



Significance of surrogacy (regulation) bill, 2016

Ved Prakash¹, Shruti Katiyar²

¹ Student of BA.LL.B (10th Semester), Law College Dehradun, Uttarakhand University, Uttarakhand, India

² Assistant Professor, Department of Law, Law College Dehradun, Uttarakhand University, Uttarakhand, India

Abstract

This article looks to address the intricacy with respect to surrogacy laws in India. In India, surrogacy has been perceived under ART treatment however there has been no law managing the cases identified with surrogacy. The bill, restricting business surrogacy, has been passed by Union Ministry in August 2016 and has set out specific rules identifying with surrogacy process in India. The article would examine the Historical Development of Surrogacy in India, Present highlights of the bill and furthermore talks about the abnormality of present bill. Promote the paper investigates its different measurements so as to find out the premise which makes it basic for the governing body to pass a law with important changes to expressly address the issue. The reason for the investigation is to underwrite the requirement for authorization of surrogacy from the point of view of positive major right of multiplication ensured under Article 21 of the Indian Constitution. By restricting, as opposed to directing, the market, the administration can't keep the abuse of poor ladies who turned out to be a piece of it because of need of cash. Additionally give recommendations and answers for make the surrogacy law more successful.

Keywords: surrogacy, ART Treatment, legalization, Indian constitution

Introduction

In Indian culture procreation of child is a pre-requisite for solemnization of marriage. According to Hindu mythology child plays an important role in performing last rites of a person so that the said person goes to heaven. In many parts of India childless couples are not allowed in many ceremonies. Even Muslim law procreation of child is important.

So, surrogacy is a method that help childless couple to get offspring. But due to globalization and modernization surrogacy become industry in which poor woman conceive baby of anther unmarried couple, unmarried man and women, foreign couple etc. Women who are unable to earn money for livelihood from another source choose this one to earn their livelihood.

In many cases they are deceived and not provided care and medical assistance. In some cases they have to suffer from physical disability.

The Surrogacy (Regulation) Bill, 2016 is considered as an important step towards the regulation of surrogacy practices in India. The Bill focuses on preventing commercial surrogacy, exploitation of surrogate mothers and child born through surrogacy. It also provides a detailed regulatory framework for Surrogacy Clinics.

Important feature of the Bill ^[1]

1. Surrogacy will not be allowed for
 - a. Homosexual couples
 - b. Single parents
 - c. Couples in live-in relationships
 - d. Foreigners
 - e. Couples with children
 - f. Attempts at commercial surrogacy

2. Couple must be married for at least 5 years.
3. Either one of couple must have proven infertility.
4. Only Indian citizens; NRIs are also not included
5. Age of couple: 23-50 for females and 26-55 for males.
6. Women can be surrogates only once and a married couple can only have one surrogate child.
7. The couple should employ an "altruistic relative", i.e. the surrogate mother should be a relative who is sympathetic to the situation.
8. Egg donation is banned.

Historical Background

Surrogacy is when a woman carries a baby for another couple and gives up the baby at birth. In the past decade, commercial surrogacy has grown tremendously in India. It is currently estimated to be a \$2-billion industry ^[2]. Commercial surrogacy has been legal in India since 2002, a practice that has been fully taken advantage of by many stars in the Hindi film industries. People has started using surrogacy to procure child so to prevent pregnancy and suffering during that period and started using it as a fashion but not by those couples who are unable conceive due to medical reasons. Before November 2015, when the government imposed a ban, foreigners accounted for 80 per cent of surrogacy births in the country. This is because most countries, barring a few such as Russia, Ukraine and some U.S. states, do not permit commercial surrogacy. Many countries in Europe have completely prohibited surrogacy arrangements, both to protect the reproductive health of the surrogate mother as well as the future of the newborn child.

The debate began in case in 2008 in *Baby Manji Yamada v. Union of India and Another*, (2008) 13 S.C.C. 518 ^[3]. A

Japanese doctor couple commissioned a baby in a small town in Gujarat. The surrogate mother gave birth to a healthy baby girl. By then the couple had been divorced and the baby was both parentless and stateless, caught between the legal systems of two countries. The grandmother of the child, came from Japan to take care of the child and filed a petition in the Supreme Court of India under Article 32 of the Constitution. The Court relegated her to the National Commission for Protection of Child Rights constituted under the Commissions for Protection of Child Rights Act, 2005. Finally, baby Manji left for Japan in the care of her genetic father and grandmother.

Many cases are coming those highlight the total disregard for the rights of the surrogate mother and child and due to which large number of public interest litigations has been filed in the Supreme Court to control commercial surrogacy. The 228th report of the Law Commission of India also recommended prohibiting commercial surrogacy and allowing surrogacy only to needy Indian citizens by enacting a suitable legislation [4].

Inconsistencies with the present laws

- The confinement, particularly in view of conjugal status like single parent can't experience surrogacy damages the privilege to family under Article 21 of Indian Constitution, as when the law permits appropriation by a solitary parent, for what reason not permit surrogacy as well.
- Bill says simply poor "Desolate" Couples are legitimately gifted to endeavor surrogacy yet no unmistakable game plan is given for the women for whom tyke bearing can be risky or for no good reason the earlier youths have kicked the can.
- No proper option is accommodated the couples who can't locate a volunteer surrogate inside its family. This arrangement denies a person from the Right to family and Right to have organic successor on the off chance that one neglects to locate a relative as surrogate mother. With no financial remuneration, nobody would bear such torment for simply charitable reason. What's more, if regardless the surrogate mother bites the dust the individual relations inside the family get demolished.
- Banning business surrogacy and controlling selfless surrogacy in India is a lost opportunity and an activity in moral crusading. It swings to the way that interest for surrogacy still exists in India and the bill will drive the whole surrogacy industry underground. For eg. The rich family may convey the surrogate mother with the planning couple to remote nations where surrogacy is legitimate so as to get a surrogate youngster. As surrogacy treatment is extremely costly, just poor Indians select the same and in light of the fact that a few people has influenced it to design prohibiting business surrogacy would deny other destitute individuals from benefiting this administration.
- The arrangement to attempt surrogacy after the time of five years of marriage will make the surrogacy as last advance, in the wake of attempting all the accessible costly ART strategies which would make the surrogacy system to be happened slightest conceivable if the planned lady goes

to menopause and further the therapeutic science doesn't take such a long stretch of 5 years to announce the couple barren.

Suggestions

The Parliamentary standing committee on health and family welfare reviewing the Surrogacy (Regulation) Bill. The board made vital proposal and requested that compensated surrogacy be preferred over altruistic surrogacy. The previous ensures that rights of all parties are protected and enforced whereas the latter sees a women being left without any compensation for her productive labour.

Committee's recommendation [5]

Broadening the eligibility criteria in favour of the following is recommended:

1. Live in couple are allowed due to modern social setup in urban cities.
2. Divorced women and widows.
3. Non-Indian, Persons of Indian origin and overseas citizenship of India cardholders.
4. Five year waiting period after marriage must be reduced which seems arbitrary and without logic.

Other key recommendation [6]

The committee make the following recommendation regarding other significant issues relating to the bill.

1. The mechanism for obtaining the consent of the surrogate: There should be an elaborate mechanism undertaken by a competent authority after medical and psychological counselling. An option of withdrawal should also be there for surrogate.
2. Surrogacy agreement: The bill should provide for a registered and legally binding comprehensive surrogacy agreement containing all safeguards such as clause relating to insurance, compensation, the manner of payment, pre/post-delivery care, nourishment etc.
3. Abortion during surrogacy period: The requirement of approval of appropriate authority for abortion during surrogacy period should be done away with. The abortion should be governed by existing Medical Termination of Pregnancy Act, 1971.
4. Second surrogacy- Provision for intending couple to avail surrogacy services again, if the child born out of surrogacy is mentally and physically challenged or suffering from fatal illness or life-threatening disorder etc.
5. Child right: There should be a comprehensive provision entailing insurance coverage for unborn child.
6. Penal provisions: The Bill should have explicit provisions with regard to offences like human trafficking, abduction, sex-selection practices etc.
7. Regulation of ARTs: As there are no separate surrogacy clinics, the regulation of ARTs clinics is needed to make the bill meaningful.

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