



RESEARCH ARTICLE

Blessing and Trauma of a womb

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Abstract

Pregnancy is one of life's most untouchable personal experience which each women may experience in her life time .But all are not blessed with this experience and it is highly impossible to sense their pain .As a solution to this pain they can look for Advanced Reproductive Techniques (ART).Among all forms of ART ,“surrogacy” has emerged out as a light at the end of a very long tunnel .For surrogate mother it is a chance to do something truly extraordinary ,for a childless couple to have child ,forming their own family ,which is considered as a basis unit of society. Surrogacy is becoming a fast growing reality and with this the question arises when payment for this service is involved .Do we treat children born out of surrogacy as a commodity ,when a person who makes a living out of growing babies for others ,in violating the essential quality of creativity in this process. Even more problematic is the fact that the bond of marriage becomes confused when a second woman enters the process especially if she is a genetic mother .What happens if the surrogate mother or the commissioning couple changes their mind? What happens in the case of miscarriage? All this is dealt with in this Article.

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INTRODUCTION

Marriage constitutes the basis of social organisation and is considered as sine quo non for birth of child. The moment we make decision to have a child is momentous .But fulfilment of this decision is sometimes far away from some people. Change in the life style, poor nutritious diet intake etc are the reasons for increasing infertility rate in India. As science and technology develops we have solution also to deal with this problem of infertility. They can look for advanced reproductive techniques such as advanced infertility treatment, egg, sperm and embryo donation. Among all, surrogacy has emerged as a ray of hope. But the history of surrogacy goes back to the dawn of time .It was rarely spoken about and not documented. It was from Bible the first documented case of surrogate pregnancy comes, when Hagar, the maidservant of Sarah, lies with Abraham to bear a child for her infertile mistress. However, the first formal surrogacy agreement was not entered until 1976. It was in the year 1978 October 3rd the world's second and India's first IVF [In Vitro Fertilization] baby Kanupriya alias Durga was born about two months after the world's first IVF boy, Louise joy Brown born in Great Britain on July 25th 1978.since then the field of alternative reproductive technology has developed rapidly.

The word surrogate derives its origin from Latin word “surrogatus” denotes “substitution” that means appointed to act in the place of .A surrogate mother is a women who agrees to bear a child for a couple who want to have children but are incapable. There are two types of surrogacy, in which the first one is called as partial or traditional surrogacy .In this type the gestational mother is artificially inseminated with the sperm of the commissioning father. The surrogate mother is both the genetic and gestational mother of the child. Whereas in the case of Gestational surrogacy also known as Host surrogacy, the intended parents produce an embryo created by the process of In-Vitro Fertilization .In this case she is not a genetic mother; she is only the child's birth mother. This can be done either

gratuitous where she will be paid for a commercial transaction according to the agreement between the commissioning couple and the surrogate mother or Altruistic surrogacy where the surrogate mother agrees to undergo pregnancy for helping the couple as a service without any consideration.

Legality of surrogacy around the world:

Countries have different stances on surrogacy .Only a handful of nations recognising it. The first country ever to enact surrogacy legislation was United Kingdom whose main aim was to abolish commercial surrogacy. The Act passed was the surrogacy Arrangements Act 1985.A landmark year for surrogate mother's was 1986, with the 'Baby M' case in the Supreme Court of New Jersey .In 1984 William and Elizabeth Stern had contracted Mary Beth Whitehead to be the surrogate mother. When it came closer to the delivery date, she decided to void the contract and keep the baby, rejecting the money offered with the contract. Whitehead was arrested and brought to court where she claimed that the baby was her's.In the end ,the court concluded that surrogacy contract conflict with state public policy, but still permitted voluntary surrogacy ie.without any payment to act as a surrogate. In Canada commercial surrogacy arrangements were prohibited and altruistic surrogacy remains legal .In Japan the science council of Japan proposed a ban on surrogacy and said that the doctors, agents and clients should be punished for commercial surrogacy arrangements .In Italy, Germany and France all surrogacy is illegal whereas in Ukraine, some States in the United State and in India commercial surrogacy has been legal since 2002.

In recent years India has acquired the status of “surrogacy capital” with its reproductive tourism industry promoting surrogacy in India with an estimated amount at Rs.25, 000 Crore, promoted by over 2 lakh IVF clinics with websites offering wombs, sperms and egg .As Supreme court observed commercial surrogacy, reaching industry proportions, is sometimes referred to by the emotionally charged and potentially offensive terms like “wombs for rent”, “outsourced pregnancies “or “baby farm”.surrogacy packages, which is costly in Europe and United States are easily available in India in a cheaper rate that also makes India the surrogacy capital.

Legal and Ethical issues:

To deal with legal pre-requisites for a commercial surrogacy, there is no uniform law in India .For the time being guidelines for accreditation, supervision and regulation of ART, the Indian Medical Council of medical research issued guidelines. The draft bill contains 50 clauses under nine chapters .The Bill comprises some landmark stipulations. But these guidelines are silent on many issues and therefore prompt to exploitation.

The Bill acknowledges about surrogacy agreements and their legal enforceability. This will ensure that surrogacy agreements are treated on par with other contracts and the principles of the Contract Act 1872 and other laws will be applicable to these kinds of agreements. The question raises here is how come Indian Contract Act is applicable to surrogacy agreement, when the object and consideration of contract itself is unlawful. Section 23 of the Act states what is consideration and object. By going through this section 23 we will come to know that in surrogacy the consideration and object is unlawful as it is against public policy and immoral as the subject matter is of selling of babies for money.

It also provides that a foreigner or foreign couple not resident in India or a NRI individual or couple, seeking surrogacy in India, shall appoint a local guardian who will take care of the surrogate during and after pregnancy till the child is delivered to the foreigner or the couple or to the local guardian. These kinds of stipulation makes their condition more worse and unethical .It also violates Article 21 of the Constitution when these women are shifted into hostels for the whole duration of pregnancy which in a way deprives freedom of life which is embodied in Article 21 of our Indian Constitution.Once they are shifted to the hostel they have no right on decisions regarding their own body and life.

Another problem which is high lightening here is in India there are no provisions of psychological screening or legal counselling which is mandatory in USA. They have to know what they are agreeing to as pregnancy is the most dangerous time in a women's life. None of the surrogate mother knew how many embryos had been transferred or the complications of multi fetal pregnancy or fetal reduction. Clinics typically reduce the number of foetuses according to the commissioning parent's wishes .A lethal solution is injected into unwanted foetuses around week 10 of pregnancy. This is generally considered as safe but it causes a small risk of infection and loss of the remaining foetuses. By this again the surrogate mother only will be in loss as the amount they are getting will come to an end.

Further the Bill provides that the surrogate mother shall relinquish all parental right over the child. Here emotional issue comes into picture when the surrogate mother become attached to the fetus and is not ready to give up the baby when she gives birth .She may feel emotional distresses when she is not being able to see the child's development. Here the question arises is this how one promises something which is not in anyone's power to promise i.e., not to fall in love with her baby.

The Bill further laid down that a child born to a married couple or a single person through the use of ART shall be presumed to be the legitimate child of the couple or the single person as the case may be. One problem which will generate because of this provision is that the rich career oriented women who do not want to take the trouble of carrying their own pregnancy will resort to hiring surrogate mother. Not only this even lesbian or gays have child through this method which will go against the social organisation. Therefore it is of the view that commercial surrogacy be deleted.

Conclusion:

People are engaging in the practise of surrogacy when nearly million of Indian children are orphans. Adoption of a child in India is a complicated and lengthy procedure. Hence there is a strong need to amend and make the adoption procedure simple for the childless couple who want to give a home to these children will come forward and will bring down the rate of surrogacy. Altruistic surrogacy should be promoted for those who need their own blood. Law should be framed and implemented to cover the grey areas and to protect the rights of women and children. If not it will be a trauma of a womb.

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