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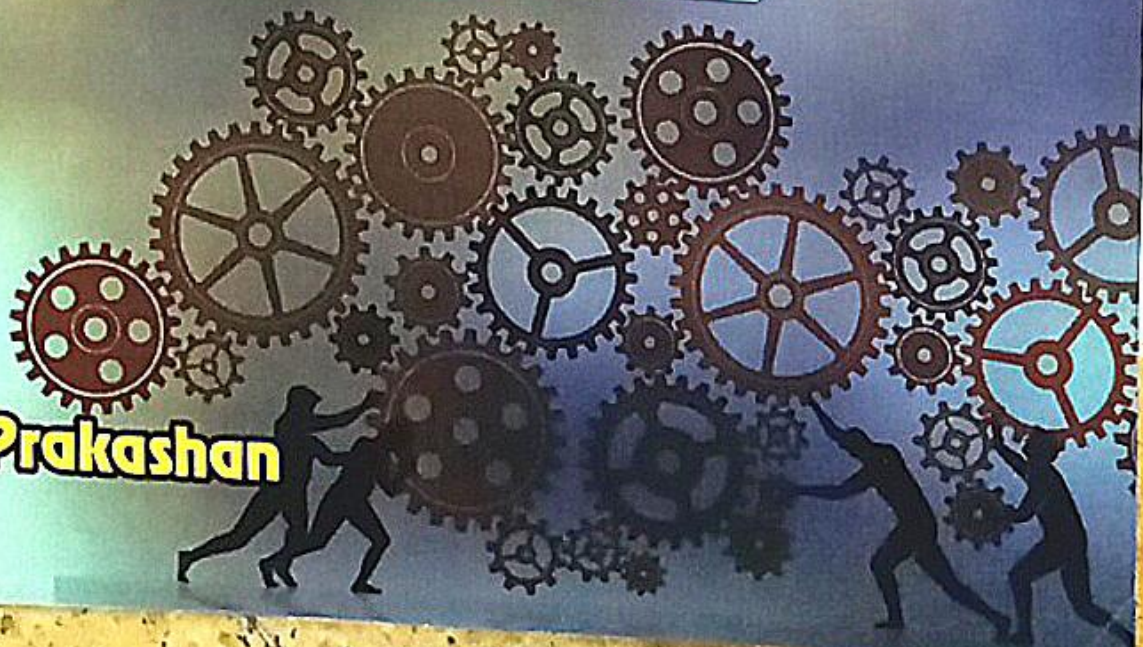
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15. Surrogacy and Women's Reproductive Rights in Global Era - Indian Current Perspectives

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Abstract

Surrogacy defines, to hold the child for the opposite lady who isn't capable of producing the one, because of various complexities. The key styles of surrogacy are Natural Surrogacy, Physiological state Surrogacy, Commercial Surrogacy and Altruistic Surrogacy. This paper talks on the concerned problems and women's right to reproductive in context of surrogacy in India. Surrogacy is a topic that is in talks from the traditional times and is been known to almost each societies of the globe. From which Commercial surrogacy, or "Womb for rent", may be a growing business in Asian country. In our speedily globalizing world, the expansion and exploitation of women in context of Surrogacy is increasing rapidly. Surrogacy business is exploiting poor girls and women in Indian country which already increases the high maternal death rate. Government should strictly enact laws to manage surrogacy and its related issues in India, so as to protect and guide couples moving into for such a choice without any foolproof legal framework.

Keywords: Surrogacy, Intended Parents, commercialization, Women rights, Surrogacy Bill.

Introduction

Nature has presented the beautiful capability to multiply a life among girls and each lady cherishes the experience of maternity. The desirousness of having children among couples is universal phenomenon. Parenthood may be a life dynamic and everlasting satisfying experience. The pain of not fulfilling the dream of Parenthood is immeasurable. The science of infertility treatment has increased rapidly. When two individuals move and enter into a marital bond, a new family comes into existence and such family becomes complete with the birth of a new child. However due to varied reasons, major section of the society are unable to give birth to a child. As per research report that one in six couples have such issues. The inability to give birth to a child is known as infertility in medical terms it may be a global problem. As per

the medical research reports the only solution for a childless couples was adoption which was in highly used in the country prior years. The advancement in medical science has come up with various options in Artificial Human Reproductive Technology, where in, Surrogacy has become the most popular solution to this medical issues. Surrogacy is an arrangement, typically supported by a legal agreement, whereby a lady agrees to become pregnant, carries the pregnancy for intended parents. There are few main types of surrogacy, gestational, traditional, commercial, Altruistic surrogacy where by -

- a. Gestational Surrogacy- The pregnancy results from the transfer of an embryo created by in vitro fertilization (IVF), in a manner so the resulting child is genetically unrelated to the surrogate. It also referred to as gestational carriers.
- b. Traditional Surrogacy - The surrogate is impregnated naturally or artificially, but the resulting child is genetically related to the surrogate.
- c. Altruistic Surrogacy - The term refers to an arrangement in which a woman volunteers to carry a pregnancy for intended parents without receiving any monetary compensation in return.
- d. Commercial Surrogacy - The term generally refers to any surrogacy arrangement in which the surrogate mother is compensated for her services beyond reimbursement of medical expenses.

Surrogacy is not a concept which is newly introduced; it is an old practice in all over the world. The legalization of surrogacy varies from country to country. Many countries like United Kingdom, Ireland, Denmark, Belgium, some US states, India, Russia permit the surrogacy in various manners. In India, the legislation has not done something on it from the purpose of legal context. The couples who don't seem to be endued with a baby go along with this concept however several people criticize it. The people, who are in favor for it, wish to legalize it.

Literature Review

1. CALLMAN JUDY; (1998) the author contends that as the times change and along with new technology so also ethics keep changing. So the society and the people change with time and technology. Assisted reproductive technologies including surrogacy are well accepted. But the requirement of the day is proper laws to handle them. Also this article speaks about counseling which is a very important part of all infertility treatment procedures. At present only few unlicensed organizations like COTS (childlessness overcome through surrogacy) which introduces the commissioning parents to the surrogates instead a formalized licensed government agency should replace such

voluntary agencies. Thus slowly but surely we have to move towards normalization of the process of reproduction through Assisted Reproduction Technology.

2. **Sujay Dixit, BA.LL.B(Hons in Corporate Law) Institute of Law, Nirma University-** In his studies revealed the significance of laws in surrogacy with reference to the The Law Commission of India has submitted the 228th Report on "NEED FOR LEGISLATION TO REGULATE ASSISTED REPRODUCTIVE TECHNOLOGY CLINICS AS WELL AS RIGHTS AND OBLIGATIONS OF PARTIES TO A SURROGACY."
3. The following observations had been made by the Law Commission:
1. Surrogacy arrangement shall continue to be governed by contract amongst the parties involved, which will contain or will be applying all the terms requiring the consent of surrogate mother to bear the child, agreement of her husband for the same and other family members for the same, medical procedures or formalities of artificial insemination, reimbursement of all reasonable expenses for carrying child to full term, willingness to hand over the child born to the commissioning parent(s), etc. But such an arrangement should not be for commercial purposes and it has to be implemented or adhered in a strict manner.
 2. A surrogacy arrangement should provide for financial assistance or support for the surrogate child in the event of death of the commissioning couple or individual, before delivery of the child, or divorce between the intended parents and subsequent willingness of none to take delivery of the child.
 3. A surrogacy contract should necessarily take care of life insurance coverage for surrogate mother in the future period of time to provide safety and security.
 4. One of the intended parents should be a donor as well, because the bond of love and affection with a child primarily generates from biological relationship at the prior stages. Also, the chances of various kinds of child-abuse, which have been noticed in cases of adoptions, will be reduced or may be lowered down. In case the intended parent is single, he or she should be a donor to be able to have a surrogate child. Otherwise, adoption is the way to have a child which is resorted to if biological (natural) parents and adoptive parents are different.
 5. The birth certificate of the surrogate child should contain the name(s) and other details if required of the commissioning parent(s) only supported by legal documents.
 6. Right to privacy of donor as well as surrogate mother should be protected and preserved strictly.

7. Sex-selective surrogacy should be banned or prohibited.
8. Cases of abortions should be governed by the Medical Termination of Pregnancy Act strictly.

Objectives of the Study

- To understand the concept of surrogacy with reference to women's role.
- To study about the legal issues under Surrogacy and women reproductive rights.
- The Challenges faced by women during surrogacy.

Methodology

Sources of data collection

Secondary data: It majorly consists the information collected from various sources like books, websites, journals etc.

This paper will discuss the questions concerning about major issues under Surrogacy faced by women. Here secondary data collections were done to know more about the India legislation with reference to Surrogacy, the Bill passed by the Lok Sabha.

The Challenges faced by women during surrogacy

The underlying plan behind surrogacy could be a noble one because it relies on the selfless principle or commercially too of doing well to others i.e. one girl serving to another woman. While going through this medical treatment of surrogacy, the surrogate women faces major challenges are as follows.

- Most Indian women act as surrogate mothers because of financial condition or different economic necessity. However, surrogacy technology might involve some complications and cause damage to the health and lifetime of the mother. This raises the necessary issue of liability for the damage caused or suffered by a mother.
- Right to dignity is one in every of the inherent and cherished rights of each human being. It was debated that surrogacy degrades the inherent dignity of a girl. Surrogacy involves the utilization of a woman's body for producing a baby which is later on handed over to the intended parents. Throughout the term of gestation, the female parent should abide by the conditions set down within the contract and has no right to take any decision affecting her body moreover the female parent should not develop any special bond with the growing child in her womb. Surrogacy totally degrades the dignity of a woman.
- Many articles stated that surrogacy is like prostitution,, because it involves the reproductive capacity of a girl and therefore the use of her body reciprocally for

payment of cash. Further it debated that the same as a prostitute has no control or any choice to abide by all terms and conditions which are put forward by intended.

Women with restricted economic suggests that in Indian country have majorly accepted this technique of earning fast cash and fulfilling the wants of the family. Thus, the presence of world class medical aid facilities and accessibility of low cost surrogate mothers have placed India at the forefront because the outsourcing destination for surrogacy. It leads to exploitation of poor women.

The involvement and attachment of surrogate mother who carries her baby to the term. The mother has to physically and emotionally detach herself from her child once it is born.

The legal issues under Surrogacy and women reproductive rights

The growing surrogacy developments in which girls conform to have their bodies undergo maternity and giving birth to a baby is changing into a significant issue of the twenty first century. Surrogacy is commonly remarked as "womb renting" whereby a bodily service is provided for a fee. It is being commercialized. It was observed that the practice of course of action of surrogates increases the complexity and controversy surrounding the implications for women's health and human rights. Since the surrogate has no biological relationship with the child, she has no legal claim and also the surrogate's name does not seem to be appeared in the birth certificate. In India no national regulation of surrogacy

A few of the various problems raised by surrogacy include: the rights of the child born by the surrogates; the (moral) and sensible ramifications of the additional commodification of women's bodies; the moral and ethical consequences of reworking a standard biological function of a woman's body into commercial dealings.

In surrogacy, the rights of the child are usually not considered. Transferring the duties and responsibility of parenthood from the giving birth mother to a contacting couple denies the kid any claim to its "gestational carrier" and to its biological parents if the egg and/or sperm cell is/are not that of the contracting parents. Additionally, the child has no right to information concerning any siblings he or she could have in the latter instance.

Findings were as follows

Surrogacy Bill 2016 finally passed by Lok Sabha

First Surrogacy (Regulation) Bill was introduced in 2016, which was finally passed by Lok Sabha, on 19 December, 2018. This bill states some norms to regulate surrogacy within

the country and has completely banned the commercial surrogacy, but allowing altruistic surrogacy.

The main aim of this bill is to safeguard girls from exploitation.

Indian Surrogacy Bill (Regulation), which the bill majorly includes:

- The Bill entitles solely to Indian Citizens voters to avail surrogacy; foreigners and NRIs
- Homosexuals and single parents are not allowed for surrogacy and couples who have already got child are also not allowed only intending couples that suffer from infertility
- Not for commercial purposes;
- Not for producing children for sale, prostitution or different kinds of exploitation
- The couple seeking surrogacy should possess a certificate of essentialness issued by an appropriate authority
- The bill is applied to any or all the states except Jammu and Kashmir
- As per the bill, women between the ages of 25 and 35 years will choose surrogacy and one girl can solely be a surrogate once in her lifespan
- The female parent should be a 'close relative' of the intending couple
- The couple seeking surrogacy even has some pointers. the women should to be age 23-50 and the man should be of age 26-55 and the couple should be married for a minimum of 5 years.
- The bill contains the availability of penalty and imprisonment if the person profaned the law.

Conclusion

Surrogacy ends up in an On-Going Discussion. Each differs in their views with others on this sensible issue. Surrogacy is a worth, promising treatment for infertility. It can potentially solve many intolerable difficulties that the infertile couples or their families face. Although initially frowned upon, evidence shows that the surrogacy arrangements are more acceptable now, than when it was first introduced. Therefore, there is a need in the changes in the attitude in decision making about surrogacy can also be seen in some countries, but there are still indications of the degree of divergence between discourse and the actual practice of different forms of surrogacy around the world. Social, ethical and legal problems all together are subject to major debates and disagreements in natural or partial surrogacy or genetically unrelated full surrogacy. Genetic gestation surrogacy may largely be free from social, legal and moral complications. It is a great choice of infertility treatment whether the couple wants their own

genetic baby, but it still requires more thoughts and discussion. It seems ironical that people are engaging in the practice of surrogacy when nearly 12 million Indian children are orphans. Adoption of a child in India is a complicated and a lengthy procedure for those childless couples who want to give a home to these children. Even during the course of 60 years of Independence have not given a comprehensive adoption of law applicable to all its citizens, irrespective of the religion or the country they live in as Non-Resident Indians (NRIs), Persons of Indian Origin (PIOs) or Overseas Citizens of India (OCIs). As a result, they resort to the options of an IVF technique or surrogacy. The Guardian and Wards Act, 1890 permits Guardianship and not adoption. The Hindu Adoption and Maintenance Act, 1956 does not permit non-Hindus to adopt a Hindu child, and requirements of immigration after adoption have further hurdles. There is a strong need to modify or change and make the adoption procedure simple for all. This will bring automatically, down the rates of surrogacy. Altruistic and not commercial surrogacy should be promoted. Laws should be framed and implemented to cover the grey areas and to protect the rights of women and children.

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