

QUANDARY OF HEALTH RIGHTS OF A SURROGATE MOTHER IN SURROGACY ARRANGEMENTS IN INDIA

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Abstract: Surrogacy has rampantly explored in India. Births through new reproductive and cloning technology have introduced incredible potential in the reproductive arena. Surrogacy arrangements have commoditized surrogate mother violating the health rights; reproductive rights. The occurrence of certain health risks associated with surrogate pregnancy may pose serious health risk and hazards namely Ovarian Hyper Stimulation Syndrome (OHSS), miscarriages, multiple pregnancies, C-section Delivery, Ectopic pregnancy, and Ovarian cancer. Considering the innumerable health risks associated with IVF to the extent of death, and health disabilities it is of prime importance to safeguard the reproductive health of women including the surrogate mother through legislation. Need to regulate the use of Assisted Reproductive Technologies and the surrogacy arrangements through effective legislation, continuous monitoring and regular evaluation.

Key words: Surrogacy, Surrogates, Health rights, reproductive rights, health risks

Introduction: “[Motherhood is] the biggest gamble in the world. It is the glorious life force. It’s huge and scary—it’s an act of infinite optimism.” Gilda Radner.

The above quote brings forth the cherished, revered state of being in the company of vulnerability endowed upon women. This article seeks to address health; reproductive rights of a surrogate mother, one of the smouldering issues amongst many in the present set-up of unregulated surrogacy arrangements.

Since last four decades we have witnessed major transitions through the advent of medical technology. 21st century being the science and technology age has witnessed a phenomenal revolution in medicine and particularly assisted reproductive technologies (ARTs). ARTs have brought colossal change in the concept of parentage and motherhood. Though births through new reproductive and cloning technology have introduced incredible potential in the reproductive arena it has created many challenges besides its popularity.

Motherhood is perceived as the utmost component of the women gendered identity. Parenthood, particularly motherhood appears normative and childlessness deviant. However sometimes, some are unable to conceive due to certain medical conditions (absent uterus, recurrent miscarriage, and repeated failure of *in vitro* fertilization (IVF), etc) and social, physiological or other reasons. The desire for a baby leads them to take aid of reproductive sciences and find alternative solutions in the form of advanced treatments such as artificial insemination, *in vitro* fertilization, and ovum and embryo donation. These techniques have completely revolutionized the reproductive environment. Amongst these methods surrogacy, as one of the arrangement with the help of ART technique has become rampant.

India being recognized as a popular destination for medical tourism soon came became “the world capital of surrogacy” demanding for gestational surrogacy. Surrogacy means the process of carrying and delivering a child for another person. In the scenario of non-binding guidelines and recommendations and the absence of laws, surrogacy till 2016 has remain a free playing field for unprincipled intermediaries who lure and push disadvantaged and poor women into surrogate motherhood and exploit them denying their ‘**Right to Health**’. Due to these controversies arisen and to regulate the unchecked reproductive industry various drafts of the Assisted Reproductive Technologies (Regulation) Bill has been brought in 2008, 2010, , 2014 and at present the proposed draft –the Surrogacy (Regulation) Bill, 2016 which is yet under the veil and to be introduced into the Parliament.

‘Right to Health’ incorporates ‘Right to Reproductive Health’: In the modern economic and social development ‘Right to health’ is an indispensable fundamental right under Article 21 of Indian Constitution thus improving the quality of life of our citizens. Thus, it is the primary responsibility of the state to provide health care services to all its citizens. India, despite being a signatory to the Alma Ata Declaration of 1978, which guaranteed ‘Health for All’ by 2000, is far from realizing this objective. High maternal mortality rates in India reflects human rights violation pointing the systemic failure of the State in ensuring access to reproductive health facilities for Indian women. The Andhra Pradesh High Court sustaining the view of US Supreme Court in *B.K. Parthasarathi v. Government of Andhra Pradesh* recognised ‘the right of reproductive autonomy’ of an individual as a facet of “right to privacy” covered under Article 21 of Indian Constitution.

In surrogacy when a monetary transaction is involved it becomes a business and essentially changes the

unique biological ability of a woman's body to reproduce. Since 2003 India's 'fertility industry' has experienced rapid expansion under globalisation, emerging India as one of the leading global destinations for 'fertility tourism' or 'reproductive tourism'. This has further worsened the problems of surrogate mother. Surrogacy arrangements have commoditized surrogate mother and the surrogate child.

Reproductive rights are legal rights and freedoms relating to reproduction and reproductive health. The International Conference on Population and Development (ICPD) held in Cairo in 1994 marks the beginning of a new paradigm in addressing human reproduction and health. Rights relating to reproductive and sexual health include the rights to life, liberty, and the security of the person; to access health care and information; and to nondiscrimination in the allocation of resources to health services and in their availability and accessibility. Of central importance are the rights to autonomy and privacy in making sexual and reproductive decisions, as well as the responsibility of health care providers to ensure informed consent and confidentiality in relation to health services. Cairo agenda defines 'Women's control over their own childbearing' as a key component of reproductive rights.

Feminist scholars have argued that depriving women of their rights during pregnancy deprives women of legal personhood, diminishes women's autonomy, and derogates women's claim to full citizenship. Reproductive rights thus enable all women including the surrogate mothers to have safe pregnancy and childbirth.

But already having an alarmingly high maternal death rate, surrogacy business is further deteriorating and exploiting poor women in India. Thus, women especially the surrogate mothers in India have limited Health -reproductive rights and choices.

Contravention of diverse Health Rights of Surrogate Mother: Arts including the surrogacy compromises the dignity of the surrogate mother, even in case of voluntary participation, by treating her as a 'womb for hire'. The present scenario shows that surrogacy is not only restricted to the metros but has also widespread in the number of cities, towns and villages. The health care provider must obtain informed consent from the surrogate and must respect her right to accept or refuse medical procedures. The poor and disadvantaged women unknown of health risks are often persuaded to become surrogates by their spouse or agents for earning easy money. In India, neither there is a provision of psychological screening nor legal counseling, which is mandatory in USA. After employed as surrogates, they are shifted into hostels

for the whole duration of pregnancy on the pretext of taking antenatal care. They are hardly allowed to go out of hostel and are allowed to meet their family only on weekends. In case of unfavorable outcome of pregnancy, they are unlikely to be paid, and are left without any post-pregnancy medical and psychiatric support. Hence, there are number of ethical, social, legal and psychological issues associated with surrogacy, which require urgent need for framing and implementation of law.

It is reported fact about the occurrence of certain health risks associated with surrogate pregnancy which may pose serious health risk and hazards namely Ovarian Hyper Stimulation Syndrome (OHSS), miscarriages, multiple pregnancies, C-section Delivery, Ectopic pregnancy, and Ovarian cancer. Considering the innumerable health risks associated with IVF to the extent of death, along with multiple embryo transfers due to uncertain success rate of IVF; it is of prime importance to safeguard the reproductive health of women through legislation. Often women undergo caesarean even to suit the birth time to commissioning parents. Many cycles of hormonal injections invade the health of the surrogate leaving side effects. Pregnancy, birth and the post-partum period includes complications such as pre-eclampsia and eclampsia, urinary tract infections, stress incontinence, hemorrhoids, gestational diabetes, life-threatening hemorrhage. Surrogate mothers also become prone to induced hypertension, stroke and placental abruption along with issues such as premature delivery, genetic malformation and infections. Hence surrogacy is criticized by opponents' by referring it in offensive terms as "outsourced pregnancies", "babyfarms", "wombs for rent", "human trafficking", "commoditization" "bonded labour", etc.

Conclusion: In the scenery of right to health being incorporated as a fundamental right furthermore well expressed in various international instruments, intensifying the various facets of the health right vis-à-vis reproductive right is the urgent need. To realize the reproductive rights for women in India, the women's health care needs should be addressed. It is essential to accelerate the improvements in health services thus concluding the health inequalities. The use of Assisted Reproductive Technologies and the surrogacy arrangements should be regulated. Thus laws, regulations, and policies towards assisted reproductive technologies should incorporate principles of equity with effective sanctions. The law should promote transparency by incorporating the principle of accountability. Ethical practices should be encouraged. This is achievable only through the enforceable provisions in law, its effective implementation, continuous monitoring and regular evaluation. Governments approach in advancing the

health of surrogates in assisted reproductive technologies is very important. Resolving this long awaited moral quandary through legislation is needed

to protect the rights of surrogate mothers ensuring the right to health.

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