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Surrogacy's legal complexities: juggling parenthood, rights, and obligations

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Research Article

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Abstract
As a form of assisted reproduction, surrogacy raises a number of legal issues that go against conventional ideas of family, parenting, and physical autonomy. The surrogate, intended parents, medical experts, and the infant are among the many parties involved, each of whom has certain rights and obligations. Different countries have different legal frameworks regulating surrogacy; some allow it under controlled systems, while others forbid it because of ethical issues. The lack of comprehensive surrogacy law in India has resulted in a number of legal uncertainties, especially with regard to the rights of the surrogate mother, the enforcement of surrogacy agreements, and the determination of parentage. The Baby Manji Yamada case brought to light the lack of clear regulations, which might cause problems with citizenship and parental rights, particularly in cross-border surrogacy agreements.
The status of the surrogate mother, the nationality of the children born via surrogacy, custody rights, and secrecy concerns are among the major legal problems concerning surrogacy that are examined in this paper. It critically analyzes how the Assisted Reproductive Technology (Regulation) Bill of 2010, the Indian Contract Act of 1872, and pertinent court rulings shaped the country's contemporary surrogacy legal environment. The ethical issues surrounding the commercialization of motherhood and the consequences of commercial surrogacy are also discussed in the study. Through case studies, the study highlights the significant inadequacies in the current legal system and promotes comprehensive legislation to safeguard the rights of intended parents, children, and surrogates, among other parties.
The research comes to the conclusion that India's surrogacy laws are still disjointed and lacking, which often leaves parties open to abuse and conflict. To reduce these dangers and guaranty the preservation of human rights in surrogacy agreements, a clear, moral, and enforceable legal framework is necessary.

Keywords: India, parenting, assisted reproduction, surrogacy agreements, child custody, nationality, commercialization, legal framework, and surrogacy

Introduction

As a method of assisted reproduction, surrogacy has become a game-changing choice for people and couples dealing with infertility or other obstacles to becoming parents. Although surrogacy gives many intended parents hope and joy, it also poses a number of legal challenges that go against conventional notions of family, parenting, and physical autonomy. Each of the many parties involved in the process—the intended parents, the surrogate, the medical staff, and eventually the child—has certain rights and obligations that need to be upheld and balanced within a legal framework.

The legal treatment of surrogacy varies greatly throughout the world. Some nations allow surrogacy under controlled regulations, while others explicitly prohibit it because of moral dilemmas or worries about exploitation. Legal difficulties over the enforcement of contracts, the determination of legal paternity, and the rights of the surrogate mother sometimes emerge, particularly in cross-border partnerships, even in places where surrogacy is allowed. Long-lasting arguments, emotional upheaval, and, in some situations, the child's statelessness or custody ambiguity might result from these legal

ambiguities.

Until regulation, India had no laws specifically addressing surrogacy to protect the rights and interests of the commissioning parents, the surrogate mother, or the child. However, Indian law does not expressly forbid surrogacy. The surrogacy agreement under the Indian Contract Act of 1872 is invalid because it violates public policy. This situation presents a number of legal challenges.

Legality of Mother

The surrogate mother was not considered the legal mother in India. The birth certificate was created using the names of the genetic parents.

In this case, Baby Manji Yamada, the first surrogacy baby born in India, received an identity certificate from the Indian government. The certificate did not indicate country, mother's name, or religion, and it was only valid in Japan. As a consequence of this ruling, the Indian public is becoming more and more worried about the need for legislation to handle concerns pertaining to commercial surrogacy. Two twins who were fathered by a German national in the Anand district via paid surrogacy were given Indian citizenship by the Gujarat High Court in the Jan Balaz v. Anand Municipality case.

Nationality of Child Born through Surrogacy

What is the kid's nationality if a foreigner or foreign couple uses surrogacy or sperm or egg donation in India and a child is born as a result? Despite being born in India, the child is not an Indian citizen, according to clause 35(8) of the Assisted Reproductive Technology (Regulation) Bill, 2010. The birth certificate of a child born with assisted reproductive technology must contain the name or names of the parent or parents who requested its use.

Custodial Parent of a Surrogate Child in the Case of Gay Parents: In the Baby Manji Yamada case, the court decided that a single guy or a male gay couple might be the intended parent. As a result, gay parents may be considered the parents of a surrogacy kid in India. Clause 35(4) of the ART (Regulation) Bill, 2010 uses the word "unmarried couples" to refer to heterosexual partnerships.

Child Custody

The starting parents should keep their parental rights if most surrogate agreements are carried out smoothly and without any problems. When the surrogate chooses to keep the kid and won't give it up to the couple, especially if she is also the genetic mother, issues might occur. It is argued that both Section 17(1) of the Guardians and Wards Act, 1890 and Section 13(1) of the Hindu Minority and Guardianship Act, 1956 expressly indicate that the best interests of the child must come first when choosing a guardian.

Surrogate Child with Physical and Mental Impairments The birth of "healthy" kids is the only goal of surrogacy contracts, and women are only seen as a tool to that end. This is one of the reasons why it is said that prejudice and a violation of human dignity may result from the selfless and charitable act of surrogacy. The position of children with impairments in a surrogacy contract is now a major ethical conundrum. When the surrogate contracting couples found out about the baby's condition, they often refused to adopt her. They consider babies with disabilities to be "faulty products." This implies that the modernization-influenced eugenic paradigm operationalizes surrogacy within its binary framework.

Status of Divorced Biological Parents in Respect of the Custody of Child: Baby Manji Yamada's biological mother and father signed a surrogacy arrangement with the surrogate mother. Due to marital conflict, the biological parents declined to adopt the kid. The problem of child custody then surfaced. In this decision, the Supreme Court did not examine child custody disputes between divorced parents. Is it also true that the kid should be considered the couple's legitimate child if a commissioning couple decides to divorce after undertaking surrogacy but before the child is born?

Confidentiality of Information Regarding Surrogacy

The foundation of gestational surrogacy is a contract that separates the intended parents' and the surrogate's genetic, social, and gestational parental duties. The treating physician may feel that they have competing obligations with relation to the patient's treatment, which might lead to disagreements between the parties. Concerns about the surrogate's pertinent rights and the doctor's obligations while treating gestational

surrogates may surface, as well as the possibility of conflict in the case of surrogate misbehavior. The following problems are evident in this situation:

(1) how a doctor's duty to preserve confidentiality is affected by a surrogate's waiver of confidentiality and subsequent revocation; and (2) if third-party interests are sufficient to support a doctor's disclosure of information despite the surrogate's objections.

Enforcement of Surrogate Agreement

Both the infertile couple who want a child and the surrogate mother who helps the kid be born might benefit from the surrogacy arrangement. However, since surrogacy agreements are special and entail a broad range of medical treatments, a lengthy period of time, and the duties of the parties involved, a thorough analysis of the many issues involved is required. The rights and obligations of the intended and surrogate parents, the consequences of any violation of these obligations, and the parties' liabilities in the event of any undesirable circumstances are just a few of the factors that the parties entering into such agreements are required to evaluate. This might be accomplished by drafting a formal agreement to function as a surrogate mother.

Surrogacy contracts are written agreements between the intended parents and the surrogate that specify the terms and conditions of the surrogacy partnership. The contract is in the possession of the surrogate and each of the intended parents. These kinds of contracts are required to safeguard the legal interests of both parties to the surrogacy relationship. This is because no one can predict the disputes that can occur between the intended parents and the surrogate, as well as the difficulties that might occur before the surrogacy process starts, during pregnancy, or after the kid is born. If not, the surrogacy agreement would no longer serve its intended purpose. As a result, if the surrogacy deal goes through as planned, the couple will get the healthy kid they have been longing for and the surrogate mother will be paid. The parties will be forced to litigate their differences in court if they are unable to come to an agreement. Regretfully, there is no specific legislation governing the terms and circumstances of surrogacy agreements in India. The settlement of any such problem based on a surrogacy contract becomes very difficult in the absence of particular law and may raise concerns about the rights and interests of the parties. However, since every surrogacy contract involves a number of legal and human rights issues, such as whether the contract amounts to prostitution, slavery, or the monetization of motherhood, its validity and enforceability are questionable. A common criticism of commercial surrogacy is that it promotes positive eugenics via selling infants. Surrogacy contracts may create questions about the proper remedies in the case of a violation. Diverse viewpoints on the legality and enforceability of surrogacy contracts have emerged as a result of this diversity.

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