



A Study On Indian Surrogacy Scenario With Contradictions Of Legal Aspects In The Current Era

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Abstract

Surrogacy is a very contentious subject that generates passionate arguments in feminist literature, particularly when it occurs in underdeveloped countries and is carried out by local women for affluent multinational persons. The purpose of this Research paper is to challenge commonly held beliefs using the tales and experiences of Indian surrogates themselves. The results suggested that surrogates satisfied the national standards' age and marital and family status requirements. The decision to become a surrogate mother was often made with the spouse. Its primary objective was to enhance the socioeconomic status of the family. Women have praised surrogacy as providing better working circumstances than their previous employment. They held firm opinions on the child and their employment. As surrogacy is connected with extramarital relationships, they reported encountering obstacles and social disapproval. In addition, they detailed a medical procedure over which they had little control, yet they made no objections. Overall, surrogates did not depict themselves as fragile women or victims, but rather as moms and husbands who were in charge of their own destinies. The reality of surrogacy in India encompasses contradictory characteristics, which we refer to as "paradoxes" in this study. First, although women have become surrogates in response to gender limitations as mothers and husbands, they have violated gender norms by doing so. Surrogates exploited surrogacy as a way of upward mobility for themselves and their children, despite the social perception of surrogacy as filthy job performed for survival. Lastly, despite the fact that surrogacy was structured to combat allegations of exploitation, surrogates were constantly dominated by the medical establishment and had no say in the surrogacy process. This reflects their everyday lives as women. Although the legal environment in India has evolved, surrogacy continues to challenge gender norms, particularly in other developing nations where the practise is gaining popularity.

Keyword: Surrogacy; paradoxes; India; Issues; Legal aspect.

Introduction

Surrogacy is a very contentious subject, particularly when it occurs in underdeveloped nations and is practised by local women for affluent multinational persons. In fact, it may exacerbate gender, economic, and racial disparities and contribute to the stratification of reproduction by rewarding the reproduction of wealthy people while "depriving or criminalising the mother-work of others." In the social science and feminist literature, there have been strong debates about transnational and commercial surrogacy, with the discourse concentrating mostly on choice, agency, and the commercialization of women's bodies and motherhood. For some feminist researchers, especially radical and materialist feminists, it is viewed as an economic necessity for impoverished women and is viewed as a kind of economic compulsion. In contrast, other feminists view it as a viable "reproductive choice" in a setting of poverty where women have few alternative options to improve their living situations (Rozée et al., 2020).

In 2002, India approved commercial surrogacy, which led to an upsurge in the demand for surrogacy among infertile and childless couples. Due to a lack of legal structure and regulation, India has become the surrogacy capital of the world due to strong demand from domestic and international couples. In 2005, the Indian Council for Medical Research (ICMR) developed a set of recommendations. The government of India outlawed commercial surrogacy in 2015, and foreign nationals were prohibited from participating. In 2016, the federal cabinet adopted the surrogacy regulatory law. Which allowed infertile married couples in India to utilise surrogacy services. The bill enacted in 2016 differed significantly from the bill passed in 2014. In 2015, the Indian government outlawed commercial surrogacy and prohibited participation by non-resident Indians (NRIs). The Surrogacy Regulation Bill was passed by the Union Cabinet in 2016, allowing only Indian married infertile couples to utilise surrogacy services. In a number of respects, the 2016 bill was different from the 2014 bill. Nonetheless, it continued to evade surrogacy legislation, and the Bill was not tabled in the Rajya Sabha. Subsequently, the Surrogacy (Regulation) Bill, 2019 was reintroduced in the Lok Sabha as a carbon copy of the Surrogacy (Regulation) Bill, 2016 and passed by the Union Cabinet to safeguard women who become an easy target for couples owing to their financial circumstances (S.Sinha, 2020).

Legalization of surrogacy varies from nation to nation. Numerous nations, including the United Kingdom, Ireland, Denmark, Belgium, some U.S. states, India, Russia, and Ukraine, permit surrogacy in one form or another. From a legal standpoint, the Indian legislature has taken no action on this issue. This viewpoint is supported by many who do not have children, however it is criticised by many others. People who support it want to legalise it so that everyone can experience the joy of having a child for the sake of future family and national growth. From ancient times to the present, at least one individual has advocated surrogacy, as determined by a researcher who examined a large number of papers and legal cases. Given the Draft Surrogacy Bill and the emergence of surrogacy as a multi-billion dollar industry, it is imperative to analyse commercialisation. Further, women's demands and preserving their interests is also the underpinning in this revolutionary constitutional age, (as most of the argument is concentrated on the morality of the process) (as most of the debate is centred on the morality of the process.)

Therefore, the issue of enabling commercial surrogacy should be thoroughly discussed. Some argue that women are finally recognising their commercially exploitable skills. What was once considered a social obligation, namely childbearing, can now be used to economically empower women. When sperm donors are compensated, why shouldn't women have the same ability to cash their checks? On the other hand, several researchers have discovered that commercial surrogacy is exploitative from a financial, emotional, ethical, and moral standpoint. Some have even compared it to prostitution since surrogates are exploited sexually for reproductive labour (D.RadhikaYadav and Pavan Kasturi, 2021).

This paper attempts to examine the numerous legal issues of surrogacy in India to determine whether it is a blessing or a curse in the Indian legal framework. There are several perspectives on the matter, including those of legal professors and legal researchers.

Materials and Methods

Research Techniques

The approach of study adopted by the researcher is analytic legal journals and legal treatises, including comparisons of numerous foreign laws with India's legal system. The manuals and guides related with law practices approach is also employed to obtain the research's conclusion. Primarily, a researcher use observational methods to observe data and verify his discoveries. We also attempted to compare the laws of other countries and the current situations of India with those of other nations, which would greatly aid in reaching the final conclusion and provide a better knowledge of the people's psychologies surrounding the issue of surrogacy. In addition, a comparison will be made between several landmark instances and works from different nations.

Data Gathering

The data gathered from many e-data sources are used for research studies. The data evaluations were conducted using Google Books, law papers, and numerous other personal studies, as well as library books.

Table 1- Data Analyzed by various sources of surrogacy.

(with year)	Data collection sources for study	
	law Papers Books	Personal Studies(Articles)

2009			
Primary	4	1989-1998	1996
Secondary	11	1969-1998	1989
Primary and Secondary	5	1988-1997	1995
2010			
Primary	5	1992-1999	1996
Secondary	9	1968-2000	1992
Primary and Secondary	4	1996-1998	1997
2011			
Primary	5	1992-2000	1997
Secondary	7	1978-2000	1995
Primary and Secondary	4	1992-2000	1998
2012			
Primary	5	1990-2001	1998
Secondary	8	1959-2001	1995
Primary and Secondary	6	1993-2000	1997
2013			
Primary	4	1988-2003	2000
Secondary	7	1979-2002	1997
Primary and Secondary	4	1997-2002	2000
2014			
Primary	6	1962-2004	1999
Secondary	7	1987-2003	1998
Primary and Secondary	5	1998-2002	2000
2015			
Primary	6	1992-2005	2000
Secondary	10	1939-2004	1996
Both	5	1998-2002	2001
2016			
Primary	7	1990-2006	2000
Secondary	11	1912-2004	1996
Primary and Secondary	6	1996-2005	2001
2017			
Primary	4	1999-2007	2004

Secondary	8	1982-2008	2000
Primary and Secondary	5	2000-2006	2003
2018			
Primary	5	2000-2008	2004
Secondary	9	1965-2009	2001
Primary and Secondary	5	2000-2008	2004
2019			
Primary	6	1997-2008	2004
Secondary	8	1963-2009	2002
2020			
Primary	5	2000-2008	2004
Secondary	9	1965-2009	2001
Primary and Secondary	5	2000-2008	2002

2004

Results and Discussion

Despite the fact that the financial aspect of surrogacy elicited unfavourable feelings toward the surrogate mother, many of our sources regarded the surrogate mother's actual act of assisting a childless couple as a noble gesture. This was the case despite the fact that the money side of surrogacy elicited negative feelings. Some people have a very high opinion of surrogate moms because they believe that they put themselves through a lot of emotional pain: "In society, a surrogate mother deserves our highest regard." She really deserves praise for selecting such a nice item to give. That needs to be acknowledged and accepted by society. I shall treat her with respect. The anguish and difficulties that she is going through for the entirety of her pregnancy, woman with a high socioeconomic background. Women and men of varying socioeconomic situations had the same perspectives, which were summarised as follows: "She has helped the childless couple by donating her baby; as a result, she has accomplished a good job and has done a kind gesture".

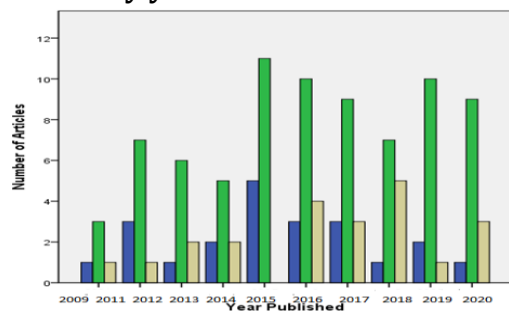
Indicators of surrogacy can be identified when it renders women incapable of becoming pregnant and giving birth. Major causes include frequent abortions, In vitro fertilisation failure, and several other medical conditions that render a woman infertile. Some individuals hold the opinion that surrogacy breaches the human rights of the person. There is child and surrogate mother exploitation. Peoples take advantage of this by selling infants and keeping the proceeds for themselves. The other form of exploitation is forced surrogacy or surrogacies that are carried out under duress. The surrogate women are utilised to produce children and are then forgotten. If these requirements are not met, the commissioning parents abandon the kid. This constitutes a breach of the rights of

children. These are the primary causes of human exploitation. Therefore, many individuals reject surrogacy for these reasons alone.

India's baby business is rapidly expanding; however it lacks sufficient regulation and rules/guidelines that must be followed universally across the country. If there is a breach of contract between the surrogate mother and the commissioning parents, there are no provisions. In its 228th report on Assisted Reproductive Procedures, the Indian Law Commission made pertinent observations on surrogacy. It was recommended that the surrogate mother should have life insurance and that, if nobody is willing to accept the kid, the infant should get financial help. In addition, it mandated that all abortions be controlled by the Medical Termination of Pregnancy Act of 1971 (34 of 1971). The surrogate agrees to sacrifice herself for the child and will always protect the child from risks associated with her behaviour, such as taking drugs that are not suitable for the body/drugs not prescribed by a doctor, smoking, and drinking alcohol, etc. Her husband must likewise abstain from sexual activity without a doctor's prescription. The surrogate also relinquishes in writing any parental rights to the surrogate kid (Saravanan.S, 2016). Fertility of Indian women who are interested in surrogacy has become a worldwide commodity, and the delay in passing legislation to regulate surrogacy is due to reproductive tourism, which produces foreign cash, in order to withstand the global economic downturn. However, this profit-driven effort to salvage the sector has failed to address a situation that deserves a greater level of care. Effective laws can prevent future exploitation and the creation of illicit markets, as opposed to outright prohibition. It is necessary to rouse ourselves from our slumber and adopt a new course consisting of severe regulatory and enforcement procedures (Parks. JA, 2016).

The government should create laws that are incompatible with basic rights and policies that appeal to the feministic mentality. To justify a blanket prohibition, it is necessary to assess the living situations of surrogates in light of the challenges they may confront. In the impractical "altruistic paradigm," a surrogate mother must endure the physical and mental consequences only because of "compassion." Thus, the "compensatory surrogacy model" where losses in terms of health, wages, sufferings, and mortality, etc. are covered by the intended parents must be investigated (A.Majumdar,2014). The results clearly show the Surrogacy on secondary data analysis.

Fig.1 Data published in yellow-law papers, blue - personal studies and green - books by years.



Conclusions

Surrogacy is fraught with social, ethical, legal, and technological complications. The topic of surrogacy has legal implications, but society as a whole must examine it as a social issue and deal with it in such a manner that our ethical principles are not compromised while at the same time we take use of the advancing technology. Governments must consider each stakeholder, which is vital when drafting such legislation. It must take into account the personal experiences of surrogates in order to develop the most ethically sound practises for surrogacy contracts.

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