

Status of women in modern reproductive clinics: Legal and ethical issues

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Abstract

Whenever we talked about modernization and urbanisation somewhere we overlooked the negative impact of it in the entire world. Modernization and Urbanisation not only helped in the development of the society but it has increases crime also. Because somewhere poverty, increased with modernization and Urbanisation. And it is also found that behind many crimes poverty is one of the causes which forced the poor people to commit crime and sometimes they themselves become the victim of the crime committed by well educated person of our society. One of such crime is trafficking of women for surrogate mother and egg donor for Reproductive Clinics.

We all know about Commercial Surrogacy as this topic has become one of the burning topics for discussion and research in 21st Century. As through this technique not only single parents can have their own baby but lesbians and Gay people also can have their own baby through this process. Now the question is if this technique is really good for the society then why this technique is not free from negative impact? The answer is that, there is no doubt that this technique is one of the best invention of science and technology but this technique has also increased crime against women in entire world because women were used in the reproductive clinic or Reproductive Industries as a fuel and the end product of this Reproductive Industries is the baby born from this technique. Trafficking of women for Surrogacy can be found from the cases of Baby 101, death of Susma Pandey, case of SABYC Clinic in Romania etc lots of examples are their which proves that Commercial Surrogacy has increased crime against women in entire world which need to control through strong law.

Keywords: Egg donor, Surrogacy, Commercial, Reproductive Clinics, ART Bill

Introduction

The American Law Reports ^[1], defined the term "Surrogacy" in the following manner:

"...a contractual undertaking whereby the natural or surrogate mother, for a fee, agrees to conceive a child through artificial insemination with the sperm of the natural father, to bear and deliver the child to the natural father, and to terminate all of her parental rights subsequent to the child's".

According to the Black's Law Dictionary ^[2] "surrogacy means the process of carrying and delivering a child for another person".

Black Law Dictionary ^[3] divides surrogacy into two categories:-

- 1) Gestational Surrogacy- Here the genetic mother and father gives her eggs and sperms to another women (surrogate mother), which after fertilization is inserted into the womb of the surrogate mother and she carries the fetus till birth.
- 2) Traditional Surrogacy- Here the eggs belong to Surrogate mother and by artificial insemination, fertilization took place. In addition, she will carry the fetus until birth of the child.

The first case of gestational surrogacy was reported in India was at Dr. Nayna Patel's Akanshka Fertility Clinic in Anand, Gujarat in 2004, where Rhadha Patel aged 47 years, became surrogates mother for her UK based daughter. After that case, the Dr. Nayna Patel's Akanshka Fertility Clinic was highlight in media there by attracting numbers of foreign Couples.

It was after the case of Baby Manji Yamada versus Union of India & Anr. [2008] INSC 1656 ^[4]. where by Supreme Court in its judgment mentioned that Commercial Surrogacy is legal in India and asked the Legislature to pass a Law to govern the

Surrogacy. According to that, Legislature has prepared a bill called assisted reproductive technologies (art) regulation draft bill 2010, which is still pending for its approval.

Commercial surrogacy agreement

Like any other legal agreement, Commercial Surrogacy is a written agreement between the Genetic parents and the Surrogates mother that the surrogate mother will give birth to the child of the genetic parents and in return, she will get money from Couple, and all the medical expenses will be borne by the genetic couples or by the clinics. And after giving birth to the Child, the Surrogates mother will relinquish her right over the child born.

Problems relating to commercial surrogacy

▪ Economic exploitation

For commercial Surrogacy, both the parties have to sign an agreement with each other i.e. Intended couple with the Medical Clinic and Medical Clinic with the Surrogate mother and this agreement is known as Commercial Surrogacy Agreement. It is to be noted here that in practice the agreement signed between intended parents and medical clinics contains about the terms and conditions of the Commercial Surrogacy including the fee payments for the entire procedure, which also includes the medical expenses of the surrogate mother. But in reality, Hospital authority never gives the actual payment which they take from the intended parents for the surrogate mother. Even there is no fixed fee for Commercial Surrogacy. Thus, the Reproductive Clinics charges very large amount from the intended couples. And the fees vary from couple to couple depending on the status and nationality of the couple. But the

amount which surrogate mother receives from the clinics is very less in compare to service which she is giving to the clinics and off course to the intended parents by renting her womb. Thus, by this way the right of the Surrogate mother were violate and they were economically exploit by the clinics. As the surrogate mother, hardly get 1-2 lakhs fees from the clinics for delivering the child of the intended couples, where the Clinics charges more money from the intended couples for the surrogate mother.

For Commercial Surrogacy, the surrogate mother from the poor families is in danger because broker and the clinics exploit their rights and even sometimes they were forced to become the surrogate's mother. As the surrogate mother were not aware of the fact that how much amount the

Clinics use to charge from the intended parents for surrogate mothers, so this is a positive point for the clinics to exploit the surrogate mother.

Ranjana Kumari ^[5]. Director of Social Research said that in most of the cases relating to Commercial Surrogacy it is found that the surrogates mother are being exploited. And according to her it's a high time to introduce the Assisted Reproductive Technologies (ART) Bill, to protect the surrogates mother, child and the genetic parents. Thus, the pending ART Bill, 2010 should be passed immediately.

It was mentioned in the Report No-228 of Law Commission of India ^[6], that the price fixed for the Commercial Surrogacy Agreement, between the Intended parents and the surrogate mothers in India, is near about \$25,000-\$30,000 that is around 1/3 from the other countries ^[7].

In India because of the absence of surrogacy law it is found that, sometimes during pregnancy due to any complication if the surrogate mother dies or she had a miscarriage in that case neither the hospital and nor the genetic parents will be liable to pay them for that. Since, the payment, which was agreed for commercial surrogacy, was for the entire term period of pregnancy to still the birth of the child. So, in between this if anything wrong happened to the surrogate's mother then no one will be liable for it and the women will also not get any payment. In this way, the medical clinics and the brokers exploit the economic rights of the surrogate mothers.

As in India still now we had no rule and regulation for Surrogacy, so the surrogate mother in India are to sufferer a lot both mentally, physically and financially. Sometimes for the payment, she has to depend on the mediator and to doctors also.

This is all about the economic rights of the surrogate mother, which are exploits by the Reproductive Clinics and by the brokers also.

▪ Trafficking

In a recent study done by the National Rapporteur on Trafficking in Human Beings of Dutch ^[8]. And also the report submitted by the same, raised a question about the Commercial Surrogacy, that whether the women for commercial surrogacy were coming voluntarily or forcefully to become a Surrogates mother? "Jyotsna Gupta, a senior lecturer in gender studies and diversity at the University of Utrecht, argues that Indian surrogate mothers are usually under enormous pressure from their husband and family" ^[9].

In countries, where most of the population belongs to poor society, rights of women's from that society were infringed and violated by the intermediary and the clinics for the money

which was agreed to be paid to the Surrogate mother for the purpose of Commercial Surrogacy. Because most of the money which she is about to receive from this surrogacy agreement were taken by the Reproductive clinics and the broker.

In fact, we can say that, For Commercial Surrogacy, the illiterate surrogates mother from the poor background are in danger. Because brokers and the clinics exploit their rights and even sometimes they are force to become the surrogate mother or egg donor.

Dr. Roel Schats ^[10] chief medical officer of the IVF centre of the VU Medical Centre, argued against Commercial Surrogacy, "It is a form of modern slavery to use an Indian woman as a breeding machine without the benefit of any form of care". Moreover, slavery system is the violation human rights. It was submitted in the report ^[11] that in case of Commercial Surrogacy, if a woman was forced, Coerced and exploited to become Surrogates mother in that case it will be considered as a crime. Thereby, it will fall under trafficking.

There is a huge demand of Surrogate mothers in the Medical Clinics or in the Reproductive Industries, by the needy couples for the Gestational Surrogacy as well as for Commercial Surrogacy. As the demand of surrogates mother and egg donor is too high in the current scenario, for the Reproductive Industries, so to meet the demand, supply of the surrogate's mother and the egg donor is required in the same ratio. Thus, it has increases the trafficking of women in the global black market of Reproductive trade to meet the demand of Surrogates mother and egg donor as well.

According to the definition of the United Nations, "trafficking is any activity leading to ecruitment, transportation, harbouring or receipt of persons, by means of threat or use of force or a position of vulnerability" ^[12].

Status of women

From the from the above discussion, we find that how the Reproductive clinics were becoming multi-millionaire baby production industry in today's world and the women from the poor society were used as a raw material for these baby production industries. And the end product of this industry is available only to the Rich section of the society. One more interesting thing about these industries is that like any other industries here also one has to give advance for purchasing the raw materials i.e. surrogate mother and egg donor to start the process of production. In the process of Commercial Surrogacy, Women body as well as her reproductive organ i.e. ova is used here for commercial purpose, which is a violation of basic Human Rights. Ethically and legally Human body and organ both cannot be used for commercial purpose.

Cases of trafficking

- Another incident of human trafficking in 2011 was report, where 14-15 Vietnamese women were rescue from Thailand and they were trafficked and forced to become Surrogate mother for Commercial Surrogacy by a company named BABY 101 ^[13].
- In the year 2009, another case of Commercial Surrogacy involved with trafficking known as Romanian Scandal ^[14] was exposed. In that case, eggs from the minor girls were trafficked by the Israeli Doctors in one of the clinic named SABYC Clinic in Romania. Even a girl of 16 years was

rescue in a serious condition, left after the eggs removal procedure.

- In India, a 26 years woman named Yuma Sherpa from Delhi, died during the egg removal procedures and a 17 years Girl named Sushma Pandey from Mumbai, died after two days of egg removal procedures. Because of the absence of law and guidelines regarding how many eggs can be removed from the body at a time and the dosage of injection Gonadotropin that is used for producing multiple of eggs has increased a great concern for the doctors, lawyers and Human rights activist in respect of the health and life of the women ^[15].
- Recently, the Thailand Military Government ^[16], after the case of BABY GAMMY, has given approval for a drafted bill by which Commercial Surrogacy in Thailand will amount to be a criminal offence and thereby making it banned. Because of the problems related to Commercial Surrogacy.

Suggestion

For Legal Issue: There is a need of strong law for the protection of the women in cases of Commercial surrogacy. And the ART Bill should be passed immediately with proper necessary amendments.

For Ethical Issue: Women's body and human organ are not for sale. Ethically and legally it's wrong. Though the technique of ART Bill is very help full for the person who cannot have there own baby but this technique has raised so many ethical question especially due to this technique women were used as fuel for the reproductive Clinics. So tom protect women from this we should motivate other to go for adoption or this technique should be banned like Thailand.

Kathleen Sloan ^[17], in his article said that, In Surrogacy process, surrogates mother acts like a Commercial Industry and the product of this Industry, is the baby born through this process. Women from the poor section were exploits, and there health is on risk throughout this process.

Conclusion

आपदर्थे धनं रक्षेद् दारान् रक्षेद्धनैरपि ।
आत्मानं सततं रक्षेद् दारैरपि धनैरपि ॥

This is one of the famous neeti of Chanakya ^[18].

The meaning of this neeti is "For bad days one should save money. Women should be protected even if it takes the money saved. But for self- preservation, the money and the women should be sacrificed, if required ^[19]."

From this statement we find that in ancient India women were treated like animal and husband can sale there wife in case of need of money. That was the status of women in ancient India where they were treated as item.

Thus from the above discussion, we find that with modernisation and urbanisation the status of the women has not changed even though we had law to protect women rights. Earlier women body were used for entertainment i.e. for prostitution and now they were used as commodity or item or fuel for earning money and for the production of baby in the Reproductive industries. Women's were not only exploited in past but still now they are facing this same problem with new version in this technical and modern world.

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