

COMMERCIAL SURROGACY IN INDIA

ABSTRACT

The research paper aims to make the reader aware of one of the major yet lesser-known issues prevailing in our country – Commercial Surrogacy. The paper plans to instigate a spark in the reader to make him/her aware of the issue which is undergoing numerous changes. The paper starts with the history of surrogacy – from the origination of surrogacy and its prevalence in ancient times to the contemporary world. The article provides an insight into surrogacy and different types of surrogacy that have been practised in earlier times. It goes on to give a detailed explanation of the steps involved in the process of surrogacy. The paper highlights the importance of Artificial Reproductive Technology (ART) and In Vitro Fertilisation (IVF). These are the advancements that enable an infertile couple to have the opportunity without going for surrogacy. The paper then discusses the drawbacks of surrogacy and the plight of surrogate mothers. The changes were made in the year 2008 with the introduction of Assisted Reproductive Technology Bill (ART Bill), 2008. The final bill successfully came in 2017. In addition to this, the paper analyses the newly introduced Surrogacy (Regulation) Bill, 2019, and summarising the features. It then goes on to do a critical analysis of the recent bill passed by the Lok Sabha and forwarded to the Select Committee. The paper talks about the merit and the demerits of the bill without any bias towards any side. The author then provides some recommendations for the present bill highlighting spheres/places where the bill can be amended before concluding the paper.

INTRODUCTION

Surrogate Parenting is a process in which the commissioning parents make the legal agreement with a woman to give birth to a child for them. The parenting rights remain with the commissioning parents. It is called as ‘contract pregnancy’. One of the major problems that hinder the joy and happiness of married couples is Infertility. What is the meaning of the term ‘Infertility’? When a married couple fails to conceive a child despite having timed sexual intercourse over a period, they are termed as infertile. Infertility neither has a territorial restriction nor it is a gender-based problem. The problem of infertility can be observed in one of the most developed countries like the USA to one of the fastest developing nations like India.

Infertility is briefly divided into two categories – primary infertility and secondary infertility. Primary infertility refers to couples who haven't been able to conceive a child from the past one year even after timed and controlled sexual intercourse. Secondary infertility refers to couples who have conceived a child once but aren't able to conceive again. There are no conclusive reasons for infertility. However, poor lifestyle, depreciated hormonal levels, etc. can be attributed as the causes of infertility. Usually, one does not require medical aid for the diagnosis of infertility, thereby meaning it can be self-diagnosed.

The data collected by the Indian Society of Assisted Reproduction (ISAR) states that nearly 27.5 million couples actively trying to conceive suffer from infertility in India which is 10 % - 14 % of the entire population of the country¹. Nowadays, there are various treatments available to treat and increase the chances of conceiving a child. These, generally, include hormone treatment, medication, fertility drugs, and at times, surgery to increase the chances of conceiving a child. In addition to all the medical treatment, there is another way through which a couple can have a chance of conceiving a child and that is Surrogacy.

HISTORY AND ORIGIN

The word 'surrogacy' is derived from the Latin word "Subrogate" which means "to substitute".² Surrogacy is an age-old practice which is still in practice to date. Several references have been made in the western culture and the Indian culture as well. It was first cited in "The book of Genesis"³ in the story of Sarah and Abraham. Sarah and Abraham were not able to conceive a child of their own and they turned and looked up to their servant Hagar to be the mother of their child. This was the first mention of surrogacy in biblical times and simultaneously written in the bible⁴. This practice is been followed for quite a time now which goes back 4000 years ago or even more. Similarly, the idea of Surrogacy can be found in the mythological tales of *Mahabharat*.

¹ Neeta Lal, *India's Hidden Infertility Struggles*, THE DIPLOMAT (13 May 2018), <https://thediplomat.com/2018/05/indias-hidden-infertility-struggles/#:~:text=According%20to%20the%20Indian%20Society,suffer%20from%20infertility%20in%20India>, accessed on 15th Jan 2021

² Malini Karkal, *Surrogacy from a feminist perspective*, INDIAN JOURNAL OF MEDICAL SCIENCE (Oct 1997)

³ Author unknown, *The book of Genesis*- the first book of the Hebrew Bible and the Old Testament

⁴ Grayee P. Storey, *Ethical Problems Surrounding Surrogate Motherhood*, YALE, <https://teachersinstitute.yale.edu/curriculum/units/2000/7/00.07.05.x.html>, accessed on 13th Jan 2021

The practice of surrogacy has come a long way undergoing several changes – the introduction of technologies, and finally, in 1978, the world's second and India's first IVF (In Vitro Fertilisation) baby Kanupriya alias Durga was born in Kolkata on October 3rd.⁵

So, to summarise everything till now, Surrogacy is an arrangement where a woman agrees to bear the child for another person or persons who have failed to bear/conceive a child.

SURROGACY – A LIFELINE FOR THE UNFORTUNATE

The life is not equal for everyone. Everyone in this world had and are still struggling because of one reason or the other. Though, the pain cannot be compared and how much some one has suffered but to not get the opportunity to experience parenthood is really unfortunate for anyone. It forms a very important part of life with an never-before-experience. Therefore, Surrogacy comes to the aid of such people to give them a chance to fulfil their dream of becoming parents. Surrogacy means 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 to carry it to term and hand over the child to the person or persons for whom she is acting as a surrogate.⁶ In the earlier times, altruistic surrogacy was prevalent. However, with developments over the time, it is seen as an opportunity in the economic sector to earn money. This resulted in huge cash inflow and simultaneously, surrogacy was also promoted as it was beneficial to all the parties involved in the agreement like it is said in the surrogacy field - *'the barren gets a baby, the broke gets a bonus'*.

There are four different types of surrogacy, namely, traditional, gestational, altruistic, and commercial respectively. These different types of surrogacy are similar yet distinctive.

Traditional Surrogacy refers to a process where a surrogate woman gets artificially inseminated with the father's sperm.⁷ She then carries the baby and delivers it for the prospective parents. So, the surrogate mother is the biological mother of the baby.

⁵ Sanchari Pal, *Denied Recognition, This Path-Breaking Doctor Created India's First Test Tube Baby*, THE BETTERINDIA (30 March 2018), <https://www.thebetterindia.com/129159/subhash-mukherjee-doctor-india-first-test-tube-baby/>, accessed 03 June 2020

⁶ Assisted Reproductive Technologies (Regulation) Bill 2010, Indian Council of Medical Research(ICMR), Ministry of Health & Family Welfare, Govt. of India

⁷ The National Infertility Association: "Surrogacy," "Myths about Surrogates." , <<https://www.webmd.com/infertility-and-reproduction/qa/what-is-a-traditional-surrogate>>, accessed 17th Dec 2020

Gestational surrogacy is a process where the eggs from the biological mother are made to fertilize with the sperm of the biological father in an artificial environment. The resultant embryo is then placed in the uterus of a gestational surrogate⁸. The surrogate, then, carries the baby until birth. She doesn't have any genetic ties to the child because it wasn't her egg that was used. This process is better known as In Vitro Fertilisation.

Altruistic Surrogacy refers to surrogacy agreements where the surrogate does not receive monetary compensation. In most altruistic surrogacy agreements, the surrogate is a close relative to the intended parents (family member/close friend).

Commercial Surrogacy refers to an agreement which includes a pre-determined monetary compensation that is given to the surrogate mother. The intended couple or parents are also required to cover medical expenses, food expenses, etc.

The main focus of this article is going to be commercial surrogacy. Surrogacy emerged as the point of discussion when it was discovered that the cost in India is comparatively less than the western nations. This process is accompanied by lesser legal formalities in India. Therefore, Indian markets observe a huge inflow of foreign couples because of its feasible cost and lesser legal complications making India the Hub for Surrogacy.

Different countries have different laws governing surrogacy. Some countries regard Surrogacy as illegal, while countries like India have allowed only for altruistic surrogacy. These regulations have an impact on the amount of money that a surrogate mother earns.

Before 2002, India was carrying out a huge number of unregulated surrogacies. There was a major shift in the Indian market as the Government decided to bring a series of changes in the present market structure. The Government of India brought a draft of the National Guidelines for Accreditation, Supervision, and Regulation of ART clinics in 2002. However, the draft got approved only in 2005, which is three years after the proposed draft. About 3000 clinics were set up to moderate the process of surrogacy.⁹

There are three parties to a legal agreement for surrogacy – prospective couples, clinic authorities, and surrogate mother. Initially, there is no real data to calculate the inflow of cash

⁸ Reviewed by Traci C. Johnson, *Using a Surrogate Mother: What You Need to Know*, WEBMD, <https://www.webmd.com/infertility-and-reproduction/guide/using-surrogate-mother#1>, accessed 29th Nov 2020

⁹ Nita Bhalla; Mansi Thapliyal, *India seeks to regulate its booming surrogacy industry*, *Medscape Reuters Health Information*, (30 September 2013), accessed 07th Jan 2021

but with a study backed by The United Nations (UN) which was carried out in 2012, it has been estimated that India was earning a revenue of about \$400 million¹⁰.

There was another reason behind India becoming a hub for surrogacy. The willing surrogate mothers saw this as an opportunity to earn money by lending the womb. The cost of a surrogate mother is around ₹3000/month and ₹200000 after childbirth.¹¹ The amount paid to the surrogate mothers ranged according to the age of the surrogate mother. The younger the woman, the more money she was paid as she can bear more children as compared to those who are elder to her. However, with such unprecedented demand for surrogate mothers, it opened the gates for corruption and unaccountable bribe.

Generally, a contract is entered into, as per statute, by the commissioning parents before they can undergo the process. Here, comes the role of middlemen who act as the mediating party between the parents and surrogate mother. Women who volunteer or act as a surrogate mother are not literate enough to understand the legal formalities and consequences. Hence, they do not bother to get into such issues and rely upon the middlemen for the same. The cost involved in the process is majorly spent on the medical expenses of the surrogate mother and the clinic's fees.

The embezzlement of money and corruption takes place at this stage. The clinics started to perform operations without writing down the contract. This allowed both the middlemen and clinic authorities to extort money from the couples. The illiteracy narrowed down the remedies available with a surrogate mother. More often than not, these women who volunteer are not given adequate health insurance which paved the way for unfathomable exploitation.

¹⁰ Nita Bhalla; Mansi Thapliyal, *India seeks to regulate its booming 'rent-a-womb' industry*, REUTERS (Sept. 30, 2013, 2:01 PM), <https://www.reuters.com/article/us-india-surrogates/india-seeks-to-regulate-its-booming-rent-a-womb-industry-idUSBRE98T07F20130930>, accessed 31st Dec 2021

¹¹ Natalia Alvarez, Romina Packan, *Surrogacy laws in India – Cost, Process & Requirements*, BABYGEST, (30 September 2019)

SURROGACY PROCESS¹²: IMPORTANCE OF IVF AND ART

Surrogacy is a long process and it requires both time and money. The entire process is divided into five steps-

DECIDING TO OPT FOR SURROGACY

The most significant step while going for surrogacy is the first. This step revolves around making up of mind by the intended parents and surrogate mother. The prospective couple should be well aware of the laws prevailing in the country where they intend to have the baby (if they are going for surrogacy in a different country from theirs). The surrogate mother must voluntarily give her consent because neither the parents nor the surrogate can opt for abortion at the later stage. In addition to this, they should know all the pros and cons and the risks associated with the process. The process is not only limited to the parties of the agreement but also someone who is not yet a part of it – unborn baby.

FINDING A SUITABLE SURROGATE MOTHER

The second step is majorly concerned with finding the right and suitable surrogate mother. This process is undertaken by the clinical agency. They provide a variety of options to the prospective couple and they are supposed to choose a surrogate mother as per their financial capacity and preference. The cost of surrogacy is usually decided at this stage.

FULFILLING LEGAL FORMALITIES

The third step is to initiate the process and fulfil the legal formalities and sign up the surrogacy agreement. This agreement states all the necessary information such as the name of the prospective couple, the name of the surrogate mother, the clinic that is going to aid in the entire process, the amount to be spent on the medical expenses of the surrogate mother during the period of pregnancy and the amount to be given to the surrogate mother after the baby is born. Generally, this agreement is laid down so that neither of the parties can gain an advantage.

¹² SURROGATE, <https://surrogate.com/surrogates/becoming-a-surrogate/the-six-steps-of-the-surrogacy-process/>, accessed 23rd Jan 2021

BEGINNING OF THE PROCESS

Here comes the essential part of the entire process. This step revolves around Artificial Reproduction Technology (ART) which aids in the infertility treatment. One of the most common and safest options under this is In Vitro Fertilisation or IVF.

In Vitro Fertilisation is a long process and can extend to several months in some cases. Sometimes, the process works in the first attempt but it could even take more rounds to get pregnant through IVF. The process of IVF is divided into several stages. The first step is to take medications as prescribed by the doctor. This is done to mature the eggs and make them ready for the process of fertilization. It is suggested to get repeated ultrasounds and blood tests to monitor hormonal levels and to prevent any side effects if any.

Then, comes the second step of the process. Once the eggs are matured for fertilization, the doctor calls the patient for the process known as *egg retrieval*. Here, the doctor performs minor surgery and takes the fully matured eggs out of the woman's body. The eggs are taken to a lab where the matured eggs of the wife and sperm of the husband are fertilized under supervision. This process of mixing the sperm with the eggs is called *insemination*. In cases, where the sperms have low motility (which doesn't swim well) are directly injected into the eggs.

Once the embryo is developed, the preparations are made for embryo transfer. After 5 days or so, the embryo is put back into the wife's uterus. Pregnancy happens only if any of the developed embryo sticks or attaches itself to the lining of the uterus.

There is a possibility that the patient may experience certain side effects such as :

- Cramping
- Mood swings
- Headache
- Infection
- Bleeding
- Allergic reaction to the medicines, etc.

The only difference between IVF and Surrogacy is the person who bears the child. In the case of IVF, the child is placed in the uterus of the biological mother meaning she is bearing her child whereas, in case of surrogacy the same process is carried out by the surrogate mother so appointed/chosen by the prospective couple.

WELCOMING THE BABY

After 9 months of pregnancy, the baby is born and taken up by the biological parents of the baby, and the remaining amount is paid to the surrogate mother and the clinic for the services and facilities offered throughout the process.

DRAWBACKS OF SURROGACY

There are various drawbacks of surrogacy such as low literacy rate, surplus supply, an insatiable hunger for money, etc. which result in unlimited exploitation of surrogate mothers. A very insensitive approach takes place behind the closed doors as many failed to notice the shortcomings of the face value the process offers.

The first and the foremost is the exploitation of these poor and illiterate women by the middlemen and clinics who act as a mediator between them. The illiteracy amongst these women renders them helpless to understand such complicated legal agreements. The clinic authorities manipulate by promising them the given amount in return of acting as a surrogate mother. Most of the time, this incentive influences them to agree in consideration of some quick cash which they can use to support their families.

There cannot be enough appreciation for the kind of work these women carry out for others. However, this noble work which started with the motive to help the unfortunate gets overshadowed by the greed of money in the long run. With more female members in their family, they persuade the young girls to enter into this practice. Though this may not sound wrong but influencing someone without their free consent is violating human rights. It violates human rights in the sense of Right to Life. The term "Right to Life" should not be interpreted in the literal sense alone. It also extends to making free choices out of the free will. The law has failed to protect the inalienable rights of the minors.

Surrogate mothers are devoid of proper medical care and healthcare insurance. The living conditions and accommodation provided is occupancy for about 8-10 mothers at a time. Generally, this period for the pregnant mother is very important as she is fragile and a lot of changes are going inside her body. This results in both physical and mental changes. This might not only affect the health of the pregnant woman but affect the health of the unborn child as well.

Moreover, the amount paid to them by the clinic authorities is less than what is quoted to them. The authorities charge a huge amount from the prospective parents, retain a major share of it with themselves, and giving the rest to the mother. They are offered a minimal amount of money after the baby is born excluding the medical expenses incurred by the clinics during the period of pregnancy. They are more often than not manipulated for a big amount and denied the same at the time of payment. Even if they follow up for the same, they are told to come at a later date or given an excuse for such small earnings.

There are many cases where the prospective parents have first commissioned for the birth of the baby but later on, denied taking the baby for medical reasons or trivial issues. This leaves the baby fighting for its survival. There have been several cases where the couple had left the baby behind. One of the instances is where the Australian couple who had left the baby in India.¹³

There is no conclusive answer to the whereabouts of the baby question. The baby is either left on the street to die, or the baby is given up for adoption or the baby is sold in the human trafficking market or the baby is killed. These are all the possibilities that entail the disownment by the intended couple.

JUDICIAL INTERVENTION

The obstacles don't end here, the next major problem that arises is to give the baby back to its biological parents. The law has remained silent on the aspect when there arise inter-personal issues between the couple and they decided to go for a divorce. There have been cases in the past where government intervention was required. A similar case was brought before the Supreme court of India in 2008.

In the case of *Baby Manji Yamada v. Union of India*¹⁴, 13 SCC 518, the baby (Manji Yamada) was born to an Indian surrogate for a Japanese couple. During the period of pregnancy or surrogacy, there arose a conflict between the couple and they decided to go for separation. This separation didn't only impact the lives of the couple but also put the future of the baby at a greater risk. The Japanese government denied the baby access to enter the country. All of this

¹³ This is one of the known cases where the Indo-Australian couple had denied to take the child with them, Aarti Betigeri, 'Where is Dev, the child born through surrogacy but left behind by his parents (*Scroll*, 29 September 2016) <<https://scroll.in/pulse/817116/where-is-dev-the-child-born-through-surrogacy-but-left-behind-by-his-parents>>, accessed on 02 June 2020

¹⁴ *Baby Manji Yamada v Union of India* [2008] 13 SCC 518

had a huge impact on the baby as it was now left without any guardian. It was now upon the court to decide regarding the custody of the child. There existed no past precedents and the law wasn't flexible and didn't state the way out for such issue. Finally, the Supreme Court of India, the Indian Government with the help of the Japanese government was able to get a visa on Humanitarian grounds and the Government of India could issue a travel certificate. The custody of the child was given to the mother and was allowed to travel to their home country.

This case allowed the country to introspect its prevailing laws and introduce more flexibility. So, another major issue discovered was the post-pregnancy problems which need to be addressed.

In another case of *Jan Balaz v. Anand Municipality and Ors.*¹⁵, AIR 2010 Guj 21, a prospective German couple wanted to go for surrogacy in India. The process was successful and the German couple was blessed with twins. However, it is seen that Surrogacy is illegal in Germany. So, the baby will not be legally recognized in Germany. The matter reached the Supreme Court which requested the Central Adoption Resource Agency (CARA) which is an autonomous body under the Ministry of Women & Child Development. It dealt with inter-country adoption and it was successful in making an exception for the twins. Subsequently, permission was given on humanitarian grounds and the twins could fly back with the German couple.

Apart from domestic shortcomings, there are problems at the international level where one country has legalized the process, while the native country of the parents strictly prohibits the same. Hence, one thing that could be concluded is that the legal norms in our country were not flexible enough to deal with all the possible issues that might arise before, during, or after the surrogacy is completed.

SURROGACY (REGULATION) BILL, 2019¹⁶

A ray of hope provided to the prospective couple seems to diminish in 2015. The Indian government brought in changes to the commercial surrogacy practised in India. The government has introduced some restrictions which made it difficult for prospective couples to

¹⁵ *Jan Balaz v Anand Municipality and Ors.* [2010] AIR 2010 Guj 21

¹⁶ Surrogacy (Regulation) Bill, 2019 was introduced on 15th July, 2019. Lok Sabha had passed the bill in the same year on August 05

have a baby in India. The Indian government was eyeing to make the process of commercial surrogacy illegal. It took 2 long years of discussions and debates in the House of People (Lok Sabha) to pass the bill.

The newly introduced bill seemed like a misfortune for prospective couples and surrogate mothers than an opportunity for happiness. The bill had curbed a lot of options and the leap of faith was no more to be seen. This bill is introduced as it was observed that there are various illegal clinic that are functioning in India as a Surrogate clinic for the purpose of surrogacy.

Some of the highlights of the bill are:

- The commercial surrogacy in India now stands illegal
- Commercial surrogacy cannot be practised anymore and only altruistic surrogacy is allowed
- No prospective couple from any other country except India are eligible
- The infertile couple should have been married for the last 5 years
- The couple needs a doctor's certificate mentioning that the couple is infertile
- Women acting as surrogates aren't allowed to perform the role more than once
- A woman acting as a surrogate has to be a close relative of the intended couple
- The surrogate mother should be married and have a biological child
- Ban on single parents, live-in couples and homosexuals

The changes brought a new age of surrogacy in one of the largest hubs for surrogacy. Apart from India, several other countries like Thailand, Nepal, etc. have banned surrogacy in their respective nation. These changes had a major impact not only on the surrogate mothers but also on the revenue that was earned by India by way of commercial surrogacy.

SHORTCOMINGS OF SURROGACY (REGULATION) BILL, 2019

The new bill has been criticized by the public and the experts for numerous reasons. It was anticipated that the bill will bring several regulations eradicating the past and the present problems but it has so far been unsuccessful in doing that. The bill has failed to resolve the past issues persisting in the country but has also posed new challenges.

LACK OF SURROGATE MOTHERS

As per the new bill, commercial surrogacy is seeing a dead end on its future but at the same time, it has opened gates for another type of surrogacy i.e. Altruistic surrogacy. Altruistic surrogacy refers to a situation where the surrogate mother is willing to bear the child for the prospective couple and not persuaded by want of money. It is the relatives of the couple or a close friend that act as the surrogate mother. This is a decrease in the number of surrogate mothers.

This implies that now only those women who are a close relative of the prospective couple will be acting as the surrogate mother with the said conditions. These prerequisites are conditional on the willingness of the married close relatives. The reduction in surrogate mothers has a huge impact on the entire market. The nature of the surrogacy might have been replaced but the number of surrogate mothers has taken a hit.

The low count of surrogate mothers not only hampers chances of the prospective couples getting an opportunity to become parents but simultaneously puts a dent on the earning of these poor women.

Another viewpoint that comes into picture is the social problem of patriarchy. The male section of the society is given a superior status as compared to a woman. It is seen that the primary role of a woman in the family is to reproduce and extend the lineage. On similar lines, there is a possibility that the elderly who still carry the typical patriarchal mindset may force the female members to act as a surrogate for her relatives. The female members of the family are now vulnerable to exploitation.

EXCLUSION OF VARIOUS SECTIONS OF THE SOCIETY

Another major backlash of the bill is that it failed to include various sections of society who have equal right as a human being to become a parent and enjoy the parenthood irrespective of their status, gender, colour, sexual orientation, etc.

It is wrong and unjustified to exclude someone based upon their marital status. The life of human beings is full of uncertainty and at times it can be unfortunate and harsh for some. Someone losing his/her spouse right after the marriage or someone who is not willing to marry is entitled to equal rights to enjoy the parenthood. In this case, going for an altruistic surrogacy is not the best option available as there are far more latent effects. People won't be willing to

severe their present ties with the close ones in exchange for living their dream of entering into parenthood.

Secondly, the exclusion of couples based on their sexuality is another unjustified ground. There are a lot of people who are coming out about their sexuality and several successful marriages are happening all around the world. The sexuality of a person has nothing to do with parenting and shouldn't be denied this right on the same basis. Homosexual couples possess all the qualities that a heterosexual couple possess. Moreover, it is seen that a single father or a single mother do equally well, then why not two of the same gender.

Lastly, live-in couples aren't included in this ambit. This again seems to be unreasonable on various grounds. The live-in couple who aren't married can't be declared as bad parents or inferred the same. Marriage is only an institution that doesn't force or isn't a mandatory thing to enter into. It is up to one's own free will whether they want to enter or not. If both the partners and their respective family doesn't find any problem in it, then impositions of such restrictions of such nature are meaningless. Anything but just a tag of marriage doesn't ensure that the parents aren't right and capable to raise a child.

Henceforth, all of these sections of the society should be included as they all deserve to be. The government should bring about amendments in all the required sections in the above-mentioned bill. This will help to reinstitute a ray of hope in the bleak future of the unfortunates.

HUMAN RIGHTS VIOLATION

Another prevalent issue is that law is ineffective in providing any solution for the gross human rights violation that takes place without any accountability. The exploitation of young girls by coercing them to go for surrogacy is a violation of human rights. The inalienable rights that every human being is entitled to cannot be done away with. The surrogate mother should be free while giving consent or consenting to act as a surrogate mother.

Generally, young girls are forced into this practice who have achieved puberty recently. These young girls do not possess enough knowledge to understand the side effects of the drugs and medication given to them. The consent given by them is solely placed on the belief that their known relative will not be advising or forcing them to do something wrong. Coming from a poor background, they don't mind to undergo such treatments. The amount paid to them for their contribution is negligent in comparison to the type of work they are doing. This used to be the case when Commercial surrogacy was in practice.

With the introduction of the new guidelines, this exploitation is now shifted to the female members of the family. The female members of the family are compelled to uphold the orders of the elderly. Moreover, to prevent themselves and their family from being disrespected, they unwillingly decide to go for surrogacy. It is not uncommon that every family wants a son to continue their lineage. However, such perception is prevalent in the narrow-minded and patriarchal families. This concept is now fading since the idea of equality have started to gain importance. However, this remains speculation and merely a possibility and inconclusive at present but it can be ruled out that such a situation will not happen.

RECOMMENDATIONS

The bill though has tried its best to curb problems by imposing severe punishments on the offenders but has failed to rectify the past mistakes completely. There is a lot of scope and areas where the bill could have aided and covered all the various sections of the society but has fallen short of it. This bill has had a more negative impact on all the parties as compared to the goods it is doing to them.

The bill did well on some grounds such as prohibiting to leave the baby born by way surrogacy. It also imposes stricter punishment on those who first consent to have a baby but then deny to accept if the baby is found to have genetic defects. The government has tried to put an end on these self-centred people whose personal interests are more important than the newly born child.

The government has also tried to regulate the market and take control of the inexplicable exploitation and to some extent have successfully introduced some provisions to keep it under check. Here, this bill has successfully passed but the inability to rectify past mistakes has put the government on the receiving end and consequently have to face the brunt.

The non-inclusion of various sections of the society by denying them an equal opportunity without reasonable justification is something that could have come out in a better way and continue to uphold the essence of article 14¹⁷ of the Constitution of India. Article 14 of the Constitution of India reads as, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on

¹⁷ The Constitution of India, Article 14 – Equality before law

grounds of religion, race, caste, sex or place of birth". But it cannot be seen that nothing of that sort has happened. This is one point where the government can amend its provisions and provide the necessary relief needed.

In addition to this, imposing restrictions on the type of surrogacy to be performed have affected the surrogate mothers to a large extent who were solely dependent on this to earn their livelihood. Moreover, the replacement of commercial surrogacy with altruistic surrogacy has many latent shortcomings that are not prima facie visible. The lesser number of surrogate mothers not only affects them but the consequences of the bill have hampered the chances of the infertile couple to become parents.

Moreover, the bill instead of having flexible legal norms have provided for stricter reforms which make it difficult for the present Indian couples who are infertile to avail the opportunity to become a parent and have a chance to live the parenthood.

The bill could have been more people-friendly by including all the sections of society. Secondly, the bill could have flexible norms for those who want to have a baby through surrogacy. Lastly, the bill could reinstate surrogacy along with altruistic surrogacy and have stricter implementations of law.

CONCLUSION

The problem of infertility has one of the major hindrances in the life of a married couple. Surrogacy has come out to be one of the most successful options besides adoption to overcome the problem of infertility. Surrogacy is an age-old practice that has gone under several changes and is now being practised with several technological advancements that aid the entire process more efficiently. With traditional surrogacy more prevalent in the biblical and mythological stories has now been replaced by commercial surrogacy in modern times. Commercial surrogacy has not attracted customers in India but has had a wide coverage on the international level as well. With Artificial Reproductive Technology (ART) into play, IVF has assisted in a harmless and successful surrogacy. Commercial surrogacy in the year 2002 has gained its prime importance and the markets got fame at an ever-increasing speed.

With a lot of attention and inclusion of several parties, it opened gates for an unaccountable corruption. With greed for money in the minds of the clinic authorities and an easy way of earning some bucks led to the poor surrogate mothers' consent in exchange for whatever minimal amount they got. Commercial surrogacy had though acted as a ray of hope for many resulted in the exploitation of those who gave the same hope. It brought smiles on the faces of the unfortunate but brought destruction on the other.

With the introduction of a new surrogacy bill in place, there was a sense of anticipation that the bill might rectify the past problems and come up with better solutions to end the plight of these poor women but in vain. Though the bill did bring some useful provisions to prohibit the illegal acts of human trafficking and abortion, etc. but yet it failed to exhibit a sense of equality by making certain sections of the society ineligible for surrogacy.

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