of Medical Research (ICMR) released regulations for ART clinic certification, oversight, and control in India. The guidelines have established measures to protect surrogate mothers' rights. However, did not impose any restrictions on foreign nationals using these services or commercial surrogacy. Penalties and

offenses not specified as well

ASSISTED REPRODUCTIVE TECHNOLOGY(Regulation) BILL 2008: explains the physical infrastructure and labour requirements for ART operations in patient selection, surrogate mother, and donor in an infertility clinic. Records' confidentiality needs to be upheld. The surrogate mother, the kid, and the donors' rights and obligations were described.

DRAFTED REPRODUCTIVE TECHNOLOGY(Regulation) BILL, 2014: In 2012, a research by the Confederation of Indian Industry estimated that the Indian surrogacy market was worth \$2 billion per year. Additionally, it's suspected around 3,000 fertility clinics nationwide are engaged in this practice. Unethical practices that benefit brokers and commercial agencies, the exploitation of surrogate mothers, the abandonment of surrogate children, riots related to the organ trade, the importation of embryos, and other issues have been brought up by the unregulated surrogacy industry. To regulate the commercial surrogacy The law Commission of India, in its 208th report, recommended a ban on commercial surrogacy. In 2015 India banned surrogacy for foreign nations.

THE SURROGACY (REGULATION) BILL,2016: In 2016 the surrogacy regulation bill was introduced in Lok Sabha, but it was failed to be enforced and lapsed after the dissolution of parliament.

THE SURROGACY (REGULATION) BILL,2019: was introduced in the Lok Sabha on 15th July 2019 and passed by Lok Sabha on 5th August 2019.

THE SURROGACY (REGULATION) BILL, 2020: was passed by the Union Cabinet on February 26, 2020. Following the COVID-19 epidemic, the Bill was put on hold, but it was anticipated to be brought up as Bill 2021 in the Indian Parliament's lower house during the next session.

THE SURROGACY (REGULATION) BILL,2021:

According to the Surrogacy (Regulation) Act 2021, woman between the ages of 35 and 45 who has been widowed or divorced, or a married couple who is lawfully married, may undergo surrogacy if she has a medical condition that requires it. Additionally, it forbids commercial surrogacy and the law only allows altruistic surrogacy . Other than the prenatal care and medical costs, altruistic surrogacy does not include any financial payment to the surrogate mother. According to the bill, commercial is a crime that carries a maximum fine of Rs. 10 lakhs along with a 10-year prison.

RIGHTS AND OBLIGATION OF SURROGATE MOTHER:

- A legally binding surrogacy agreement must be signed by the surrogate mother and the couple or individual seeking a surrogacy using assisted reproductive technology.

Couple or individual seeking surrogacy is responsible for covering all costs, including insurance costs if applicable, associated with the surrogate's pregnancy obtained through assisted reproductive technology. These costs must be paid during the pregnancy and after delivery in accordance with medical advice, and until the child is ready to be delivered to the biological parent or parents in accordance with medical advice.

This Act prohibits any woman from serving as a surrogate mother for more than five successful live deliveries, including her own children. Only women who are over thirty-five years of age or less than twenty-one years of age are authorized to participate in this role.

Any woman who requests or accepts to be a surrogate mother must undergo medical testing for any infectious diseases that could harm the child's health. She must also provide a written disclosure of all of these conditions that throughout the previous six months, she has not received a blood transfusion

If the woman who wants to be a surrogate; is married, she cannot serve as a surrogate without her spouse's approval.

A woman who agrees to serve as a surrogate has an obligation to prevent herself from doing anything that might harm the fetus during pregnancy or the kid after delivery, at least until the infant is given to the intended person or people.

Only citizens of India shall be eligible to serve as surrogates, no ART bank or clinic may send or receive an Indian for surrogacy abroad.

VI. RIGHTS AND OBLIGATION OF INTENDED PARENTS

- A couple or individual may use a family, a known individual, or an unknown person as a surrogate mother. If a relative is serving as a surrogate, the relative and the woman seeking the surrogate should be of the same generation
- Through an ART bank, individuals or couples can hire a surrogate; however, the bank is not allowed to publish advertisements seeking surrogates.
- It is legally required of the person or people who used a surrogate mother's services to accept custody of the child or children, regardless of whatever abnormalities the child or children may have. Failure to do so will be considered as violation

- A couple or an individual may not use more than one surrogate at any given time.
- The simultaneous transfer of embryos into a woman and a surrogate is prohibited for a couple.
- All surrogate information will be kept private, and surrogacy-related information won't be shared with anybody outside of the Department of Health Research's central database until a court of jurisdiction issues an order.

VII. COUNSELLING FOR SURROGACY

Entire surrogacy agreement should involve comprehensive counselling for all involved parties. Individuals need to establish mutual trust and feel secure in their choices. The genetic couple and the intended surrogate need to talk about a number of things:

(A) For surrogate:

Prospective surrogates are typically asked why they wish to be a surrogate as part of the screening process. In addition, they receive counselling regarding the possible feelings they might have during the surrogacy process. They should also discuss potential outcomes and how to be ready for it. The importance of a strong emotional support system is usually emphasized at this stage.

(B) For intended parents:

A challenging emotional journey was experienced by numerous candidate parents before to deciding on surrogacy as their means of becoming parents. They might have experienced other challenges, such as infertility or miscarried children. It is imperative to allow personally to properly process these losses before proceeding with surrogacy. Parents may experience a range of challenging feelings during the surrogacy process, including a loss of control, a possible genetic tie being lost, anxiety of IVF failure, pregnancy issues, and more. Pre-surrogacy support and counselling with their professional should be provided to intended parents in order to help them prepare and deal with these feelings.

VIII. RELIGIOUS VIEW ON SURROGACY

(A) Christianity:

The Catholic Church, which holds that children are a gift from God and should be conceived and carried naturally by a married husband and woman, generally opposes surrogacy. But some Protestant groups might hold more progressive beliefs and be open to the use of assisted reproductive technologies as surrogacy.

(B) Islam:

Surrogacy is prohibited for the majority of Sunni Muslims. The Fikh Council's 1984 Mecca Fatwa permitted surrogacy, if the surrogate mother and the oocyte donor were both married to the same man; but this decision was declared invalid in 1985. certain scholars argue that using a surrogate is equivalent to adultery and that the child has no legal family, while others claim that surrogacy is an integral part of the belief that humans have the right to procreate.

(C) Jews:

Different Jewish groups have different views on surrogacy. While some Jewish people are not in favour of it, others might be, especially those associated with the Reform and Reconstructionist movements speaking out against surrogacy, some Orthodox Jews argue that it almost amounts to using women as slaves for the use of their wombs.

(D) Buddhism:

Since procreation is not viewed as a moral obligation, surrogacy is fully acceptable in this religion, and surrogacy is not seen as a sinful activity.

IX. SURROGACY AND LGBTQ+ RIGHTS

For many LGBTQ+ people and couples, surrogacy is a big part of their lives since it gives them the chance to have biological children. Numerous organizations and agencies that specialize in surrogacy support LGBTQ+ intended parents during the surrogacy process by providing individualized assistance and direction.

(A) Circle surrogacy:

Since 1995, this organization has assisted members of the LGBTQ+ community in becoming parents. They offer partnerships and strategic programs that focuses on the cultural and environmental concerns of the LGBTQ+ community. Circle Surrogacy places a strong emphasis on the value of both emotional and legal support during the surrogacy process.

(B) Sensible surrogacy:

The group emphasizes how crucial it is to pursue surrogacy in a nation where gay couples are supported by the law. When looking into surrogacy options abroad, it is advised to carefully assess the opportunities against any potential complications.

(C) Creative family connections:

Since 2001, this organization has been assisting LGBTQ couples or individual with surrogacy process. They actively engaged in the LGBTQ community and offer assistance and legal advice

to LGBTQ intended parents.

It may be necessary for same-sex couples seeking surrogacy to undergo further legal action in order to establish parental rights for the non-genetically related parent. In most cases, depending on the particulars and state legislation, this can be done through a pre- or post-birth order, stepparent adoption, or second-parent adoption. Overall, surrogacy has given many LGBTQ+ people and couples a route to parenting, and there are agencies and legal tools available to support them through the way.

X. SURROGACY LAWS IN VARIOUS COUNTRY

(A) Surrogacy in UK:

The UK allows surrogates to be paid solely for "reasonable expenses," indicating that surrogacy is permitted on an altruistic basis. Because of this, it is extremely difficult to find a surrogate in the UK. Fertility undergo surrogacy treatments abroad. In the UK, prospective parents are prohibited from publicizing their need for a surrogate and surrogates are prohibited from publicizing their availability. Since surrogacy services are prohibited by UK law from being profitable, there are no organizations that work professionally to match prospective parents with surrogates.

(B) Surrogacy in US:

In the US, the process of becoming a surrogate is complex and costly, involving agency fees, surrogate pay, legal fees, and fertility clinic medical expenses. The United States is renowned for its advanced infertility facilities and high success rates. Additionally, birth certificates containing the intended parents' names are automatically provided. However, surrogacy laws vary widely at the state level, with each state having its own regulations.

(C) Surrogacy in Canada:

In Canada, the practice of surrogacy is limited to nonprofits. Still, many clinics and "consultancies" evade the legislation because they are not strictly enforced by the government. Surrogate salaries are generously offered by clinics, which also frequently give commercial agency services. The Canadian government made significant announcements about surrogate payment reforms in 2019. A surrogate will only be compensated for costs for which she can provide a receipt as of 2020. This will decrease the financial incentive for possible surrogates and represents a significant change in the surrogacy landscape in Canada. For many clinics, obtaining a surrogate may become practically difficult under the new regulations.

(D) Surrogacy in Mexico:

Mexico became one of the few nations in 2021 where married, single, homosexual, straight, and international intended parents could legally use commercial surrogacy. Mexico was added to the list of nations where married, single, gay, straight, and international intended parents can legally use commercial surrogacy in 2021. Intended parents may now be named on their child's birth certificate as soon as the child is born in some states in Mexico.

(E) Surrogacy in Russia:

Legal surrogacy is available in Russia for heterosexual couples who have been diagnosed as infertile. In order to be considered for surrogacy in Russia, a couple must demonstrate that they are medically unable to become pregnant themselves. While heterosexual relationships are required for Intended Parents, Russia is unique in that marriage is not required for eligibility. This makes it possible for unmarried males to seek surrogacy in Russia by partnering with a "female friend" who is prepared to sign the surrogacy agreement and become the legal mother of the child.

XI. CONCLUSION

Thus, after examining the country's current legal system and judicial perspective on surrogacy, it is clear that in India a rising number of people believe that surrogacy clinics use unethical methods for acquiring clients in order to make large profits. A number of laws and regulations, has attempted to control surrogacy centers. Still, the government must take numerous actions to ensure that the regulations are properly implemented. Surrogacy clinics should be strictly monitored and subject to appropriate penalties. In the interest of the patient and the community at large, a controlled and moral surrogacy method is essential.

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