



Surrogacy And Parentel Rights In Legal Perspective In India

SUBMITTED BY AUTHORS:

ARUNA G

AKTCHAYA S

DHANALAKSHMI SRINIVASAN UNIVERSITY, TRICHY

ABSTRACT

India has grown to be a popular destination for overseas couples and a centre for surrogacy during the last 20 years. The number of fertility clinics offering IVF, surrogacy, and artificial insemination to Indian citizens and foreign couples has increased dramatically across the nation. The surrogacy boom has led to more complex ethical, legal, and social issues. The prevalence of unethical practices such as child abandonment, surrogate mother exploitation, and selective breeding has increased. The study focuses on the various unresolved difficulties related to surrogacy. This thesis highlights the many case studies in India as well as the timeline of the regulations that the Indian government has put in place to regulate surrogacy services. In India, surrogacy is not governed by any laws. Guidelines for the Accreditation, Supervision, and Regulation of ART clinics in the nation were published by the ICMR in 2005. These guidelines were followed by the Assisted Reproductive Technology Bill in 2010, its 2013 edition, and the Surrogacy Regulation Bill of 2016, which was reintroduced in 2019. Nevertheless, these bills and guidelines are not legally binding. The researcher has also looked at other laws in India that deal with surrogacy-related issues and try to maximize its advantages, but these laws have flaws of their own and are difficult to enforce in the current situation, where surrogacy has become a major problem in terms of appropriate regulation and related human rights violations on ethical grounds, despite the seriousness of the issues at hand. Consequently, this study will conduct a thorough examination of the pertinent legal provisions. It seeks to evaluate India's surrogacy legislation critically. According to this study, a comprehensive Act pertaining to surrogacy restrictions is still awaiting. In this thesis, the researcher makes the case that outlawing commercial surrogacy in India won't solve the problem because it would push such operations underground and result in illicit activities.

KEYWORDS: Surrogacy in india, legal perspective, parental rights, surrogacy rights, ethical issue of surrogacy, eligibility of intended parent.

INTRODUCTION:

Surrogate that particular the intersection of medicine, ethics, and law. It enables a woman, known as a surrogate, to carry and deliver a child for another person or couple, referred to as the intending parents. While this arrangement satisfies the emotional and social desire for parenthood, it simultaneously raises crucial legal questions. Unlike natural childbirth, where motherhood is traceable to the woman giving birth, surrogacy creates a situation where the womb and genetic material may belong to different individuals. This complicates the determination of legal parentage, custody, and rights over the child.

MEANING OF SURROGACY:

A surrogate is a woman who consents to carry a pregnancy and deliver birth on behalf of a person who is unable to do so. The people who desire to raise the kid are referred to the intended parents in this process, and the woman carrying the child is called the surrogate mother. It is usually utilised when a couple is unable to conceive because of health problems, repeated miscarriages, or other difficulties. Sometimes a woman's health might be at risk if she carried a pregnancy, thus she would decide to employ a surrogate. upon the birth of the child. The surrogate has no parental responsibilities; instead, the intended parents take care of the kid.

SURROGACY IN MEDICAL TERM:

Surrogacy is an assisted reproductive technique where a woman who is not meant to be the child's legal mother carries a pregnancy. In vitro fertilization (IVF), in which an embryo made from the gametes of the intended parents or donors is placed into the surrogate's uterus, is typically used to establish the pregnancy. The genetic material often belongs to the intended parents, while the surrogates supply the gestational environment.

TRADITIONAL SURROGACY

Traditional surrogacy involves a woman, called the surrogate, who is artificially inseminated with sperm from the intended father. This process means that the surrogate's eggs are fertilized by the father's sperm, making her the biological mother of the child she carries and delivers.

As you may anticipate, this type of surrogacy can be quite challenging, both on an emotional and legal level. Consequently, it is not very prevalent today. In fact, in certain regions, traditional surrogacy is prohibited.

GESTATIONAL SURROGACY

frequently nowadays. In this procedure, doctors fertilise the mother's egg with the father's sperm using a method known as In-Vitro fertilization (IVF). The sperm and egg may occasionally also originate from donors. The surrogate's womb is subsequently filled with the fertilized egg, which is now an embryo. The surrogate is not a mother; she is merely carrying the child.

INDIA'S SURROGACY LAW FRAMEWORK:

Transition from commercial to altruistic surrogacy with the surrogacy (regulation) act, 2021, india established a legal framework. Commercial surrogacy is forbidden by the act, and only altruistic surrogacy in which the surrogate receives no compensation other than insurance and medical costs is allowed. Although the goal of this policy is to stop exploitation, many potential parents now have much less options for surrogacy.

REQUIREMENTS FOR INTENDING PARENTS ELIGIBILITY:

The act limits who can choose to be a surrogate. Married heterosexual Indian couples are the only ones that qualify. The spouse must be between 23 and 55 years old, and the wife must be between 23 and 50 it is necessary to have a medical certificate attesting to infertility. A surviving biological or adoptive kid is prohibited for couples, unless they have a disability or a life threatening illness. The scope of surrogacy limited by these requirements, which exclude foreigners, single parents, LGBTQ+ people, and unmarried couples. The surrogate mother's requirements the surrogate mom has to. Be a married mother with a minimum of one child. Be in the 25-35 age range. Go through surrogacy just once in her lifetime. Give written consent without being forced. Despite the fact that the act needed

INTENDED PARENTS RIGHTS AND RESPONSIBILITIES

Rights and Responsibilities of Intended Parents The new surrogacy law in India prohibits commercial surrogacy and protects women from being exploited by individuals who may be drawn into such relationships. Olu altruistic surrogacy is permissible under India's 2021 surrogacy law, which allows you to bear a child for another individual or couple without getting any financial compensation other than insurance and medical bills. This section prioritizes the welfare of all parties involved and ensures that surrogacy agreements in India continue to be moral and open. Furthermore, the legislation highlights the importance of responsible and controlled surrogacy activities in India by establishing a number of standards that must be met before a couple or individual can choose to employ surrogacy in the country.

“SURROGACY REGULATION ACT, (2021)”

The act limits who can become a surrogate. Only married heterosexual Indian couples eligible. The husband must be at least 55 years old, and the wife must be between the ages of 23 and 50. A medical document attesting to infertility is required. A surviving biological or adopted child is not permitted for spouses unless they have a disability or a life-threatening sickness. These rules limit the scope of surrogacy, as they prohibit foreigners, single parents, LGBTQ+ people, and unmarried couples. Surrogate mothers must meet certain conditions. Be a married mother with at least one child. Be in the 25-35 age bracket. Go through surrogacy only once in her life.

SURROGACY MOTHER RIGHTS:

There are several ways for a woman to become a surrogate mother. As a result, she is willing to endure the pain and follow the advice of medical professionals and prospective parents. A surrogate pregnancy may require several attempts to be successful. She is therefore nine months pregnant before the child is born. The surrogate mother's obligations are prioritized over her rights in surrogacy agreements. In addition to the obligations they have, a surrogate may also have certain legal rights. However, surrogacy regulations in many countries do not take this matter seriously. To protect her interests, it is therefore essential to establish the surrogate mother's rights.

SURROGACY AND ETHICAL ISSUES:

Surrogacy has given rise to a number of ethical problems. Among their most frequent sources of inspiration are social justice, women's rights, children's welfare, and bioethics. Because a woman must be used as a surrogate, surrogacy presents the biggest ethical issues. Scholars have criticized surrogate motherhood for objectifying and commercializing women, among other physical, psychological, and symbolic issues. Carl Schneider claims that some surrogate moms may become sick or even pass away. According to some observers, surrogate moms may experience psychological trauma as a result of the procedure, similar to birth mothers who place their children for adoption. Some surrogates are adamant about attempting to keep the child because they regret bearing a child for a different husband.

CONCLUSION:

Surrogacy is a legal struggle as well as a medical advancement. By protecting surrogate mothers' rights and guaranteeing intended couples' legal paternity, the Surrogacy (Regulation) Act, 2021 was a significant step towards organised surrogacy governance in India. However, a careful balancing act between autonomy, equality, and protection is necessary for true justice in surrogacy legislation. In order to preserve the constitutional principles of dignity, reproductive freedom, and child welfare, the legislation must change to reflect shifting family arrangements and global norms. Whether India can establish a truly equitable surrogacy regime one that respects the rights of all parties involved will depend on future judicial interpretation and legislative reform.