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Transnational Surrogacy during Pandemic: Stranded Babies, Waiting Parents

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Abstract:

Surrogacy i.e 'rented womb', 'Baby factory', 'true angels' as it is termed by various researchers is an interdisciplinary topic which have been scrutinized by medical practitioners, researchers, academics, lawmakers, and the media for how they consider the surrogate's role, the use of technology, and the future of the kid delivered through the arrangement. In this case, Commercial gestational surrogacy, as well as transnational surrogacy has arisen in India over the past two decades.

Though India has passed the Bill for regulating Surrogacy in 2019 which strictly bans this transnational commercial surrogacy yet the Bill has to become law. The effect of which during this Covid-19 pandemic is that several neonates have been left stranded as a result of the nationwide coronavirus quarantine. More than a dozen such new-borns have been waiting for their biological parents to pick them up at the Anand surrogacy centre in Gujarat, some for more than a month. This is a serious issue. Individual lives and parent-child relationships have been disrupted, as has the worldwide surrogacy industry. Through this paper a brief account of Transnational Surrogacy in India as well as impact of Covid-19 pandemic on the said process has been tried to portray.

Keywords: *Transnational Surrogacy, Gestational Surrogacy, Pandemic, Intended Parents*

1. Introduction

"It's stressful to be in an unfamiliar place, so far away from home, at such a happy time but their smile wipes away our frustration,"¹

Parenthood is regarded as a life-changing experience in terms of passing on the family lineage. The desire for children among spouses is a worldwide phenomenon, unmatched and incomparable to any other form of creative and economic pleasure. The importance and necessity having a kid is likewise highlighted in practically all world religions. Not only it is necessary to have a family and give birth to a kid in order to satisfy one's own goals, but it is also necessary for the survival of society. The act of procreation, which is a natural procedure by which a married couple

might have their own offspring, fulfils this need. Traditional reproduction is a clear three-dimensional occurrence in which a natural mother, a natural father, and a natural child share the complete biological process without the participation of any other agency other than minimum medical knowledge.²

Melissa Williams, the renowned Political Scientist, commented that —Reproduction of child, after all is the oldest production known to humankind, a process that is programmed into the biological fibre of our beings and defines our very survival.³ Unfortunately, for a variety of reasons, a huge number of people are unable to successfully complete this biological process and bear a child. Infertility is a heart breaking event that can bring a great deal of emotional distress. It can have a significant impact on every part of a person's life, including self-esteem and interpersonal relationships. Childlessness due to infertility is well-known to create considerable strain in many couples' interpersonal relationships. Learning to handle childlessness with oneself, one's partner, and society is one of the most difficult tasks faced by a childless pair which most times lead to matrimonial breakdown irretrievably.⁴

The urge to become a mother drives people to seek other alternatives, and reproductive medicine is one of them. One of the options available to infertile couples prior to the evolution and growth of science was to adopt a child, but medical science is rapidly altering to accommodate the changing world's perception of procreation. Couples now have various options for reproduction through Artificial Insemination, In Vitro Fertilization, or Embryo Transfer thanks to global research on Assisted Reproductive Technology (also known as test tube babies). Surrogacy is one of the forms of ART which enables infertile couples to make their dreams come true. Surrogacy is a type of medically assisted reproductive technology (ART) in which a woman carries a child for someone else and then gives the kid to them when it is born. This ART is offered as a service for those who are having a "reproductive disruption" on their path to motherhood owing to infertility or the inability to conceive or carry a pregnancy to term.

2 Surrogacy: Ray of hope for Infertile:

According to estimates, about 72.4 million couples worldwide struggle with infertility.⁵ However, infertility remains a serious global issue, affecting an estimated 60-80 million women and men, the vast majority of whom reside in low-resource nations. Subfertility refers to any sort of diminished fertility accompanied by a period of unwanted infertility. Infertility and sterility are sometimes used interchangeably, with spontaneous pregnancies occurring only on rare occasions.⁶

Infertility, which can be medical or social, is the most common reason for childlessness. Medical infertility is commonly described as the failure to have a child with regular sexual intercourse after a year or two of trying.⁷ A novel type of infertility known as social infertility has evolved in recent decades. It refers to people's inability to have children as a result of numerous

socioeconomic factors in their lives.⁸ Single women, widowed women, and divorced women, for example, may be fertile but unable to have children unless and until they marry. Similarly, homosexual couples are unable to bear children because begetting a kid necessitates a sexual union between man and woman. Furthermore, people who are elderly or crippled, as well as those who are in prison.

Adoption became popular as society and legal institutions improved, allowing childless couples to have children. Adoption allowed people to have children and fulfil their desire to raise them, but it did not meet the inherent innate desire of people to have a kid who was genetically connected to them. The desire to have a genetically related kid led to numerous human reproduction trials and research, which culminated in the development of various approaches. Artificial insemination, in-vitro fertilization, surrogacy, and other technologies were developed as a result of technological developments in the field of human reproduction and medical science⁹ for assisting a couple to beget a genetically related child.

3. Transnational Surrogacy Market:

It became feasible to differentiate the genetic mother from the gestational mother thanks to in vitro fertilization (IVF). This legal separation meant that the surrogate's and the baby's connection would be significantly weaker than in regular surrogacy situations. The separation of eggs and wombs fostered the development of a surrogacy industry and provided the necessary conditions for it to grow. It also signified a substantial departure from prior types of traditional surrogacy, which were led by discursive strategies.¹⁰

The shift from Traditional¹¹ to Gestational¹² surrogacy opened up the surrogacy business to the rest of the world, allowing couples to hire gestational mothers in India despite vast differences in genetic makeup, appearance, and other characteristics. The phenomenon of globalization increased both demand and supply in the surrogacy industry. In a positive way, reproductive tourism is a direct result of globalization, which has United Nations into a single "knowledge society." Globalization, on the other hand, has widened the gap between those who can seize opportunities and others who are left behind in the race.¹³ Progressive liberalization of trade in health services in developing countries contributed to widening inequalities in health and healthcare, increasing disparities between urban and rural areas and between rich and poor. It is against this context that reproductive tourism became increasingly viable and financially sustainable in India, facilitating a willing pool of persons for whom surrogacy was among the few available options for economic empowerment.¹⁴

The Indian surrogacy market has grown rapidly since 2002, reaching a peak in 2014 when it was estimated to be valued over INR 2000 crores,¹⁵ or USD 500 million. The Indian Council for Medical Research (ICMR) predicted that income from the surrogacy sector would reach USD 6 billion in the next few years in 2005-2006. Within reproductive tourism, surrogacy has been

described as a “pot of gold”.¹⁶

4. Pandemic Mishaps:

Despite the fact that surrogacy arrangements are now mostly limited to domestic intended parents in India, the wait for a child continues. In India, infertility treatment is primarily private, and statistics on the extent and magnitude of IVF are either unavailable or deceptive. In India, so-called "IVF-Surrogacy" has resulted in the proliferation and popularity of infertility technology, resulting in a rich business. For a long time, IVF doctors have claimed ownership of children born through commercial surrogacy, granting them "god-like" status. (Anika König, Heather Jacobson, and Anindita Majumdar 2020)¹⁷ As a result of the pandemic, stranded new-borns have created a credibility dilemma. In the midst of a state-wide COVID-19 lockdown, intended parents who were unable to travel to see their new-borns began to rely on private IVF facilities to care for them. Dr. Nayna Patel of the Akanksha Clinic in Anand, Gujarat, is noted as emphasizing how professionals must perform double duty by caring for both stranded infants and their worried parents. In contrast to the situation in the United States, where surrogates became “essential” caretakers, this care becomes “exclusive,” placing the doctor as the principal “saviour,” often excluding the surrogate who birthed the kid.

Through the struggle between waiting, being stranded, and providing care, mobility constraints become defined as a new form of disruption in transnational surrogacy imaginings. This exacerbates the reproductive disruptions that intended parents had to deal with when they first turned to ART and are now dealing with again as they wait to be reunited with their infants. This upheaval extends to new infant-care challenges that clinics and surrogates must negotiate. Clinics scramble to find appropriate caregivers for new-borns and reassure clients, while many surrogates in the arrangement are denied essential rites of passage, such as having IPs witness the birth and handing over the child to them (in the United States); or being recognized for their labour (in India). For most intended parents, their “long wait” for parenthood is extended by these disruptions, and remote viewings through digital interactions cannot fulfil the desire to hold their child.¹⁸

4.1 Experiential Learning:¹⁹

Only ten surrogate infants delivered at the Akanksha Infertility Centre, one of the country's largest surrogacy facilities, were handed over to parents during the lockdown, according to Dr. Nayna Patel. “This is a very trying period. The babies are being cared for by our staff and the NICU doctor. The doctor and his assistant spend hours on the phone addressing questions from parents. We understand the parents' emotional toll,” Dr. Patel said, adding that the administration was doing everything possible to assist. Akanksha has arranged for the parents to live in a nearby residential society. However, according to Dr. Patel, they were met with a lot of opposition from the community. “To protest, they formed a human chain... Things were eventually addressed with the

assistance of the administration. We do, however, understand everyone's fear about the pandemic. It's a helpless position, and most people are guarding and assisting.”

A Bengaluru couple, aged 43 and 39, were among the fortunate parents, arriving at the Akanksha centre just in time for the birth of their baby on April 16 after traveling for three days and 1,600 kilometres. They had to stay in quarantine for another 14 days before being allowed to hold him. The pair claims they were detained at various checkpoints across Karnataka, Maharashtra, and Gujarat, and that they sat in their car for 11 hours in Valsad alone, waiting for police to approve the "permit" they had received from Bengaluru authorities. The mother claimed the note they were carrying stated that they were "traveling for the birth of their kid," which is due on April 16, and that she didn't appear pregnant.

Another couple, 40 and 37, have been detained in Pune, a hotbed for Covid-19, unable to meet their daughter, who was born in late March. The father claimed that he had submitted three requests for permission to travel to Anand, but that none had been approved by the Maharashtra government. The couple also mentioned that the bill they're accruing as a result of the baby's extended stay in the hospital is weighing on their thoughts. Surrogacy treatment might cost up to Rs 8 lakh for a couple. With the government introducing a Bill in July last year to ban commercial surrogacy and allow only altruistic surrogacy, parents wanting the therapy may have to wait longer

Conclusion:

Dealing with cross-border surrogacies has emerged as one of the most serious concerns in international family law as the law of parentage strives to face the demands of new reproductive technology. Many people have recently become involved in so-called "procreative tourism" as a result of legal diversity as the current legal situation as regards surrogacy is quite diverse

It is unclear how the worldwide surrogacy sector, which is currently in halfway house, will evolve in the aftermath of the COVID-19 epidemic, as well as the implications for clinics, surrogates, intended parents, and children. Without contact, the lack of interaction between IPs and surrogates may worsen, presenting a variety of difficulties, including surrogates or other caregivers building attachments with the new-borns. The practice of "outsourcing surrogacy" may start to follow a global pattern of social distancing.

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12. When the intended mother is not able to carry a baby to term due to hysterectomy, diabetes, cancer, etc., her egg and the intended father's sperm are used to create an embryo (via IVF) that is transferred into and carried by the surrogate mother. The resulting child is genetically related to its parents while the surrogate mother has no genetic relation
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