

Surrogacy in India: Emerging Business or Disguised Human Trafficking

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Abstract : Commercial Surrogacy refers to a contract in which a woman carries a pregnancy for intended parents. There are two types of surrogacy; first, Traditional Surrogacy, in which, sperm of the donor or father is artificially inseminated in the women and carries the fetus till birth. Second, Gestational Surrogacy, in which the egg and sperm of the intended parent are collected for artificial fertilization through In Vitro Fertilization (IVF) technique and after the embryo formation, it is transferred into the womb of a surrogate mother with the help of Assisted Reproductive Technique. Surrogacy has become so widespread in India that it has now been nicknamed the "rent-a-womb" capital of the world due to relatively low cost and lack of stringent regulatory legalisation. The legal aspects surrounding surrogacy are complex, diverse and mostly unsettled. Although this appears to be beneficial for the parties concerned, there are certain sensitive issues which need to be addressed to ensure ample protection to all stakeholders. Commercial surrogacy is an emerging business and a new means of human trafficking particularly in India. Poor and illiterate women are often lured in such deals by their spouse or broker for earning easy money. Traffickers also use force, fraud, or coercion at times to intimidate the probable surrogate mothers. A major chunk of money received from covert surrogacy agreement is taken away by the brokers. The Law Commission of India has specifically reviewed the issue as India is emerging as a major global surrogacy destination. The Supreme Court of India held in the Manji's case in 2008, that commercial surrogacy can be permitted with certain restrictions but had directed the Legislature to pass an appropriate Law for governing Surrogacy in India. The draft Assisted Reproductive Technique (ART) Bill, 2010 is still pending for approval. At present, the Surrogacy Contract between the parties and the ART Clinics Guidelines are perhaps the only guiding force. The Immoral Trafficking Prevention Act (ITPA), 1956 and Sections 366(A) and 372 of the Indian Penal Code, 1860 are perhaps the only existing laws, which deal with human trafficking. Yet, none of these provisions specifically deal with the serious issue of trafficking for the purpose of Commercial Surrogacy. India remains one of the few countries that still allow commercial surrogacy. International Surrogacy involves bilateral issues, where the laws of both the nations have to be at par in order to ensure that the concerns and interests of parties involved get amicably resolved. There is urgent need to pass a comprehensive law by incorporating the latest developments in this field in order to make it ethical on the one hand and to curb disguised human trafficking on the other.

Keywords : business, human trafficking, legal, surrogacy

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