



MODERN MIRACLES: NAVIGATING THE ETHICAL AND LEGAL LABYRINTH OF ASSISTED REPRODUCTIVE TECHNOLOGIES.

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Abstract:

This research paper examines the existing legal framework governing Assisted Human Reproduction Technologies (ART). This research demonstrates that the existing legal framework is insufficiently prepared to address the novel legal, ethical, and social challenges that arise from the utilization of assisted reproductive technology as a pathway to parenthood. This study reveals that while ART aims to assist childless individuals and couples in achieving parenthood, its intricate nature and the lack of comprehensive legal frameworks result in the exploitation of women, including surrogates, egg donors, and commissioning mothers, by the so-called 'Fertility Clinics' involved in the process. A comprehensive legislative framework is urgently required to address the legal complexities arising from the utilization and potential misuse of Assisted Reproductive Technologies as a pathway to parenthood.

Introduction:

The world is flooded with news that is not only difficult to accept but also reminiscent of themes found in old epic narratives. Reports such as "A man gave birth to a baby girl," "A child was born to a deceased mother," and "Gay and lesbian couples can now become parents of a genetically linked child" exceed conventional human comprehension. Such news elicits diverse reactions among individuals; some experience horror, others amusement, and some are astounded by the possibilities now attainable through Assisted Human Reproductive Technology. The traditional method of reproduction has been supplanted by newly developed reproductive procedures, offering an alternate option for procreation. About 15% of the Indian population experiences issues related to infertility. India ranks as the second most populous nation globally, experiencing a significant decline in its fertility rate. A recent study indicates that approximately 27.5 million couples in India are experiencing infertility issues. Interestingly, the Urban Indian Youth represent the largest demographic among those experiencing infertility challenges and is noted as the most infertile group globally.

While adoption is indeed a viable solution for childlessness, the profound yearning for one's own lineage often drives individuals to pursue Assisted Human Reproductive Technologies in their quest for parenthood. The evolution of technologies, since the inception of the first IVF baby approximately 50 years ago, have now been offered with various reproduction techniques, including Gamete Donation (eggs and sperm), In-vitro Fertilization (commonly known as Test Tube Baby), Artificial

Insemination using donor, husband, or partner sperm, Zygote Intra Fallopian Transfer, Gamete Intra Fallopian Transfer, Intra Cytoplasmic Sperm Injection, Cryopreservation, Posthumous Reproduction, Surrogacy, and several others. The fertility clinics, offering solutions for various infertility issues, are now equipped with advanced technologies that enable prospective parents to select specific traits for their future child. This includes choices regarding ethnicity, creed, hair color, eye color, skin tone, and even the enhancement of genetic characteristics.

The advancements in Assisted Human Reproductive Technology (ART) offer a promising solution for individuals facing infertility and those longing for children globally. The once distant and seemingly unattainable dream of having a genetically and biologically linked child is now achievable through the application of Assisted Human Reproductive Technologies.

The field of Assisted Human Reproduction encompasses a diverse array of ethical, social, and legal considerations: spanning from conception to abortion, cloning to sex selection, gametes to embryo implantation, and multiple pregnancies to fetal reduction. While the technology offers advantages for many, the lack of enforceable rules, regulations, guidelines, and laws concerning Assisted Human Reproduction in India leads to the commercialization of reproduction. This includes the sale of women's gametes (reproductive material such as eggs and ova) and the renting of wombs, which negatively impacts the health and well-being of women and undermines their life and dignity.

India, became a surrogacy hub for international patients who wish to become parents. Baby Manji Yamada's case and Jan Balaz case were some initial which threw light on commercial surrogacy hub that has been running in India. Only after these cases, Government has taken some actions to provide some rules and regulations for surrogacy.

Since 2004, more than 500 Indian women came to Anand from adjacent villages and towns to serve as surrogate mothers for families from over 30 nations. Dr. Nayana Patel and her spouse operate Akanksha Clinic, the sole surrogacy facility in the city. The body of a surrogate is utilized to its maximum extent. Fertility clinics restrict her freedom for nine months until either the abortion or delivery occurs, depending on the situation. They reside in inadequately maintained hostels, and she is forced to remain separated from her family and children throughout the entire gestational period. Fertility clinics impose fees ranging from Rs. 20 lakhs to 30 lakhs for a single surrogacy-assisted birth, while the compensation for a surrogate typically falls between two to four lakhs rupees for her contributions. The surrogate additionally compensates approximately fifty percent of the funds to the broker as commission fees for her role as a surrogate.

Assisted Human Reproductive Technologies (ARTs)

The Assisted Reproductive Technology (Regulation) Act, 2021 establishes the framework for the management of ART services in India. Assisted reproductive technologies are characterized as medical interventions aimed mainly at tackling infertility, which include the manipulation of human gametes externally. Assisted reproductive technology services encompass in-vitro fertilization (IVF), artificial insemination, sperm or egg donation, and embryo transfer. The Act plays a crucial role in guaranteeing that ART procedures comply with ethical, medical, and legal standards, while providing hope to individuals or couples facing infertility who aspire to become parents.

The Key Provisions of the ART Act:

- Regulation of ART Clinics: All ART clinics and banks in India must register with the National Assisted Reproductive Technology and Surrogacy Board to ensure adherence to established health and safety standards (ART ACT 2021).
- It is essential for ART clinics to secure written, informed consent from patients prior to initiating any procedures. Clinics are required to deliver thorough counselling regarding the risks, success rates, and possible outcomes (ART ACT 2021).
- The ART Act establishes stringent screening protocols for sperm and egg donors, as well as surrogate mothers. The regulation requires that gamete donors and surrogate mothers complete medical and psychological assessments to confirm their suitability (ART ACT 2021).

- The ART Act establishes regulations that prohibit the commercial trading of gametes, eggs, or embryos. All types of gametes or embryo transfer should be conducted with altruism in mind, ensuring no financial gain beyond the medical expenses incurred (ART ACT 2021).
- The ART Act represents a significant advancement in the legal framework governing ART services in India, mandating that both individuals and clinics engaged in these services uphold rigorous ethical and medical standards.

Methods of Assisted Human Reproduction: Alternative Approaches This section examines a range of medical techniques within ART, emphasizing the legal and ethical frameworks established by the ART and Surrogacy Acts of 2021.

Artificial Insemination (AI)

The ART Act outlines Artificial Insemination as the method of placing sperm into a woman's reproductive system without engaging in sexual intercourse. Artificial insemination can be categorized into three distinct types:

1) AIH (Artificial Insemination by Husband):

This technique is frequently employed when the husband's sperm is functional, yet natural conception has not succeeded due to various other reasons. It's also known as homologous insemination.

2) AIP (Artificial Insemination by Partner):

In situations involving live-in relationships, AIP can be utilized, contingent upon the couple completing a background check, as mandated by the ART Act (ART ACT 2021) (surrogacy act). It's also known as intrauterine insemination (IUI).

3) AID (Artificial Insemination by Donor):

In cases where the husband is infertile or has a genetic disorder, donor sperm may be used. However, donor anonymity must be maintained. It is utilized in couples where the woman ovulates regularly but the father is infertile. The fertile woman receives insemination of her vagina by semen from an unidentified donor.

In-Vitro Fertilization (IVF)

India has a unique place in the chronicles of in-vitro fertilization (IVF) history since, in 1978, Kolkata became the home of the world's second and India's first test-tube baby. In vitro fertilization, or IVF, involves removing eggs from the ovaries and fertilizing them in a lab setting with sperm that is not within the body. The lady or surrogate has the embryo placed into her uterus after that.

The ART Act strictly forbids the commercial selling of embryos and requires that they should be handled and stored properly. According to the ART legislation 2021 (the surrogacy legislation), embryos may be stored for later use but cannot be utilized for research or any other purpose than implantation. Because multiple pregnancies involve considerable health hazards, the ART Act further mandates that facilities adhere to stringent rules for the number of embryos to be transplanted into the womb (ART ACT 2021).

In addition to expanding the limits of accepted ART, the success of IVF using donor oocytes brought with it a plethora of previously unheard-of social, ethical, and legal issues. Controversial discussions surround donor confidentiality, monetary incentives for donor involvement, the necessity of a registry of infants resulting from third-party reproduction, and the upper age limit for receivers of donor gametes. In spite of these unanswered questions, donor IVF is still a crucial component of contemporary ART and is currently responsible for the 2- to 2.5 lakh IVF cycles that are performed annually in India. But estimates suggest that this number may rise to 5–6 lakh cycles every year, meaning that by 2030, the market value will have surpassed \$3,721 billion, up from \$793 million in 2020.

Surrogacy:

One of the most talked-about areas in ART is surrogacy, mainly because of its intricate ethical, legal, and emotional aspects. The Surrogacy (Regulation) Act, 2021 aims to control the surrogacy industry in India while guaranteeing the safety of both surrogate mothers and the offspring born via them. This law makes a distinction between altruistic and commercial surrogacy, with the latter being the only kind that is legal in India.

Type of Surrogacy:

1) Altruistic Surrogacy:

Surrogacy agreements where the surrogate receives no financial compensation are referred to as altruistic surrogacy. The surrogate is usually a close friend or family member of the intended parents in most altruistic surrogacy agreements. It is also known as charitable surrogacy.

For both commercial and altruistic surrogates, the surrogacy procedure is essentially the same. But in most cases, intended parents in selfless surrogacy agreements collaborate with surrogates they are already acquainted with. Many women donate their gestational services for their siblings, children, or other close family members or friends because to the extreme selflessness demanded by altruistic surrogates.

2) Traditional Surrogacy:

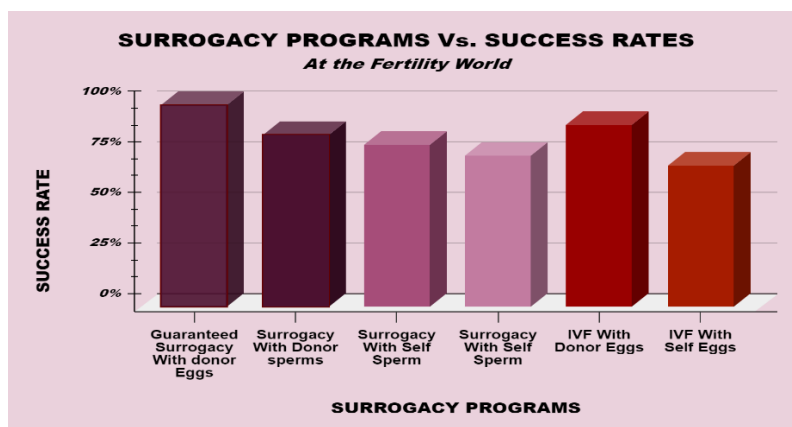
In this method, the surrogate becomes the child's biological mother by using her own eggs. Because of ethical problems, this type is rarely used and is generally avoided.

In this type of surrogacy, mother's womb is not much healthy to carry child in his womb, so eggs and sperms of the parents are fertilised in the womb of the surrogate.

3) Commercial Surrogacy:

A commercial gestational surrogacy agreement involves a compensation package for the surrogate that is tailored to accommodate her individual circumstances. The surrogate compensation agreement outlines a structured plan in which the Intended Parents commit to covering medical costs, travel expenses, legal fees, and any other potential expenses that may occur throughout the process.

Surrogacy has developed into a multifaceted issue that encompasses medical, ethical, legal, and social factors. The Surrogacy (Regulation) Act, 2021 was established to oversee surrogacy services in India, aiming to safeguard the rights and interests of surrogate mothers, children born through surrogacy, and prospective parents. The legislation allows solely for altruistic surrogacy, prohibiting any type of commercial surrogacy.



Legal Framework of Surrogacy in India:

The Surrogacy (Regulation) Act, 2021 establishes a prohibition on commercial surrogacy, which is characterized as any agreement in which the surrogate mother is compensated financially beyond her

medical and insurance costs. In India, surrogacy is permitted exclusively on an altruistic basis, meaning that the surrogate mother receives compensation only for her medical expenses and insurance throughout the pregnancy process. The legislation guarantees that surrogacy is reserved exclusively for authentic instances of infertility and forbids its exploitation for commercial gain or other inappropriate uses.

The Surrogacy Act encompasses several important regulations, including:

1. Eligibility Criteria for Surrogates:

A woman may serve as a surrogate only if she meets specific conditions:

- She must be within the age range of 25 to 35 years.
- She must be married and have at least one biological child.
- She is permitted to serve as a surrogate only a single time throughout her life.
- She is required to successfully complete medical and psychological fitness evaluations as stipulated by the surrogacy act.

2. Criteria for Eligibility of Prospective Parents:

- The prospective couple must be Indian citizens and legally married.
- The wife should be aged between 23 and 50 years, while the husband should be between 26 and 55 years old.
- The couple should not have any living biological or adopted child, unless the existing child is mentally or physically challenged, has a life-threatening disorder, or is deemed to have no permanent cure as per the surrogacy act.
- Single women, including widows and divorcees, aged between 35 and 45 years are also qualified to apply for altruistic surrogacy.

3. Court Orders and Medical Certificates:

The couple seeking to proceed must secure a certificate of essentiality from a District Medical Board, which verifies the medical necessity for surrogacy. Furthermore, it is essential to secure a court order that delineates parentage and custody rights prior to commencing the surrogacy process, as stipulated by the surrogacy act.

4. Documented Agreement of the Surrogate:

The surrogate mother is required to give informed written consent, and she retains the right to withdraw her consent prior to the implantation of the embryo, as stipulated in the surrogacy act.

5. Restriction on Child Abandonment:

The prospective couple or prospective woman is not permitted to abandon the child born via surrogacy for any reason, including genetic defects, birth defects, or the child's sex. The child conceived through surrogacy is recognized as the biological offspring of the intended parents or the intended mother, enjoying all the rights and privileges granted to a natural child under Indian legislation according to surrogacy act.

6. Prohibition on Commercial Surrogacy:

The Act explicitly forbids commercial surrogacy, encompassing any payments or incentives to the surrogate mother that exceed medical expenses. All types of advertising or canvassing related to commercial surrogacy are prohibited. Noncompliance with these regulations may lead to significant consequences, such as incarceration and financial penalties as stipulated in the ART ACT 2021.

7. Rights of the Surrogate Child:

A child born via surrogacy possesses all the rights and privileges afforded to a natural-born child. The legislation ensures that the child born through surrogacy will be recognized as the biological

offspring of the intended parents, thereby securing inheritance rights and legal protections under Indian law (surrogacy act).

8. Quantity of Embryos Transferred:

The quantity of oocytes or embryos that can be implanted in the surrogate mother is required to adhere to the regulations set forth by the National Assisted Reproductive Technology and Surrogacy Board. The occurrence of multiple pregnancies presents increased risks, leading to established limits on the number of embryos permitted for transfer to the surrogate mother's womb, as outlined in the surrogacy act.

9. Restriction on Termination of Pregnancy:

According to the Surrogacy (Regulation) Act, abortion is prohibited during the surrogacy process unless it is deemed medically necessary, and it requires the written consent of the surrogate mother. Additionally, any abortion must adhere to the Medical Termination of Pregnancy Act, 1971, and receive authorization from the relevant authorities (surrogacy act).

10. Coverage for Surrogate Mother:

The legislation requires that surrogate mothers receive insurance coverage for a duration of 36 months, which includes all postpartum complications and any medical issues that may occur following delivery.

Impact of India's legal system on Surrogacy:

The Surrogacy (Regulation) Act, 2021 guarantees that surrogacy services in India are strictly controlled to prevent exploitation and restricted to charitable causes. Due to the availability of inexpensive surrogacy services, commercial surrogacy, which had thrived in India, was viewed as a violation of women's rights and was outlawed entirely. The Act ensures that only worthy couples or persons with a valid medical need can obtain surrogacy services by closely monitoring surrogacy practices.

The current focus of India's surrogacy regulations is on safeguarding the welfare of surrogate children and shielding surrogate moms from exploitation. The government has put in place systems to properly regulate surrogacy procedures, provide accountability, and guarantee that moral standards are upheld with the establishment of the National and State Assisted Reproductive Technology and Surrogacy Boards (surrogacy act).

One of the primary moral issues with ART is still the monetization of women's reproductive potential. The practice of commercial surrogacy, which was popular before the Surrogacy Act, made India a center for "reproductive tourism," with underprivileged women frequently forced into surrogacy agreements that abused their bodies. By restricting surrogacy to selfless agreements, the new regulations aim to allay these worries. Making sure surrogates are completely aware of the psychological and physical hazards associated with the procedure is still difficult, though.

In a similar vein, consent and exploitation are ethical issues that are brought up by egg and sperm donation. Many women who donate their eggs are not fully informed of the intrusive treatments they must endure, which may have long-term health consequences. The ART Act places strict restrictions on the extraction and use of eggs in an effort to reduce these hazards, but enforcement is still difficult.

Conclusion:

The Surrogacy (Regulation) Act, 2021, along with the Assisted Reproductive Technology (Regulation) Act, 2021, signifies notable progress in the governance of ART in India. Nonetheless, the utilization of women's reproductive abilities, the moral complexities associated with surrogacy, and the commercialization of human reproduction necessitate continuous examination. As ART progresses, it is imperative that the legal frameworks that regulate it also adapt, guaranteeing that these technologies align with the interests of all stakeholders—foremost among them, the women whose bodies facilitate ART.

This updated iteration integrates essential legislative particulars from the supplied documents and examines the legal, ethical, and societal ramifications of ART. It additionally includes a more systematic examination of the Surrogacy and ART Acts, offering an extensive perspective on the governance of human reproductive technologies in India.

As ART technologies progress, it is imperative that the legal framework evolves to confront emerging ethical challenges. The Assisted Reproductive Technology (Regulation) Act, 2021 and Surrogacy (Regulation) Act, 2021 represent significant advancements; however, they leave numerous critical issues unaddressed, including the legal status of embryos, the rights of children conceived through ART, and the accessibility of ART for LGBTQ+ individuals.

The debate surrounding the accessibility of ART for all individuals, irrespective of marital status or sexual orientation, continues to provoke significant discourse. The ART Act in India does not explicitly address the accessibility of these technologies for LGBTQ+ individuals, thereby permitting the possibility of future legal disputes.

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