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THE LEGAL AND ETHICAL BOUNDARIES OF PARENTAL RIGHTS IN SURROGACY ARRANGEMENTS

ABSTRACT

Motherhood is often seen as a profound milestone, bringing a sense of fulfilment to many women. However, not all women are naturally granted this gift, as infertility can arise from various factors, such as medical conditions, accidents, or a partner's reproductive challenges. Fortunately, advancements in science have provided a remarkable solution: surrogacy. Surrogacy, as contrasted with adoption, offers childless couples the opportunity to become parents through a biological connection to their child, which is a life-changing praising for those who are infertile. The longing and need to have a genetically related child are at the focal point of any the procedure. For individuals who are economically disadvantaged and struggle to sustain themselves despite available resources, surrogacy often becomes a necessity a means of livelihood. On the other hand, for those unable to conceive or have their own child, the profound desire for parenthood fuels the demand for surrogacy.

Keywords: surrogacy, necessity and desire, facing infertility, parental responsibility, biological identity

INTRODUCTION

According to Ellen DeGeneres, "the beneficial thing regarding carrying a newborn into the globe is the reality that one has the opportunity to start and grow a family that is formed on affection not just blood." In India, there has been plenty of discussion about foetal carrier arrangements, which involve a woman carrying and giving birth to an an egg on behalf of a couple or third party. Once a relatively unfamiliar concept, fertility facilitation gained prominence alongside advancements in technology for fertility treatments (ART). For many, childbearing assistance has been transformative, providing a viable path to parenthood that was previously unattainable. As reproductive procedures become increasingly accessible, a

growing countless people and spouses struggling with infertility are embracing surrogacy to fulfil their dream of having a child. While collaborative reproduction has brought immense joy to countless families worldwide, it also raises significant moral, ethical, legal, and societal questions that warrant thoughtful consideration and discussion. Parental surrogacy arrangement introduces a nuanced set of challenges and concerns as it transforms the natural process of reproduction into a structured contractual and, at times, commercial arrangement. These complexities play a significant role in shaping the evolving dialogue around surrogacy, encouraging deeper reflection on its ethical, legal, and societal implications.

However, this monetization course of action has given rise to notable ethical, legal, and socioeconomic obstacles. The adverse consequences of unregulated third-party reproduction have been brought to attention through growing updates of the exploitation of contractual mothers, inequitable contracts, and disagreements over guardianship. The Indian government has responded to growing concerns by introducing legislation aiming to safeguard the liberties and well-being of an embryo mothers, children conceived through gestational carriers, and authorised parents while focussing on the critiques surrounding these methods (Dadhich, 2013). The Surrogacy (Regulation) Act, 2021, which forbade commercial egg donation and promoted altruistic gestation, marked a significant change in India's position on embryo donation, and it has had a significant impact on the enforcement of parenting settlements. Significant negotiations regarding the entitlements and responsibilities of all parties have also been sparked by this new law. This new legislation has had a profound effect on the enforcement of parenting arrangements and has sparked important discussions relating to the privileges and responsibilities of all participants involved. A woman, commonly to as a human embryo contributor, formally commits to carrying an infant to term for expected families who seek the legal transfer of the child when it is born.

LITERATURE ASSESSMENT

This research undertook an in-depth review of existing literature, drawing on diverse sources to offer a comprehensive understanding of the topic. These were reports from administration and charitable organisations as well as books, legal texts, policy documents, and scholarly pieces from reputable academic journals. Additionally, media accounts, magazines, and printed publications were analysed to capture contemporary public discourse and societal viewpoints. This thorough exploration of multiple sources ensures a well-rounded perspective on the topic, encompassing both legal and social dimensions. The research incorporated an in-depth analysis of the legislative process, judicial decisions, and relevant legal documents to assess the evolving legal landscape surrounding the subject. Both print and digital sources were meticulously examined to ensure a thorough review of both historical and contemporary materials. This approach guaranteed that the study was firmly based on a broad spectrum of credible perspectives and data, offering a well-rounded and up-to-date understanding of the issue at hand.

The legal issues surrounding the role of a surrogate mother are explored by author Field Maratha in her book "The Legal and Human Issues." The laws pertaining to surrogacy are still being debated in several jurisdictions. The legal system governing reproductive problems is deemed insufficient, and the problem is said to be based on value judgements. The general public should be involved in tackling these complicated issues rather than just lawmakers, solicitors, or the judiciary. Maratha emphasizes the need for a range of perspectives to be

considered and adapted in order to better address the surrogacy process, along with the rationale to support these perspectives. In a similar vein to the ineffectiveness seen in the adoption process, prenatal contracts should be deemed invalid in the context of surrogacy. Additionally, following embryo donation, it is advised that the mother retain custody of her child without the need to prove to a judge that she is a more suitable parent than the biological father.

THE OVERARCHING AIM OF THE ARTICLE

Fostering an appropriate perspective on the ethical conundrums, pitfalls of law, and societal effects of unsuccessful conception in India is one of the main goals of this research. The present research proposes to look into substantial issues surrounding how different participant such as expected parents, medical professionals, artificial mothers, and legal authorities have shaped the embryo donation industry. It will specifically look at how societal attitudes, legal frameworks, and cultural norms interact to affect the practice and the moral dilemmas raised by surrogacy agreements. Understanding how surrogacy is viewed in Indian society will be the main goal of the study, which will also look at the ethical and legal aspects of gender roles, reproductive rights, and exploitation issues. Notable objectives are as follows:

- To examine the economic significance and impact of assisted reproductive technologies in today's global landscape.
- To gain an in-depth understanding of the functioning of India's embryo transfer industry and propose an enhanced framework for its improvement within the country.
- To outline the key roles and responsibilities of statutory, judicial, administrative, healthcare, and other sectors in relation to Indian infertility institutions, particularly in the formulation, interpretation, and implementation of surrogacy laws.
- To assess and compare the approaches adopted by other countries, identify the most effective strategies, and develop a tailored model that aligns with India's political-legal, sociocultural, and economic context.
- To propose various complementary treatments that can be used alongside, rather than as a replacement for, infertility therapies.

To accomplish the aforementioned goals, the range of this research has been concentrated on the legal aspects of reproduction as well as the associated social and ethical issues.

RESEARCH TECHNIQUE

The method of investigation used for this study mainly takes an approach based on scripture supplemented with experimental and data-driven research. These articles will integrate a dedicated focus on critical scenarios to expose deficiencies within contemporary legal scaffolding and their practical implications. A balanced perspective will be maintained, addressing contentious issues such as informed consent, potential exploitation, and the intricacies of parental legal status. By analysing these challenging topics, the study aims to provide a well-rounded principle for proposing reforms that harmonize ethical principles with legal certainty in reproduction procedures. The empirical data gathered from the literature review and various research texts was analysed and assessed, leading to conclusions along with practical recommendations and proposals. The study employed both archival and data-driven research methods, primarily relying on secondary sources of literature. In summary, the study adopted a doctrinal approach. It can be structured as follows:

- ***Researchers employing a doctrinal approach:***

The research employs a qualitative approach to critically assess the responsibilities of egg donation hospitals and emphasizes the necessity of regulatory advancements to enhance the well-being and empowerment of women. It also evaluates the impact of existing laws on women's circumstances, analysing whether these regulations have effectively achieved their intended objectives. Given the analytical nature of the study, a doctrinal methodology is adopted, grounded in logical reasoning and supported by secondary data.

Additionally, an instructive technique is used to methodically describe the several measures that have been put in place within this domain, offering a thorough viewpoint on the topic.

LITIGIOUS MATTERS AND VALUE BASED CONFLICTS WHILE UPBRINGING

I'm assigned to act as the surrogate, they say. It's her egg and his sperm. I'm just the oven. It's totally their bun." said by Phoebe Buffay

Innovative developments in fertility treatments, such as in vitro fertilisation (IVF), implanted insemination into the womb (IUI), and egg transplantation techniques, have completely changed the realm of sex therapy and fertility medicine. Yet, the inclusion of other parties in procedures like implantation of eggs has generated fundamental problems about society's moral, ethical, social, and religious norms, and it has thrown into question the conventional dynamics of marriage. There are four factors that make surrogacy contentious (Wiley, 2016) The primary concern revolves around the commercialization of egg donation. Closely linked to this is the ethical and legal debate surrounding the manipulation and transaction of human sperm and embryos within the human body, raising questions of ethical responsibility and legal ownership. The third critical issue pertains to the relevance of reproduction beyond customary internal limitations. Lastly, the process distinctly places childbirth outside the traditional framework of marriage or partnerships, enabling the intentional conception of a child beyond these boundaries. Also expressing the immoral procedures of reproduction was the goal of the Surrogacy (Regulation) Bill, 2016 and the prior ART Bill, 2014.

This article addresses a number of issues of ethics and society surrounding surrogacy in this article, explaining the connection amongst the procedure, legality, and immorality. India is emerging as a key player in the global embryo donation market, often referred to as the "Third World of Surrogates" due to the rapid expansion of sperm donation programs, which are frequently promoted through enticing advertisements and attractive incentives for prospective couples. (Dr. & Lodhi, 2021) The egg donation landscape in India involves a diverse range of stakeholders, including medical institutions, fertility agencies, egg donation programs, legal professionals, and healthcare providers, both within India and internationally. To attract foreign clients seeking affordable surrogacy options, many Indian assisted reproductive technology (ART) clinics have formed partnerships with international physicians and medical tourism organizations, positioning the country as a competitive hub for reproductive services.

Despite cash incentives are frequently cited as the primary impetus behind women making the choice to become representatives, other considerations also play a role. This practice is a very personal and selfless decision for some women, who view it as a chance to assist others in realizing their ambition of starting a family. (Akhilesh & AV, 2017) Since the procedure gives childless couples the opportunity to have a biological child and experience motherhood

in a manner, they might not have otherwise been able to, many people actually see it as a noble service.

DISCOVERIES OF THE ARTICLE

In the Republic of India, egg donation is regarded as a pivotal solution in advanced reproductive techniques. Surrogacy, a highly sophisticated method, addresses both genetic and social infertility, often facilitated through gamete transfer or embryo donation programs. When couples find traditional parenting avenues unfeasible, they often turn to surrogacy and egg donation as viable alternatives to fulfil their aspirations of building a family. This approach offers hope and a sense of completeness for those seeking to extend their family tree. The innate desire to nurture a child is deeply rooted in human nature and often intertwined with cultural and religious values. Unfortunately, many individuals face profound challenges that hinder their path to parenthood, making these assisted reproductive technologies a beacon of hope.

Resolving these intricate challenges may require a comprehensive strategy that integrates social, legal, emotional, and genetic dimensions. One of the most innovative solutions to address infertility is surrogacy, often employed alongside IVF treatments to provide a path to parenthood. The right to parenthood is a fundamental human aspiration that should be upheld for all individuals, regardless of gender, caste, or familial background. Ensuring this right promotes inclusivity and equality in the journey of building a family.

Throughout the course of time, the procedure has developed into a trustworthy and risk-free way for bringing an infant to this magnificent universe. Parents without children who are unable to pay for it can do this. The surrogacy industry is expanding significantly, especially in emerging countries like India. For the sake of any couple lacking any babies or children, surrogacy is the best way to fully experience parenthood and all of its associated joys. One challenge that this surrogacy process has is related to the twisted legalities and the associated viewpoints that the procedure must adhere to. The success of surrogacy involves a number of steps. Every woman is ready to embrace being a mother. It is among the significant stages of her life that she goes through. It is impossible to call a lady who is childless a full woman. Being a mother is an emotional state of love, faith, and attachment rather than just a stage of life.

CONCLUSION AND RECOMMENDATIONS

The Indian Constitution's Article 21 right to life and personal liberty, along with several multilateral human rights gadgets, preserve each person's basic, inalienable right to procreate. Everyone has the right to get married and have children. Numerous writers have asserted that "the child generates the parents socially, whereas the parents produce their offspring genetically." However, infertility prevents the urge to start a family from being realised. According to the World Health Organisation (WHO), infertility is an illness, and there are an anticipated 19–20 million couples experiencing infertility in India.

RECOMMENDATIONS

These articles aim to address the difficulties associated with surrogacy practices by offering insightful analysis and realistic recommendations. A comprehensive strategy that takes into account the ethical, legal, medical, and social aspects of surrogacy is needed to address its

difficulties. By putting these tactics into practice, the goal is to establish a framework that streamlines the surrogacy procedure, safeguards the rights of all parties involved, and encourages a fair and caring route to parenthood.

Everyone should have equitable access to assisted reproductive technologies, including single people, regardless of their marital status or type of relationship. To ensure inclusivity and equity in the quest for children, this right shouldn't be dependent on being in a heterosexual partnership.

Specialised surrogacy laws must be established immediately in order to adequately control and oversee reproduction clinics. In order to encourage the ethical and responsible use of sterilisation technologies and to prevent their misuse, such legislation is essential. Arrangements for embryo transfers are intrinsically complicated, involving a variety of social, physical, emotional, spiritual, economical, and legal factors. to eradicate such concerns secure women from any kind of unnecessary extraction along with ensure the confidentiality and security of all surrogacy participants strong legislation must be passed these regulations should above all protect the child's welfare and civil liberties yet preserve the inherent worth and self-reliance of these women.

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