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- ❖ Sri Lanka Crisis
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- ❖ Nepal's Relations with India
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- ❖ Textile Industries in Tamil Nadu
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Commercial Surrogacy in India: Governance and its livelihood concerns

Dr. Bidisha Borah¹

[Surrogacy motherhood is a process by which there is violation of the dignity of both the surrogate mother and the child. This process turns a child into a mere commodity of buying and selling, giving least priority to the social, psychological and legal complications. This research paper has dealt with the issue of governance and livelihood concerns in India in the context of surrogacy along with the effects on livelihood concerns after the passage of the Surrogacy (Regulation) Bill, 2019.]

Commercialization is a term which is related to profit and loss. Whereas commercialization has nothing to do with emotions, health and psychology of humans. Women has a natural boon to give birth to a child which is a wonderful ability on the basis of which human generations multiplies in being commercialized. Due to various unfortunate situations, parenthood has been snatched away from some which is the result of infertility. In exchange these couples take support of Artificial Reproductive Technology (ART). This process involves Vitro-Fertilization and Intra-Uterine Injections (IUI) and also surrogacy (Rao, 2018). The whole process exploits the humans by considering humans as commodity that can be bought by a contract (ECLJ, 2012:5).

Surrogacy is an act wherein the contracting parents, intended mother and father, and the surrogate gets involved (ECLJ, 2012:6). There are two types of surrogacy (a) commercial surrogacy and (b) altruistic surrogacy. In commercial surrogacy the surrogate gets monetary benefits for renting her womb. And in altruistic surrogacy, there is no monetary benefits for renting the womb. So commercial surrogacy allows "wombs for profit" (Savio, C. 2016).

This research paper aims to highlight the issue of surrogacy in India in general. Further, it analyses the commercialisation of surrogacy which will soon be illegal in India as well as the governance and the livelihood concerns related to surrogacy.

Methodology

The purposive sampling method is adopted in this study. The sample population includes the educated adult population and the economically backward adults of the Guwahati city. The primary sources of data include the data collected from the sampled population and the secondary sources includes the records, newspaper, published articles, unpublished thesis, shodhganga etc.

Area of study

The area of this study is the Guwahati city, Assam which is situated near the mighty Brahmaputra river. The 2011

census records the population of the city as 9.57 lakhs. About 495,362 are males and 461,990 are females. 9.09% is the poverty ratio of the city. About 32% of the population of the city are below poverty line (Sarma, 2017).

Theoretical perspective

The theoretical perspective of this study has analysed the Kantian deontology, utilitarianism and the Rawls theory of justice.

According to the Kantian perspective, wrong actions are immoral whatever be the consequences. The means is immoral if the ends are not justified. According to Kant, a good will is always unconditioned good. If it to be achieved it should be unconditioned and rational. Kant prohibits from using humans as a means. Surrogacy is unethical as it destroys the surrogate woman's integrity as human-being. She is only being used as a means to achieve an end which is selfish. Kantian perspective towards surrogacy considers the it as an immoral and an unethical act (Wertheimer, 1992; Patrone, 2017).

According to the utilitarian perspective, greatest happiness of greatest people is a moral act. This view argues that morality doesn't rest on considering humans as a means, yet it should also consider an end in itself. "According to this theory, surrogacy apparently can't be moral because it instrumentalizes the surrogate mother, which becomes only a means towards reaching ends of other person" (Hostine, S & others, 2016).

According to the Rawls theory of justice, "the basic principles of justice should be obtained through an approach coined original position in which they should be developed under a veil of ignorance". If there is no other way to have children other than surrogacy, surrogacy can be allowed on the basis of his principles of justice (Hostine, S and others, 2016).

On the basis of these theories, it can be concluded that surrogacy considers reproductive power of women as a means to achieve an end which is predetermined following a contract. Women's psychological and physical health is ignored as well as that of the new born/ s suffers in the process of surrogacy. Surrogacy is unethical.

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Surrogacy and its historical background

According to the Oxford dictionary, the term surrogate came from the Latin word "Surrogatus", meaning in place of another which is not really far from how it is defined today. Surrogacy is related to the word substitute. It has originated in the 17th century. "Surrogacy or surrogate motherhood is a biomedical technique whereby a fertilized ovum is implanted into the uterus of another woman who will carry the baby to term" (Timbreza, 2007).

The origin of the practice of surrogacy, ART, can be found in 1910 BC in the "biblical story of Abraham and Sarai and their maid servant, Hagar. Unable to have a child of her own, Sarai urges her husband, Abraham, to conceive one with Hagar", which is a practice of traditional surrogacy. Way back in the year 1860BC, there was a regulation, the Lipit-Ishtar Code of Mesopotamia, whereby the practise of surrogacy is allowed. A man whose wife is infertile is allowed to have children by using the services of a "harlot". In return, the harlot gets "grains, oil and clothing". This has paved the way to commercial surrogacy. Later in 1772 BC, the Babylonian Code of Hammurabi which is based on the Mesopotamian Code, has provisions to regulate surrogacy. It allows the surrogate mothers to relinquish the paternal rights after birth. The practise of surrogacy is quite common in Greece and Rome in the ancient times (Höstinc & others, 2016). Thus, the practise and commercialisation of surrogacy has originated many years ago.

The 1st official surrogacy agreement took place in the mid 1970's. During the same period, the 1st "test tube" baby was born which has opened up ways for gestational surrogacy. It is a process where both sperms and the egg are implanted in the laboratory and later placed in the uterus of the surrogate mother. Gradually, in 1980, the 1st case of paid traditional surrogacy was conducted. The surrogate mother has been paid \$1000 for successfully delivering the baby. In 1983, the 1st successful gestational surrogacy took place (Mondal).

Surrogacy and governance in India

The practise of ARTs has been in debates in modern times. The perception of ART and its usage has many contradictions as it is influenced by the cultures and local conditions which is gaining popularity with time. In 1978, the 1st baby was born through Vitro-fertilization. This has brought ray of hope to the infertile couples by allowing them to avail all the possible ways to have a child of their own. Infertile couples can now opt for surrogacy. This has opened ways for gestational or traditional surrogacy. Surrogacy has become the 1st choice for the infertile couple making adoption the next option. With this advent, the concept of genetic and social mother has evolved. Many new issues like children's rights, rights of the surrogate mother, socio-

economic conditions and inequalities has come up. Many countries do not have a regulatory system with a proper framework for this purpose. Countries like Germany, Austria, France, Switzerland, Sweden, Norway, Italy, Bulgaria prohibits all the surrogacy agreements so that surrogacy can be stopped (ECLJ, 2012). Till 2019, India is the hub for commercial surrogacy having a billion-dollar profit. In 2002, surrogacy has been legalised. In India, surrogacy has crossed its ultimate limits which resulted in its banning by 2015. "There are cases of surrogacy where parents refused to take the possession of the child, making surrogacy related to sensitive issue of human trafficking, lack of surrogacy laws and making the whole process risky". The process of surrogacy has turned out to be a profitable business (Rao, 2018). Now India has joined the club of banning of surrogacy. The case of Baby Manji Yamuda vs Union of India & ANS, n 2008 proved the lack of regulations in surrogacy practise for the 1st time in India (<http://indiakanoon.org>).

In the year 2019, India has tabled a bill to ban surrogacy. Only those married couples who are together for 5 years and has been medically certified to be unfit can only opt for surrogacy to have a child. The Surrogacy (Regulation) Bill, 2019 do not allow any foreign nationals to have a child through surrogacy in India. The Bill has strict regulations leaving no stone unturned to stop commercialisation of surrogacy by stating that no intended parents can leave the new born baby in any condition. There is no provision for the married couples having children/child to opt to surrogacy in India. There is provision of only "close relative" of intended infertile couples to rent the womb for surrogacy which should be agreed not forced. The bill has banned surrogacy but has kept open altruistic surrogacy. On 15th July, 2019, the Indian Health Minister, Dr. Harsha Vardhan has tabled the Surrogacy (Regulation) Bill in the Lok Sabha with an intention to prevent commercial surrogacy in the country. The bill has been passed by voice vote. There is the provision of having a National Surrogacy Board and State Surrogacy Boards in the states. The purpose of these boards is to regulate the process of surrogacy. According to the bill, the married couple should be 23-50 years for female partner and for males the age group should 26-55 years. Besides, the surrogate should be in the age group of 25-35 years. The new born/s should be treated as biological sibling/s having all the rights and privileges. The bill has been passed by the last Lok Sabha but remain lapse due to the dissolution of the Lok Sabha. This has proved that India will soon end the practise of commercial surrogacy in India.

Commercialisation of surrogacy and its livelihood concerns

Commercialisation of surrogacy has paved the path for the economically weaker class to uplift their economic conditions. Profit is integrally associated with the practise of surrogacy. Surrogacy tourism has boosted

the livelihood prospects for the poor and the needy. Debates are there questioning about the mentality of those families who force women to earn money by unethical means. Indian tribal women who are uneducated and backward falls prey to surrogacy easily and thus get exploited. Countries like India have lakhs of people living below poverty line. It estimates to 21.9% of the total population of the country in 2012 (www.prsindia.com). About 6.1% of the total population is unemployed in India in 2017-18. Commercialisation of surrogacy engages at least some of these unemployed and making it a source of income for them.

Survey Report

The survey report depicts that the adult population in general have lesser idea about surrogacy. They are only aware of the celebrity couples having babies through surrogacy. They consider this process to be quite unethical. The economically weaker section people consider that as the surrogates are paid a handsome amount after renting the womb is acceptable. India having economical slowdown these days having less employment opportunities will help a section of the population to give a livelihood opportunity. The educated population opines that commercial surrogacy should be practised as it helps the infertile economically sound couples to have babies. The engagement of women in inhuman trade is unacceptable. If properly regulated, then commercial surrogacy is a boon for the society.

Conclusion

According to the feminist, surrogacy has made women a commodity of buying and selling. Women has to rent her reproductive property to others. Commercial surrogacy has respected the concept of labour by providing the surrogate with payment for the offered labour which helps the surrogate to uplift her economic condition. Thus, it has been a source of livelihood for many. As far as the regulations are concerned regarding surrogacy in India, altruistic surrogacy is allowed. Altruistic surrogacy is connected to free labour as the surrogate will rent her womb for free of cost. This will disregard the labour the surrogate contributes to the intended couple who will have all the happiness of parenthood later. So surrogate is an unpaid means to an end where there will be the intended couple. There is an ever increasing of infertility rate in India as well as in the world for which the process of surrogacy is a boon and not a ban. It can be opined that if surrogacy helps people to have satisfaction, happiness and parenthood then the regulations should be such that restricts the possibility of misusing surrogacy. The regulation should always take into consideration the fact that a black market of surrogacy may erupt. This billion-dollar business involving the clinics, medical professionals, couples, baby and the surrogate mother should be regulated taking into consideration all the stakeholders

and also the social and economic concerns. Thereafter, the practise of surrogacy can be regulated in an effective way.

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