

Impact of Surrogacy on the Women's Health in India

Dr. Monika Mishra*

Assistant Professor, Apex School of Law, Apex University, Jaipur-303002 (Rajasthan)

Abstract - The human body is an incredible piece of engineering. The future of childbirth, which may include things like test-tube infants and surrogate mothers thanks to advances in reproductive and cloning technologies, will usher in possibilities in the sexual realm that were previously unimaginable. A woman who consents to get pregnant for the purpose of carrying and delivering a child for another couple or individual to raise is said to engage in the practise of surrogacy, which is a kind of assisted reproduction. It is possible that the intended parents will be acknowledged as the child's legal parents from the moment of birth in those countries that have legalised the practise of surrogacy. In India, the practise of commercial surrogacy, sometimes known as "Womb for hire," is a burgeoning industry. The rise of reproductive tourism is a phenomena that emerged relatively recently in our globe, which is in the process of quickly globalising. Poor women in countries like India, which already have an extremely high incidence of maternal mortality, are being exploited by the surrogacy industry. In the context of surrogacy, this study discusses concerns pertaining to paternity as well as the right of women to health. It is imperative that the government of India give serious consideration to passing a legislation to regulate surrogacy in India so that couples who choose to pursue this option can be protected and guided. Patients would always be misled, and the surrogates will be exploited, in the absence of a legal structure that is unassailable.

Keywords - Maternal mortality, Paternity issues, Surrogacy, Women's right to health

-----X-----

1. INTRODUCTION

The human body is a wondrous mechanism, yet much of its inner workings are still a mystery to scientists. There are now options in the sexual realm that were previously unimaginable due to recent advances in technology, such as the possibility of having children born from test tubes or via the use of surrogate mothers. Because any reproductive technique that replaces the conjugal act is a violation of the dignity of procreation, when human procreation is disconnected from sexual relation, the spouses can quickly become objects for sex. This is due to the fact that any reproductive technique that replaces the conjugal act is a violation of the dignity of procreation. It is becoming increasingly challenging to acknowledge the dignity in one another, particularly in the unborn child. 1 Despite this, however, scientific research and technological development have made significant contributions to the development of civilization. The reality of the matter is, however, that it does not adhere to any standards of morality and is fairly contentious. [1]

1.1 Meaning and Reasons for Surrogacy

As a form of surrogacy, a woman agrees to get pregnant in exchange for the right to parent a child born to someone else. Surrogacy can take two forms:

she can be the child's biological mother (the more typical method) or she can be used to carry an unrelated embryo. In antiquity, having another woman give birth to a kid for a couple to raise was commonly referred to as having the male half of the pair as the biological father. The only other choice for parents desiring a kid who is genetically related to them is surrogacy in some situations. 2 Latin "Subrogare" (to substitute) is the origin of the English word "surrogate," meaning "assigned to act in the place of." Those who accept to be a surrogate mother for the intended parents without receiving any financial compensation are known as altruistic surrogates. To put it another way, this is essentially a free surrogacy arrangement. If the intended parents choose to use commercial surrogacy, they can pay a surrogate in exchange for her services. [2] Surrogacy is contentious because people, governments, and religious groups dispute the morality of putting money in a child's birth through commercial surrogacy services. When a surrogate carries a child, there are a number of possible causes. Due to a woman's infertility or the fact that she has had several abortions, she may need a surrogate mother to carry her child through to term. In this case, the intended parents may arrange for the surrogate mother to bear their child. Even when a woman want to become a mother, she may not be willing to carry a child to term. It is common for the

agencies who arrange surrogacy for intended parents to assist them in dealing with the numerous medical and legal issues that arise during the procedure. [3]

1.2 Health Risks Associated with Surrogacy

While in India, surrogates are given no more than two embryos for their safety, surrogates are implanted with up to five embryos in order to maximise the likelihood of conception in India. Increased health risks for both the mother and the baby are a result of using too many embryos. Surrogate mothers are more likely to suffer from postpartum depression if the kid was born in the womb of the mother. Pre-eclampsia and eclampsia, urinary tract infections, stress incontinence, haemorrhoids, gestational diabetes, life-threatening bleeding, and pulmonary embolism are all issues that can arise during pregnancy, childbirth, and the postpartum period. A surgical delivery is more likely when there are several pregnancies. The risk of perinatal mortality, perinatal death, intrauterine foetal death, and newborn death is higher for a surrogate mother of advanced maternal age. Pregnancy-induced hypertension, stroke, and placental abruption pose a larger danger to the mother. A surrogate's body will experience adverse effects from whatever medication she is directed to take. As a result, the chance of an unpleasant response and other hazards associated with artificial insemination are increased in many of the women having the operation.

It's critical to think about the risks of a preterm birth, genetic disorders, and infections, all of which can increase the amount of time a new-born must spend in the hospital.

It is common practise for surrogate mothers to nurse their children for the first few hours or days after delivery. In the event of surrogacy, parents, on the other hand, encounter difficulties in commencing breastfeeding and developing a link between mother and kid.

Surrogates and adoptive moms who undergo induced lactation seldom produce the same amount of breast milk as a new mother in the days and weeks after delivery. Infant nutrition is a concern because of this.[4]

1.3 Social and Psychological Context of Surrogacy

Surrogacy's commercialization leads to a slew of societal issues. For many Indian women, who lack access to adequate health care and education, the financial benefits of surrogacy are a major motivating element in their decision to have a baby via gestational surrogacy. Because most surrogate moms come from lower-income families and their primary motivation is financial, the agents working for the commissioning parents are able to take advantage of them. Human relationships both within and outside of families suffer when people are forced to operate in a climate of secrecy and anonymity.

It is suggested that surrogacy should be prohibited for moral reasons because of its association with prostitution in society. Human rights violations include isolating surrogate mothers from their own families during the week and only allowing them to see them on the weekends. It's clear that surrogacy presents a wide range of ethical, legal, and psychological challenges, all of which must be addressed by law.[5]

2. SURROGACY AND WOMEN'S RIGHT TO HEALTH: INDIAN SCENARIO

Surrogacy is not a new phenomenon in India. Surrogacy for commercial purposes, sometimes known as "Womb for rent," is becoming increasingly popular in India. Customers are drawn to India by the availability of English-language services and the lower cost of such services.

From rural Indian women being pulled out of poverty to the dystopian nightmare of a developing nation baby farm, the future of surrogacy practise is predicted to be filled with both opportunity and abuse.

23 Whether these women are expressing their own personal rights or are coerced to become surrogate mothers owing to their mother-in-law's husband's desire to fulfil material and financial demands is difficult to discern in surrogacy in India.[6]

It is claimed by critics of surrogacy that the practise is morally equal to prostitution, and thus should be banned. It is "dehumanising and alienating" to sign a surrogacy contract since it denies credibility to the surrogate's perspective on her own pregnancy. 23 To avoid creating a personal attachment with the kid in her, the surrogate mother considers the pregnancy as solely a chance to make the much-needed money. Payment for physical services dehumanises the surrogate mother and uses her reproductive organs and capabilities to benefit the affluent..

Surrogacy outsourcing in India is in fact a degrading practise. If a surrogate mother experiences a delivery issue or is forced to terminate a pregnancy, there is currently no law in place to safeguard her. [7]

3. PUBLIC HEALTH RELEVANCE OF SURROGACY

Infertility can be alleviated by surrogacy and recombinant DNA technology (ART). By putting pressure on open markets and public sector service infrastructure to implement high-tech reproductive techniques without constructing the basic facilities that help prevent infertility, the current demand for these services distorts priorities in the organisation of health-care service providers There is no other option for the impoverished except selling their possessions or using the chance to make money by selling their reproductive potential. Women who are pushed into this procedure pose the greatest danger

to their health. About 10 years ago, fertility clinics in the United States became overrun with patients. For this reason, couples from other countries go to the United States in search of surrogate mothers, which has sparked the medical tourism industry. Private providers claim that these Indian institutions provide first-world amenities and quality at rates comparable to those of third-world nations. By limiting the number of testing and safety procedures in women to the minimal essentials, this can be achieved. Public health concerns concerning surrogacy in the current setting have been highlighted due to the high rate of prevalence and inadequate implementation of the ART Regulatory Guidelines-2005. 29,30 Most of the flaws and concerns stem from private ART clinics that are completely unregulated, with different pricing, regulations, and procedures, that prioritise profit over the needs of the majority in India. This means that the government is ignoring the need to avoid secondary infertility due to subpar obstetric services and the provision of basic assistance to cope with infertility treatments. To encourage medical tourism and surrogacy, the private sector has been allowed free rein to establish ART facilities across the country and internationally. [8]

4. A FREE CHOICE UNDER CONSTRAINTS

The freedom to make unfettered choices about one's reproductive life and body, free from the threat or experience of physical or psychological coercion, is an essential component of the right to reproductive autonomy. This mostly refers to the right to choose whether or not to have children, as well as when, how, and with whom to have them, as well as the right to have access to the availability of birth control options. The act of making one's body available for the use of another person may, from the point of view of reproductive rights, pose similar questions and concerns. This may develop into the right of an individual to dispose of their reproductive body in order to have (carry) a child – or not – even if the kid is going to be raised by another couple. Are women who participate in the surrogacy procedure voluntarily giving up their bodies or are they coerced into doing so by the government, males, or their own families?

4.1 Becoming a surrogate

Surrogates in India are often found via word of mouth; they may have a friend, family member, or neighbour who has served as or is currently serving as a surrogate in the past. There are both formal and informal surrogacy broker/agents engaged by the surrogacy clinics to find "desperate moms" for the clinics. The feminization of poverty has spread to India, which has not been spared. Although men are traditionally seen as breadwinners, they are no longer able to cover the family's financial demands on their own. Thus, women will have to support their families' incomes. Surrogate mothers tend to be low-income, illiterate, and typically live in slums; they may also be migrants or refugees; and they are often found in slum

regions. Surrogate mothers' husbands work in informal or contract positions, or they are unemployed. Consequently, Indian women's primary incentives for becoming surrogates may be connected to pressing necessities, settling debts, or purchasing a home. Surrogacy may become a "survival strategy" in the future. [9]

4.2 Financial and gender constraints

The option of becoming a surrogate mother might therefore present itself to Indian women as "the last reasonable choice to make money." According to Anne Donchin's research (quoted in Donchin 2010), just because someone sees working as a prostitute or a surrogate as a more desirable alternative to being jobless does not indicate that they did so of their own free will. Even though the CSR study evokes pressure from husbands to undergo surrogacy, the fact that this commitment is objectively motivated by financial constraints raises questions about whether or not surrogacy can be considered a free reproductive choice. Although surrogates appear to be making a subjectively free choice, free from coercion and violence, to enter into the surrogacy process, the fact that this commitment is motivated by financial constraints raises questions about whether or not surrogacy can be considered a free reproductive choice.

4.3 Controlled and supervised (reproductive) freedom

The act of surrogacy is frowned upon in India, and this prejudice is directed mostly on the surrogates themselves. However, Hinduism, which is the dominant religion in India, does not prohibit the practise of surrogacy. Islam and Catholicism, on the other hand, do. According to Benschushan and Schenker (1997), Buddhism does not prohibit the use of surrogacy. Despite this, there is a widespread belief in India, regardless of religious affiliation, that being a surrogate requires one to engage in sexual activity with a man who is not one's spouse or partner. In this respect, surrogacy may be compared to adultery or even prostitution, both of which are highly frowned upon in Indian culture, which contributes to the perpetuation of the negative connotations associated with this practise. Some feminists do make the comparison between surrogacy and prostitution, stating that whereas prostitutes sell their sexual powers, surrogates sell their reproductive capacities. Some people also compare surrogacy to the practise of exchanging babies or abandoning them.

4.4 Surrogacy as labour

Surrogacy, according to Amrita Pande, is a new form of labour since it is an activity that involves a "capacity to produce and reproduce" in order to generate revenue. We may learn more about the realities of women's lives by looking at surrogacy as

a new sort of labour, according to this theory. In addition, we may deconstruct the victim image that is often generated anytime bodies of third-world women are in focus by defining commercial surrogacy as labour, prone to exploitation like other types of labour, and by concurrently acknowledging the women as critical actors". One aspect of it is described as "the nasty task" by her. The term "dirty work" refers to any activity that may be viewed as demeaning, physically repulsive, or otherwise unpleasant to one's moral beliefs. Those questioned in Sama's documentary and by Sharmila Rudrappa indicated that they "transform pregnancy into a type of paid labour and the baby into a commodity" in order to draw this comparison between surrogacy and traditional labour. [10]

5. A MONITORED AND CLOSED ENVIRONMENT

A surrogacy arrangement does not provide the surrogate any decision-making authority. Surrogacy clinics and their intended parents work together to decide on the substance of the agreement, which clearly outlines the roles and responsibilities of both parties during the whole procedure. Surrogates are not permitted to negotiate or discuss the terms of the contract. The intended parents or physicians make all pregnancy-related choices under the terms of the surrogacy arrangement. They aren't permitted to make any decision about the pregnancy or the birth of the kid, including when or where to give up the child; and they have to give up all parental rights over the child. Only the names of the intended parents will appear on the birth certificate.

Surrogates are supervised throughout the whole surrogacy procedure and until the moment they give birth. It's important to note that married women who want to be surrogate mothers have to get their husbands' permission to do so. This produces a first type of dependency and dominance over their reproductive bodies: if their spouse rejects, they can't go through with it. A local guardian must be selected by the intended parents in order to take care of the surrogate during her pregnancy. During the whole surrogacy procedure, from the moment of conception until the time of birth, they are under the care of doctors or a medical team. [11]

5.1 Medical Issues with Surrogacy

As with any other pregnancy, a surrogate pregnancy carries the same medical risks as a mother-to-be. Included in this list are morning sickness-related nausea as well as other unpleasant symptoms including as weight gain, edoema, lower back discomfort, and heartburn. Gestational diabetes, hypertension, and damage to the reproductive organs are among the most significant adverse effects that might occur.

With every pregnancy, there is the possibility of a surrogate miscarriage or premature labour. Keep in regular communication with your doctor to minimise these risks, take your medicine as prescribed, get

enough of rest, and strictly adhere to their suggestions to avoid any problems.

5.2 Emotional Risks of Surrogacy

In addition to the physiological hazards of surrogacy, potential surrogates may face emotional issues. The emotional toll of surrogacy might be worse for some women than the toll of pregnancy because they will not be able to take their kid home with them after they are done.

You may be at risk for depression during and after the surrogacy procedure, just as with any other pregnancy. While you'll be overjoyed for the new parents, you may also feel some pain and loss following the birth of the baby. This is normal.

You should speak with a mental health professional, get surrogacy counselling, and set expectations for post-birth contact before you ever get pregnant. These sentiments are why it is so crucial.[12]

6. CONCLUSION

In India, the act of having a child through surrogacy is purely based on a contractual understanding between the parties involved. Because of this, extreme caution needs to be exercised when drafting the agreement to ensure that it does not violate any laws. Some examples of things that need to be taken into consideration include the reasons why the intended parents choose to have a child through surrogacy, the characteristics of the surrogate, the type of surrogacy, whether or not paternity is mentioned in the agreement, the establishment

Legislation was created by the Indian government in 2008, and an ART regulatory draught bill was ultimately framed in 2010. The measure has not yet been passed and has not been introduced in the parliament. It is necessary to have an appropriate discussion and debate about the proposed law in the context of the legal, social, and medical considerations.

As a result, we have arrived at the conclusion that the Indian government should give serious consideration to creating a legislation to regulate surrogacy in India. This would safeguard and guide couples who are interested in these types of possibilities. Without the creation of a watertight legal framework, couples would unavoidably be led astray, and surrogates will be taken advantage of.

REFERENCES

1. van Zyl L, van Niekerk A. Interpretations, perspectives and intentions in surrogate motherhood. *J Med Ethics* 2000;26:404-9. Available from <http://www.jme.bmj.com.laneproxy.stanford.edu/cgi/content/full/26/5/404>. [Accessed on 2012 Nov 4]. Kevin T. The ethics of surrogacy contracts and nebraska's

- surrogacy law. Vol. 41. Creighton Law Review; 2008. p. 185-206.
2. Commercial surrogacy and fertility tourism in India, The Case of Baby Manji, The Kenan Institute for Ethics at Duke University. The case studies in ethics. Available from <https://web.duke.edu/kenanethics/CaseStudies/BabyManji.pdf> [Last accessed on 2012 Nov 14]. Jacobsson B, Ladfors L, Milsom I. Advanced maternal age and adverse perinatal outcome. *Obstet Gynecol* 2004;104:727-33.
 3. van den Akker OB. Psychological trait and state characteristics, social support and attitudes to the surrogate pregnancy and baby. *Hum Reprod* 2007;22:2287-95.
 4. Jadva V, Murray C, Lycett E, MacCallum F, Golombok S. Surrogacy: The experiences of surrogate mothers. *Hum Reprod* 2003;18:2196-204
 5. Kimbrell. *The Human Body Shop: The Engineering and Marketing of Life*. New York: Harper San Francisco; 1993. p. 101.
 6. Honjo, Arai S, Keneko H, Ujiie T. Antenatal Depression and Maternal-Fetal Attachment. *Psychopathology* 2003;36:304-11.
 7. Surrogate mothers. American Fertility Society. *Fertil Steril* 1994;62:71s-7.
 8. Jacobsson B, Ladfors L, Milsom I. Advanced maternal age and adverse perinatal outcome. *Obstet Gynecol* 2004;104:727-33.
 9. Serratelli A. Surrogate motherhood contracts: Should the British or Canadian model fill the U.S. legislative vacuum? *George Washington J Int Law Econ* 1993;26:633-74.
 10. Brahams D. The hasty British ban on commercial surrogacy. *Hastings Cent Rep* 1987;17:16-9
 11. Available from: http://www.nt.gov.au/justice/policycoord/documents/polcoord_surrogacy_consultationpaper.pdf. pdf#search=%22Surrogacy%22. [Last Accessed on 2012 Nov 5].
 12. Singh KK. Human genome and human rights: An overview. *J Indian Law Inst* 2008;50:67-80.

Corresponding Author

Dr. Monika Mishra*

Assistant Professor, Apex School of Law, Apex University, Jaipur-303002 (Rajasthan)