



A Voyage for Regulating Commercial Surrogacy in India: An Analysis of Surrogacy (Regulation) Bill, 2016

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Abstract

To beget a child is a priceless feeling. But for those persons who cannot have their own child, it can be problematic and painful. Surrogacy has emerged as a solution towards this type of situation. India became the top most place for surrogacy after baby M case and it was totally unregulated process. There were no rights for the surrogate mother and child. As different countries around the world having different laws so, there came a situation of conflict of laws. After so many bills finally Indian Government proposed a novel legislative proposal of Surrogacy Bill 2016, which has put some restrictions for particular individuals who are totally banned and cannot avail the surrogacy process. This bill has put a full stop on commercial surrogacy in India. But some critiques says that it is a very haste decision of the government. The present paper has discussed the journey of unregulated surrogacy process towards its regulation. But whether this has proved fruitful or futile? it is still a matter of discussion.

Keywords: Assisted Reproductive Technology, fertilized, Surrogate, agreement.

1. Introduction

“Surrogate”, this word has been taken from Latin word “surrogatus”, which means “appointed to act in place of”. A surrogate mother is a woman who bears a child on behalf of another woman, either from her own ovum or from the implantation in her womb of a fertilized egg from another woman. Thus surrogacy is a practice whereby a woman carries a child of another with an intention to leave it.

2. Meaning and Definition

According to section 2 (z b) of Surrogacy (Regulation) Bill, 2016, “surrogacy” means a practice whereby one woman bears a child for an intending couple with the intention of handing over such child to the intending couple after the birth. Section 2 (z e) of Surrogacy (Regulation) Bill, 2016 talks about “surrogate mother” means a woman bearing a child who is genetically related to the intending couple, through surrogacy from the implantation of embryo in her womb and fulfils the conditions as provided in sub-clause (b) of clause (iii) of section 4.

According to the Black’s Law Dictionary surrogacy means an “agreement wherein a woman agrees to be artificially inseminated with the semen of another woman’s husband and gives her consent to conceive a child, carry the child to a term and after the birth, assigns her parental rights to the biological father and his wife”.

The New South Wales Law Reform Commission has also defined surrogacy as an arrangement whereby a woman agrees to become pregnant and to bear a child for another person or persons to whom she will transfer custody of the child at or shortly after birth.

3. Reasons for surrogacy

There can be several reasons behind surrogate pregnancy. For instance, intended parents may arrange a surrogate pregnancy because a woman who intends to be a parent is infertile or unable to carry a pregnancy to term, e.g., woman with hysterectomy, uterine malformation or with a history of recurrent abortions or any medical illness making her pregnancy a risk to her own life and health.

4. Categories of surrogacy

Traditional Surrogacy or Partial Surrogacy

Under Traditional Surrogacy the husband of the infertile woman would have access to another woman and after the birth of the child; the woman would hand over the child to the husband and his wife. The modern science and technology has made it possible for procuring a biological child with the help of another woman without sexual intercourse. In this process the woman is artificially inseminated with the semen of the husband of the “genetic couple”.



Gestational Surrogacy or Total Surrogacy

When a surrogate becomes pregnant via an embryo transfer with a child of whom she is not the biological mother and such a mother is called gestational carrier.

Altruistic Surrogacy

Under this type of surrogacy, surrogate mother does not intend to receive anything except the medical expenses, maternity clothing etc.

Commercial surrogacy

Under this type of surrogacy, surrogate mother receives full consideration treating her actions as surrogate in a manner akin to a commercial surrogacy.

5. Existing Legal Prominence of Surrogacy exercise In India

The couples and individuals who wish to beget a child through surrogacy often search for countries which offer surrogacy at an affordable cost with minimum legal complications. In this context, India was used to be considered as the most favourable nation by foreigners to beget a child through surrogacy till recently because of the low cost of surrogacy arrangement and non-availability of any strict rules and regulation in comparison to other countries.

Law Commission of India in its report remarked that the surrogacy costs in India is about \$25000 to \$30000 which is around 1/3rd of the costs in developed countries like United States of America. The Centre for Social Research (CSR), New Delhi in its study report given in the year 2012, identifies that the fees for surrogates in India ranges from \$2,500 to \$7,000 and the total costs for surrogacy arrangements can be anything between \$10,000 and \$35,000. Therefore, it is a lot less than what intended parents pay in the United States, where rates fluctuate between \$59,000 and \$80,000. Another statistics shows that, a surrogacy arrangement, including IVF, costs about \$11,000 (approximately Rs. 5,00,000) in India, while in the United States, surrogacy alone, excluding ART charges, costs \$15,000 (Rs 6,75,000). Likewise in United Kingdom, an IVF cycle costs about £7,000 (Rs. 5, 00,000 approx.) and surrogacy costs about £10,000 (Rs. 7, 00,000 approx.). The cost of gestational surrogacy in Canada is approximately \$29,600 - \$68,500 and the cost of traditional surrogacy is approximately \$19,600 - \$ 68,500. In Russia the minimum cost for surrogacy arrangement is about \$35,000.

Thus, India had come to be known as a favourable destination for foreign couples who look for a cost-effective surrogacy arrangement and a whole branch of medical tourism flourished on the surrogacy practice.

A large number of couples were travelling to the places like Anand, Surat, Jamnagar, Bhopal and Indore etc. not only from India but also from other countries to fulfil their desire for a child. More than 600 fertility clinics were estimated in both rural and urban areas in almost all states of India; no doubt Gujarat became popular among westerners.

The government had been very slow to respond to the changing situations fetched by surrogacy especially commercial surrogacy practice in India. In the absence of a legislative action, the Indian Council for Medical Research came up with certain ethical guidelines for regulating assisted human reproductive technologies (ART) in general and also included guidelines for surrogacy practices. In 2000, the ICMR adopted Ethical Guidelines for Biomedical Research on Human Participants, in which they prescribed certain rules to deal with ART.

During 2002, the ICMR submitted a Draft National Guidelines for Accreditation, Supervision & Regulation of ART Clinics, 2002 to the Ministry of Health and Family Welfare. This step of ICMR was interpreted by many authors as a step of legalization of commercial surrogacy in India. However, this Draft was not officially adopted by the Government of India and as such it cannot be considered as a step of legalization of surrogacy. In fact, after consultation with the National Academy of Medical Sciences, practitioners of ART, and the Ministry of Health and Family Welfare this draft was modified and adopted by the ICMR officially in 2005.

6. Guidelines of Indian council of medical research (ICMR), 2005

The ICMR Guidelines 2005, contained provisions for dealing with surrogacy. These were adopted with the main objective of providing ethical guidelines for regulating ART clinics in the country. Under these guidelines it is stated that, surrogacy by assisted conception should normally be considered only for patients for whom it would be physically or medically impossible or undesirable to carry a baby. ART used for married woman with the consent of the husband does not amount to adultery on part of the wife or the donor. But, ART without the husband's consent can be a ground for divorce or judicial separation. However, these guidelines suffered due to many drawbacks on many fronts.

7. Report of Law Commission of India

Considering the ground realities of surrogacy practices, the Law Commission of India after a detailed discussion submitted its report titled "Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy" to the Government of India in August 2009, with the following recommendations:

1. Surrogacy arrangement will continue to be governed by contract, which will contain all the terms requiring consent of surrogate mother to bear child, agreement of her husband and other family members for the same, medical procedures of artificial insemination, reimbursement of all reasonable expenses for carrying child to full term, willingness to hand over the child born to the commissioning parent(s), etc. But such an arrangement should not be for commercial purposes.
2. A surrogacy arrangement should provide for financial support for surrogate child in the event of death of the commissioning couple or individual before delivery of the child, or divorce between the intended parents and subsequent willingness of none to take delivery of the child.
3. A surrogacy contract should necessarily take care of life insurance cover for surrogate mother.
4. One of the intended parents should be a donor as well, because the bond of love and affection with a child primarily emanates from biological relationship. Also, the chances of various kinds of child abuse, which have been noticed in cases of adoptions, will be reduced. In case the intended parent is single, he or she should be a donor to be able to have a surrogate child. Otherwise, adoption is the way to have a child which is resorted to if biological (natural) parents and adoptive parents are different.

5. A surrogate child should be recognized as legitimate child of the commissioning parent(s) without there being any need for adoption or even declaration of guardian.
6. The birth certificate of the surrogate child should contain the name(s) of the commissioning parent(s) only.
7. There should be right to privacy of donor as well as surrogate mother.
8. Sex-selective surrogacy should be prohibited.
9. Cases of abortions should be governed under the Medical Termination of Pregnancy Act, 1971 only

The Commission thus recommended that active legislative intervention is required to facilitate correct uses of the new technology. Similar concern was raised by Indian Judiciary in the case of *Jan Balaz v. Anand Municipality*. The Gujarat High Court stated that, "the legislature has to address lots of issues like rights of the children born out of the surrogate mother; rights and duties of the donor and the surrogate; and various other legal, moral and ethical issues". The Court referred to the guidelines issued by ICMR as well as the ART (Regulation) Bill, 2008 and observed that, "there is an extreme urgency to adopt a legislation answering all the issues raised by surrogacy".

The ART (Regulation) Bill, 2010 vis-a-vis Surrogacy

The ART Bill, 2010, which was based upon the "National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India" of ICMR (2005), attempts to regulate the process of surrogacy and answer some of the issues raised by surrogacy practices. However, the Bill failed to address certain complex issues relating to surrogacy and thus suffers from various draw backs.

8. Recent Developments

In order to challenge commercial, overseas, same sex, single surrogacy, a Public interest litigation (PIL) was filed by an advocate Jayashree Wad in the Supreme Court in January 2015 wherein prayer was sought with the following objectives:

- to prohibit commercial, transnational or overseas surrogacy in India.
- to control exploitation of poor marginalised Indian women surrogates in the course of surrogacy.
- to prohibit export or import of gametes, embryos in India for using in commercial overseas surrogacy.
- to prevent trafficking in human life form in the forms of inter country movement or import or export of gametes, embryos.
- to address the legal void or absence of legislation on surrogacy.
- to seek enactment of stringent law controlling the same.
- to establish commercial surrogacy as unethical against public policy, among other ancillary issues pertaining to the same.

9. The main contentions raised in the PIL are summarily stated as below –

Commercial surrogacy and overseas or transnational surrogacy are sought to be prohibited in India for exploitation of poor Indian women acting as surrogate mothers for foreigners.

Surrogacy in commercial form involves commercialization of motherhood, commodification of women's body as women let on hire their gestational services or wombs to a third party or married couple for commercial purpose or monetary fees.

Motherhood is made into a womb renting business constituting a form of exploitation entailing use of women body (uterus or womb) for commercial returns which violates right to life, liberty, dignity of women under Article 21 of Indian constitution.

It seeks for a ban on commercial surrogacy reiterates and refers to the landmark case of "Baby M", New Jersey, US 1987 where in the New Jersey supreme court struck down "commercial surrogacy" as "a form of human trafficking" or "sale of human beings", the court declined to enforce commercial surrogacy agreement, the PIL also seeks similar direction from the SC to prohibit commercial foreign surrogacy for the same reasoning in India.

It describes the adverse impact on the physical and psychological health of the surrogate mothers, the physical health risks arising out of surrogacy and along with mental or psychological health implications, stress, and mental trauma affecting the surrogate mother's mind following the biological and hormonal changes in surrogate mother.

It describes the disadvantaged, exploitative socio economic background of Indian surrogate mothers, in commercial surrogacy, women from a particular section of society belonging to poor and lower middle-class strata are particularly exploited". The women who act as gestational carrier or surrogate mothers are from particularly marginalized class, these women are largely poor, even some are living below the poverty line, barely literate or educated, thus these women are being exploited, victimized in the process of being surrogate mother.

There is no consent rather there is economic coercion due to their poverty causing rendering them to be surrogate mothers for the promise of monetary payment.

Financial gain by taking undue advantage of marginalized socio economic condition of poor surrogate mothers, in commercial surrogacy, there's exploitation of women from poorer sections of society and their vulnerabilities by the affluent rich class of doctors, couples. There is an element of commercial or financial gain by the doctors, hospitals and institutions involved in the same by taking undue advantage of the marginalized socio economic condition, of these poor women or surrogate mothers, this amounts to exploitation of women for commercial gains.

Import of gametes or embryos as a form of trafficking or sale of human life

In order to facilitate commercial, transnational surrogacy, import of human gametes or embryos belonging to couples or donors from foreign countries into India is taking place for implantation in the surrogate mother for bearing children for the foreigner couples in the guise of goods causing trade in human life amounting to trade, sale or trafficking in human beings which is prohibited, penalized by law in India. Trafficking in humans is a punishable offense in India under constitution (Article 23) as well as statutory law namely Indian Penal code.

Role of Supreme Court

Pursuant to the issues raised in PIL, the Supreme Court issued notice to the concerned government departments namely Ministry of Home affairs, Law and justice, Health and Family welfare, Commerce and External affairs as well as the Medical Council of India (MCI) and the Indian council of medical research (ICMR), seeking the response, perspective of these concerned Ministries on prohibition of

commercial surrogacy and prohibition on foreigners commissioning surrogacy, alleging exploitation of poor Indian women, the long delayed absence of law & the status of legislation on surrogacy to be replied within the stipulated time period. In response to the notice, the central government submitted an affidavit stating the government seeks to prohibit commercial surrogacy and overseas surrogacy thereby not permitting foreigners to commission surrogacy in India towards these objectives the central government proposed revised ART Bill 2014 to be produced for deliberation, enactment.

Indian council of medical research (ICMR) Circular ban on foreigners commissioning surrogacy in India

Following this government affidavit, The ICMR issued a circular directed all ART centres, fertility clinics "to halt surrogacy for foreign couples for availing surrogacy services in India from the date of issue of the circular with immediate effect" and "not to initiate any surrogacy for foreign intending couples" and "directed all ART centres, fertility clinics to provide surrogacy services only to Indian heterosexually married couples.

The Central Government through its concerned Ministry directed the Foreigner Regional Registration Office (FFRO), Embassy office that "No Indian mission or foreign office shall issue visa to foreign nationals for commissioning surrogacy in India". The circular also prohibits such Indians including overseas citizen of India from commissioning surrogacy in India. This circular would remain in force until Parliament passes legislation regulating surrogacy.

Assisted reproductive technology (ART) Bill, 2014

Following the court notice, the centre government proposed revised ART Bill 2014 for deliberation, consultation to be enacted. Some of the salient features of ART Bill 2014 are as follows:

In order to check exploitation, victimization of women there is Prohibition on foreigners from commissioning surrogacy in India.

Permissibility to surrogacy only as an exception for those foreign residents with family origins in India to commission surrogacy in India and avail services of Indian surrogates.

To provide for altruistic surrogacy, Prohibition on commercial surrogacy.

In the course of subsequent court hearings April 2016, the Supreme Court identified certain issues and sought response from the central government on the legal basis or the authority law or mechanism or the policy under which OCIs are banned from commissioning surrogacy despite the fact of draft ART Bill providing for the same. The Court inquired from the Government the status of the ART Bill and the consultation undertaken on the same along with its introduction in parliament for enactment.

The Government counsel on behalf of the Central government refused to relax prohibition on foreigners or OCIs from commissioning surrogacy in India. The government counsel has enumerated reason for such ban on foreigners and OCI in commissioning surrogacy in India.

To prevent economic, health exploitation of poor Indian women surrogates by foreigners most of the foreign nationals including OCIs commission surrogacy in India owing to avail gestational services of "cheap surrogate mothers" are available in India.

To avoid inter country legal differences on surrogacy, OCIs, foreigners commission surrogacy in India because surrogacy is banned in their respective country or not granted legal recognition in their country.

To prevent cases of stateless surrogate children, in many cases commissioning surrogacy in India by the foreigners results in denial of visa and citizenship to the surrogate child born to such foreign nationals in India leading to stateless, parentless surrogate child stuck in India. The government maintained that the government does want "bear the burden of stateless surrogate children."

To avoid same-sex surrogacy in India in the absence of law granting legal recognition to same sex couples in India, many foreigners who commission surrogacy in India are same sex partners gay and same-sex couples commissioning surrogacy in India is prohibited.

10. Intervention Pleas filed in PIL

In the course of hearing of this PIL, there are series of intervention pleas filed before the Supreme Court in this case seeking to contest the proposed government proposed stand on prohibition of commercial, overseas surrogacy in India in the same.

Medical Bodies filed a plea for intervention in the PIL Jayashree wad vs. Union of India, SC

Indian Society for Assisted Reproduction (ISAR) and Federation of Obstetric and Gynaecological Societies of India (FOGSI), Indian Medical Association (IMA) members have all filed a plea for intervention in the PIL before the Supreme Court seeks to challenge ICMR circular directing sudden halt of surrogacy services to foreign couples Health on the ground of being such hasty, undemocratic, non-transparent, pre-empted decision binding on the clinics without any prior intimation, consultation with the concerned stakeholders including the medical bodies. The Medical body sought explanation from the Ministry of Health for the same. The Medical body challenged manner of enactment of ART Bill 2014, the Bill is released, tabled for enactment even before any consultation, non-deliberation, without collecting feedbacks, suggestions from the concerned stakeholders.

The Medical bodies have raised crucial issues on the plight of a number of such couples who are differently situated in the course of ART treatment towards surrogacy including women undergoing hormonal treatment in preparation for egg retrieval extraction implantation to be surrogate mother, along with such surrogate mothers or women who are at different stages of their gestational pregnancy towards delivering surrogate child.

The Medical body met with the Prime Minister's Office (PMO) on this issue to express their concerns in November 2015.

A group of surrogate mother filed an intervention plea in the PIL Jayashree wad vs. Union of India, SC

A group of surrogate mothers from Delhi, Gujarat and other states in India has filed an application for intervention in the PIL before the Supreme Court challenging the ICMR Circular and Government order which prohibited foreigners from availing surrogacy in India and their plea sought direction from the court to withdraw the ICMR circular on the ground of circular being "discriminatory and unreasonable". The surrogate mother contends that "motherhood should not be divided or discriminated on the basis of caste, colour, creed, nationality or citizenship..." These surrogate mothers reasoned their decision to be surrogate as a part of their bodily autonomy, choice or decision making pertaining to their body, personhood, that "each woman has the right to take her own decision to become or not to become surrogate mother." These surrogate mothers expressed their concern as this deprives these women their rights to livelihood by acting serving as gestational carrier or surrogate mother helped them to support their livelihood, fund education for their children and that these poor women pleaded that "they will suffer irreparable loss and injury" if the circular is given effect or if otherwise. These surrogate mothers challenge the circular on the ground of "breach of principle of natural justice" as these women are the integral part of the surrogacy arrangement, they had neither been prior informed, nor consulted, nor included in the deliberation, enactment of the ART Bill.

11. Overseas Citizenship of India (OCIs) file petition before SC

A group of overseas citizens of India (OCIs) filed a petition to challenge the Central government notification disallowing them from commissioning surrogacy in India on the ground of discrimination on nationality, residence, citizenship.

12. Surrogacy Bill 2016

Indian Government proposed a novel legislative proposal of Surrogacy Bill 2016 during the pendency on hearing of PIL and after the Supreme Court query on the status of the draft legislation on surrogacy. The new government narrowed down the proposed Assisted Reproductive Technology Bill (ART) by proposing for a distinct separate, new Surrogacy Bill 2016 solely to address, deal with the issues related to "surrogacy" only in exclusion of other ART Techniques,

13. Surrogacy (Regulation) Bill 2016

It prohibits foreigners including Overseas Indians from commissioning surrogacy.

There will be a complete ban on commercial surrogacy.

In Altruistic surrogacy, as proposed in the draft bill, it would be illegal for the commissioning parents to pay the surrogate except for paying of all the medical bills. In addition to this bill postulates a compulsory 'insurance cover' of the surrogates during the whole period of pregnancy, while extending the insurance cover for a stipulated time period of post pregnancy.

All Assisted Reproductive Technology (ART) clinics will be registered. Clinics will be allowed to charge for the services rendered in the course of surrogacy, but the surrogate mother cannot be paid. All clinics will have to maintain records of surrogacy for 25 years. However, the question remains that would altruistic surrogacy prevent exploitation of women. Would there be any mechanism to monitor as to how the surrogacy service offers is altruistic or commercial? Although, Unmarried people, live-in couples and homosexuals would be totally debarred from opting for altruistic surrogacy.

Critics argue that banning commercial surrogacy would lead to a deeper exploitation of women "where rich families would misuse this by compelling poorer relatives or maids to act as a surrogate for them." Dr. Patel forwarded his opinions in an interview to NDTV "This is a social issue. I have taken up at least 25 cases within the family where there has been give and take of money within the family. Someone gives a jewelry set, someone gives a car. Nobody gives services without expecting something. The choice becomes limited to find someone within the family as surrogate mother. If a sister doesn't have a uterus, the daughter in law of the house could be forced to become a surrogate for her. What about social pressure that she will go through?"

The Bill seeks to provide surrogacy only for heterosexually married Indian couples, who have been married for at least 5 years can opt for surrogacy, provided at least one of them have been proven to have fertility-related issues. Further it prohibits homosexual couples from taking surrogacy services. This is because in December 2013, the honourable Apex Court decriminalised homosexual relationship by triggering article 377 of the Indian Penal Code, 1860. Perhaps, values of Indian culture not prepared to embrace homosexual and live-in relationship couples. The draft bill is also incongruous to chapter VIII, Clause no. 57 of the Juvenile Justice (care and Protection of children) Act, 2015 that allows a single parent (or a divorced person on the fulfilment of certain criteria) to adopt a child

Only 'close relatives', not necessarily related by blood, will be able to offer altruistic surrogacy to the eligible couples.

Surrogacy regulation board will be set-up at both Central and State-level

The surrogate child will have the same rights of as that of a biological child

The Bill is aimed at making parentage of such children legal and transparent

The Bill seeks to safeguard the rights and interests of surrogate mothers and

In cases of Commercial surrogacy, abandoning the surrogate child, exploitation of surrogate mother, selling or import of human embryo have all are punishable by a jail term of at least 10 years and a fine of up to Rs 10 lakh

14. Advantages of the Bill

This bill is a step ahead for the regulation of surrogacy in India. It focuses on preventing commercialization of surrogacy, prohibits potential exploitation of surrogate mothers and children born through surrogacy practice.

There have been several litigations involving surrogacy such as the Baby Manji Yamada case, Baby Balaz case etc. and there has been death cases associated with surrogacy which led to court interventions.

15. Problems with Surrogacy in India: Criticism

The bill is has not defined the term "close relative" leading to an ambiguity that who actually can be a surrogate. Further it is also next to impossible for a 'close relative' not to have emotional attachment with the child.

Leading to the free consent by the surrogate mother, she can give her consent under undue emotional pressure.

On a number of occasions, Indian adoption laws or some other country's citizenship laws create hurdles. For example, Germany recognizes citizenship by mother which creates issues in determining nationality of surrogate child.

Problem also arises if twins/triplets are born in place of a single child over the issue of custody of child.

A comprehensive law is required to deal with following issues:

Rights of surrogate mother, which includes fair compensation, adequate maternal care, right to abort and provision of maternity relief.

Law has to prescribe condition like surrogacy by consent. The surrogate mother should be aware of impact of hormones etc on her health

The number of times surrogacy is permissible, consent of husband if married are also important issues to be dealt with

Life Insurance coverage

Clarity over rights of commissioning parents, rights of child bornThe Bill raises questions over the reproductive rights of a woman. The right to life enshrines the right of reproductive autonomy, inclusive of the right to procreation and parenthood, which is not within the domain of the state, warranting interference of a fundamental right. It is for the person and not the state to decide modes of parenthood. It is the prerogative of person(s) to have children born naturally or by surrogacy in which the state, constitutionally, cannot interfere.

The bill has Restricted limited, conditional surrogacy to married Indian couples and disqualifying other persons on the basis of nationality, marital status, sexual orientation or age does not appear to qualify the test of equality (article 14), or of being a reasonable classification, satisfying the objective sought to be achieved.

The bill deprives single parents, homosexuals of availing the bliss of parenthood through surrogacy.

Infertility cannot be compulsory to undertake surrogacy. This violates the Freedom of choice available to citizens.

Economically, the bill is bound to have effect on the thriving medical tourism in the country and people associated with it.

There are certain countries, particularly European; surrogacy is banned for commercial reasons. The Indian government took a very sensible decision then and decided not issue visas to people coming from such countries. But, there were others who came from countries like the US where surrogacy was available, but exorbitantly expensive. India has also been a safe hub as compared to countries like Indonesia, where fertility procedures are completely unregulated. Indian doctors are competent and clinics are clean and more importantly there was a contract to be signed, which eliminated exploitation and blackmail possibilities on both sides. A blanket ban on such medical tourists makes no sense at all especially when we issue visas to them for other forms of medical tourism.

Many countries including the UK that have experimented with altruistic surrogacy have realized that this only tends to push the whole transaction underground. A woman who bears a child for another one is actually performing a service and needs to be compensated for it. If altruistic surrogacy is enforced, the commissioning parents have to find some non-legal means to pay the woman who has spent a year or more of her life trying to ensure the birth of a healthy baby or babies.

The Bill leaves several questions unanswered such as ensuring protection of health of surrogate mother, maternity relief available to her. It may also face challenges under Article 14, which guarantees a fundamental right to equality. The bill contradicts India's adoption laws (Hindu Adoptions and Maintenance Act, 1956 [Sections 7 and 8] and the Juvenile Justice [Care and Protection of Children] Act, 2015 [Section 57]), which allow conditional adoption for single and divorced parents.

The surrogacy bill also severely limits the autonomy of married couples and potential surrogates with the stringent conditions and requirement of eligibility certificates for both. Prerequisites such as childlessness and five years of non-conception for intending parents, and being a close relative for surrogates, are likely to receive heavy scrutiny under the same standards. Further, the Parliamentary Standing Committee on the Surrogacy Bill recognized that forcing a married couple to publicly declare their infertility raises privacy concerns, especially given the stigma often attached to infertility. The bill raises similar concerns for surrogates as well, since they too would have to disclose their identity.

The bill ignores ground realities and cases where women are coerced into becoming surrogates by their families. The ban on commercial surrogacy affects the right to livelihood of women who wish to become surrogates and instead expects surrogates to perform reproductive labour without compensation.

16. Conclusion

Indian government took an initiative to put a ban on commercial surrogacy. But it has limited the the space of procreation to the limited number of persons too. Which is not within the jurisdiction of the state. It is clearly an infringement of fundamental rights since state is not having any right to decide modes of procreation for parenthood. It is also a violation of freedom of choices which is available to the citizens.

This bill leaves several questions unanswered, such as, ensuring protection of health to the surrogate mother, maternity relief available to her. This bill is totally against or we may say that having contradictory guidelines against the Indian adoption laws i.e. Hindu adoption and maintenance Act, 1956 and the Juvenile justice care and protection of children Act, 2015, which allows conditional adoption for single and divorced parents. So, there is a need for a all-inclusive law, under which rights of the surrogate mother should be described.

Hence, this bill is no doubt having some rules which are inculcated their just for the benefit of surrogate mother and child but at the same time can be said that it has also proven a very hasty decision which will have its pros and cons.

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