

**NAME- DR. AKANKSHA**

**GUEST FACULTY**

**P.G DEPARTMENT OF PHILOSOPHY, PATNA UNIVERSITY, PATNA**

**M.A SEMESTER-II**

**COURSE CODE-Phil CC- 08**

**PAPER – APPLIED ETHICS**

**TOPIC : SOCIAL, ETHICAL AND LEGAL IMPLICATION OF SURROGATE MOTHERHOOD**

**MOBILE NO: 7839270596, 7979872919**

**E-MAIL ID: sakanksha806@gmail.com**

**Surrogate** Motherhood, which literally means “substitute motherhood”. This phenomenon of substituting motherhood actually separates the two undivided natural activity i.e. biological reproduction and mothering. A surrogate mother is a woman who agrees to become pregnant and bear a child for another couple, usually because the female partner is infertile or unable to sustain the pregnancy.

### **Types of Surrogacy**

In traditional surrogacy, the surrogate is artificially inseminated with sperm from the intended father (or donor), in which case the resulting child is her genetic offspring. The recent year trend is for gestational surrogacy through in vitro fertilization; in these cases, an embryo produced with another woman’s ovum is implanted in the surrogate. Typically these arrangements are formalized through legal contracts and entail a payment to the surrogate. Surrogacy can be **commercial or**

**altruistic** depending upon whether the surrogate is paid money for her pregnancy.

### **Social and Ethical implication of surrogacy**

The use of new reproductive technologies has changed the old established definition of the 'motherhood', in which motherhood was a status of woman in the society and in the family. But now it changes into an activity, a service, a work to produce babies through labor. Being labourers, mothers produced the precious products, but like most unskilled, disrespected workers, they are not trustworthy and need to be monitored, controlled and kept in line. Thus procedure of surrogacy separates motherhood as gestational, genetic and intended motherhood. Moreover once a woman has agreed to be a surrogate mother, she has to follow all the terms and conditions of the contract during the entire process and more importantly she has to relinquish all her rights over the child after his birth. It is claimed that entire process of reproduction is an inherent part of women's existence and that transferring the child to someone else upon its birth is unnatural and psychologically damaging. In recent years, INDIAN society has emerged as a surrogacy hub for couples from other countries. There were multiple reports concerning unethical practices, exploitation of surrogate mothers, abandonment of children born out of surrogacy and rackets involving intermediaries importing human embryos and gametes prompting the need for a stringent law on surrogacy.

- The surrogates generally turn out to be poor illiterate women of rural background who are persuaded by their spouse or middlemen to enter such deals to earn easy money. These women have no power to decide about their own body and life.

- After recruitment by the commercial agencies, these women are shifted to hostels on the pretext of taking antenatal care. The real motive is to cart them and avoid social stigma of being made outcaste by their community. These women end up spending the whole tenure of pregnancy worrying about their household and children.
- The worst part is that in case of unfavorable outcome of the pregnancy they are unlikely to be paid and there is no provision of insurance or post-pregnancy medical and psychiatric support for them.
- Due to lack of proper legislation, sometimes, both surrogate mothers and intended parents are exploited. Only middlemen and commercial agencies profit from the arrangement.
- The most unequal part in the surrogacy contract, remains on the child that results from it. There are also incidents when the child given to the couple after surrogacy is not genetically related and in turn is disowned by the intended parent and the child has to spend his/her life in an orphanage.
- The Law Commission of India also highlighted the need to enact such a law. In its 208th report, the commission recommended prohibiting commercial surrogacy citing concerns over the prevalent use of surrogacy by foreigners and the lack of a proper legal framework resulting in exploitation of the surrogate mother who may have been coerced to become a surrogate due to poverty and lack of education.

### **Psychological implication of Surrogacy**

The concerning psychological aspect of Surrogacy Arrangement is that it bypasses the actual creative process of child bearing. A baby becomes something that is manufactured elsewhere, vicariously without the physical and emotional process occurs naturally during the pregnancy

and childbirth. There is about nine possible combination of offspring resulting from surrogate arrangements where gestation is through case of surrogate for example- Intended Mothers Oocyte +Intended fathers Sperms, Intended Mothers Oocyte +Surrogate Partners Sperm, Intended Mother Oocyte +Donor Sperm, Surrogate Mothers Oocyte +Intended Fathers Sperm, Surrogate Mothers Oocyte +Surrogate Partners Sperms, Surrogate Mothers Oocyte +Donor Sperm, Donor Oocyte + Intended Fathers Sperm, Donor Oocyte+ Surrogate Partners Sperm, donor Oocyte +donor Sperm. These diversity used in the surrogacy arrangements may cause significant psychological and social uncertainty in the short and long term to the all individuals involved in such arrangements and the offspring.

### **Legal implication of Surrogacy**

Surrogacy (Regulation) Bill, 2019 has been introduced in the Lok Sabha. The Bill aims to prohibit commercial surrogacy in India. Commercial surrogacy, a practice also known as '**Rent a Womb**', was legalised in India in the year 2002, in order to promote medical tourism. And soon, India became the hub of surrogacy. Driven by factors like low cost and the absence of a strict legislation, commercial surrogacy became a booming business in the country. However, the unregulated business of surrogacy led to concerns over the rampant exploitation of surrogate mothers as well as their children, prompting the need for a legislation to regulate surrogacy in the country.

### **Features of the Surrogacy (Regulation) Bill, 2019**

It provides for constitution of surrogacy boards at the national as well as state levels to ensure effective regulation. It seeks to allow ethical altruistic surrogacy to the intending infertile Indian married

couple between the age of 23-50 years for female and 26-55 years for male.

Only Indian couples who have been legally married for at least 5 years would be allowed to opt for surrogacy. It makes it mandatory for the couple to obtain a certificate of essentiality and also a certificate of eligibility before going ahead with surrogacy. It also provides that intending couples should not abandon the child born out of surrogacy under any condition.

It also stipulates a separate eligibility criterion for the surrogate mother. The surrogate must be a close relative of the intending couple and be a married woman having a child of her own. She should be between the age of 25-35 years, not have been surrogate earlier and must be certifiably mentally and physically fit. On the legal status of a surrogate child, the Bill states that any child born out of a surrogacy procedure shall be the biological child of the intending couple. The new born child shall be entitled to all rights and privileges that are available to a natural child. The Bill also seeks to regulate functioning of surrogacy clinics. All surrogacy clinics in the country need to be registered by the appropriate authority in order to undertake surrogacy or its related procedures. The Bill also provides for various safeguards for surrogate mothers health and insurance coverage for not only the period of pregnancy but after that also.

**It also specifies that no sex selection can be done when it comes to surrogacy. Surrogacy Bill prevents same sex couples from having surrogate children even though there is a credible scientific research to show that same sex parents are as good as heterosexual parents, thus violating the Article 14 of the Constitution.**

### **Conclusion:**

Hence, the world has warmed up to the concept of surrogacy that allows childless couples or single persons to become parents. Most

countries allowing surrogacy have framed their own laws for regulating surrogacy and also protecting the rights of surrogate as well as the child. In India controversial practices of surrogacy that raises difficult ethical and legal questions and complicates the very meaning of motherhood by differentiating it's traditionally related components, childbearing and maternal care.