

Regulation of Surrogacy in India: Need of the Hour

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Abstract

Revolution of Medical Sciences over last century has not only raised the standard of health and living, but also hope for certain diseases/disabilities which were earlier considered to be untreatable. Infertility was one of such condition, but advancement of Assisted Reproductive Technology has given hope of parenthood to infertile couples. Surrogacy has come up as an alternative option for the infertile couples with incurable etiology. Surrogacy is of two types- Altruistic and Commercial; recently commercial surrogacy has gained popularity not only among intended couples but also among singles and professionals who intend to have children without bearing complications of conception and gestation. Developing countries have emerged as an alternative for commercial surrogacy due to low financial inputs as well as either no guidelines or liberal regulatory guidelines for surrogacy. We discuss a case of commercial surrogacy which turned unsuccessful due to non compliance of regulatory laws.

Keywords: Surrogacy; Artificial reproductive Techniques; Surrogacy regulation law; Altruistic; Commercial.

Introduction

The advancement of Medical science especially the artificial Reproductive techniques has fulfilled long cherished desire of many infertile couples to have biological /genetic children. But a part of society is acting as touts to commercialize ART through surrogacy. Surrogacy is a contract in which a mother bears biological child for another couple; such child may be genetically linked to her

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in case she donates her ovum. For a long time there was no separate law in the country to regulate the unethical practice of surrogacy and India was hub of surrogacy tourism owing to no defined laws [1].

Assisted Reproductive Technology (regulation) rules, 2008 was framed in order to regulate the selection of donar, consent from donar and future parents, all the medicolegal aspects related to the proceeding of assisted reproductive techniques and inspection of clinics performing ART's. The techniques covered under ART (regulation) rules, 2008 are Gamete Intrafallopian Transfer, Zygote Intrafallopian Transfer, Intracytoplasmic Sperm Injection and Ovum Donation [2,3]; there were no regulatory rulings for Surrogacy, which led to ethical misuse of the method.

Surrogacy regulation law 2018 is the latest addition to the special laws and has been framed to regulate the commercialization of surrogacy. We will be discussing a case report where a financially challenged female become a surrogate without providing previous disease history which later led to complications.

Case Report

History: A 42 years widow was referred from a private hospital to AIIMS, New Delhi for consultation regarding complications related to pregnancy. It was revealed that she was a surrogate with 17 weeks period of gestation carrying twins in exchange of monetary benefits and had concealed her past medical history of tuberculosis, hydrocephalus and depression. During second trimester she was admitted to a private hospital for treatment of vomiting. She gave history of consuming Mirtazapine tablets (antidepressant) 15-20 in number and was advised to undergo genetic counseling. She came to AIIMS, New Delhi as an outdoor patient and was advised Medical Termination of Pregnancy. Before commencement of MTP her condition worsened and had to be shifted to Emergency for treatment where she passed away. Her body was brought to the Mortuary of Department of Forensic Medicine & Toxicology for postmortem.

Post mortem examination: Deceased was average built, 162 cm in length. Rigor mortis was well developed all over the body. Postmortem staining was present over the back, dependent parts of the body and was fixed. Healed surgical mark was present on right iliac fossa. Left eye was congested and right was normal. Mouth was closed and frenulum intact.

Injuries

1. A sutured wound of length 4.5 cm with 4 sutures in-situ was present on left temporal region. The wound was 6 cm above left eyebrow. On removing the sutures, wound was scalp deep with an underlying sub-scalp hematoma in an area 2 cm x 2 cm.
2. On scalp an old C-shaped scar mark of length 8 cm was present on the left side of scalp over temporo-mandibular region 5 cm above and posterior to left mastoid (scar of shunting operation) an old scar mark of size 6 cm over the right fronto-parietal region of scalp 5 cm above tip of right ear.

Over skull a burr hole was present in right temporo-parietal region with a single white coloured plastic drain passing out from it. The drain transverses through the neck, chest cavity till the peritoneum. Brain and Meninges were edematous and congested. A surgical scar mark was present

on the right side of abdomen. Uterus was enlarged containing two fetus in-situ. One male and other was female. There were 2 separate intact and umbilical cords. The male fetus was 25 cm long and weighs 225 g. the female fetus was 33 cm long and weighed 204 g.

The deceased had past history of Tuberculosis and Hydrocephalus. Shunting for hydrocephalus was done in year 2014. She was surrogate mother with 17 weeks period of gestation and was being under follow up at a private IVF centre. While being pregnant she suffered from hydrocephalus and was shunted for the same. She had multiple episodes of vomiting and was admitted to maternity hospital from where she was referred to higher centre. At the referral hospital, patient admitted taking 10-15 tablets of Mirtazapine. She was advised for genetic counseling due to teratogenicity of mertazepine. Medical termination of pregnancy was planned but her general condition worsened in labour room, so she was shifted to emergency.

Discussion

The popularity and utility of assisted reproductive techniques (ART) is on rise due to rise in prevalence of infertility all over the world. Surrogacy has emerged as a popular alternative method for infertile couples, singles and even some professionals to have children. Surrogacy is a legal arrangement where a surrogate mother contracts to carry and deliver a child for another couple or person. In gestational surrogacy, an embryo is formed by in vitro fertilization of gametes of infertile couple and is implanted into the uterus of the surrogate mother who carries and delivers the baby but is not the genetic mother of the baby. In traditional surrogacy, the surrogate mother is artificially impregnated with the sperms of the intended father and she is also genetic mother [4]. Surrogacy may be commercial or altruistic; depending upon the factor whether the surrogate receives financial benefit in exchange of the baby. Countries all over the world are divided over the ethical implication of surrogacy. Most of the countries allow altruistic surrogacy, few permit both commercial and altruistic type of surrogacy and there are many countries which have a total ban on any type of surrogacy. Germany, Sweden, Norway, Italy, Iceland, China and Japan do not recognize any type of surrogacy whether altruistic or commercial. Commercial surrogacy is illegal in England, Australia and few states of USA but these allow altruistic surrogacy. However,

state of California in USA and Ukraine legalize commercial surrogacy [5]. India recently joined the group of countries banning commercial surrogacy and permitting only altruistic surrogacy after the parliamentary approval of Surrogacy Regulation Bill in year 2018. India had been a popular surrogacy destination worldwide due to low cost, international standards of ART in the procedure as well as no defined rules and regulations for citizens, non residents and non citizens [5]. Absence of strict regulating law has been used by the mediators and touts to financially exploit both intending couple as well as poor surrogates. Also the poor surrogates have been lured to join the business in exchange of monetary benefits which is only a fraction of the total amount extracted from genetic parents. Apart from the exploitation of the surrogate, intending parents are also duped by concealing the medical and disease history of the surrogate by the surrogate herself or some mediator just for financial gains [6]. For a woman to be chosen as surrogate, she has to undergo inquisitive medical and laboratory examination, provide past history of any medical condition, family history of a disease condition etc to rule out baby having any genetic or chromosomal disease [7]. As per the rules and regulations set by ICMR which were followed before commencement of Surrogacy regulation law (2018) a surrogate should not be more than 45 years of age, limiting successful births to three in addition to her own children. In case a surrogate is married consent from her spouse has to be taken. Surrogate can be a relative, friend or hired for commercial surrogacy and belonging to same generation in case she is a relative [8]. It also allowed practice of commercial surrogacy in addition to flexible rules for foreign nationals. So, low financial input while maintaining a high medical technology as well as lenient laws in context to foreigners made India a highly preferred country for surrogacy tourism. And as it is said, human race develops business out of everything; the technology of ART has been commercialized so is the surrogacy. Moreover, low socio economic status of people in a developing country forces them to look for an alternative method to make money; and their situation is often misused by a mediator who influences either the woman herself or her spouse to make money. Intended parents are charged a huge amount, of which just a fraction is paid to the surrogate but even this fraction means a lot to her and her family. Sometimes the urge for financial gains is so high that often past or present medical conditions are concealed for the worldly gain, which later leads to complications for both the surrogate and the foetus

[9]. In October 2015, Supreme Court of India called for a total ban on the provision of commercial surrogacy to all foreign nationals, pronouncing that 'renting a womb... amounts to the economic and psychological exploitation of the surrogate mother and is inconsistent with the dignity of womanhood' [10].

In our case report also surrogate was 42 years old widow with two living children, had a past medical history of tuberculosis, hydrocephalus as well as depressive disorder. She was either forced to hide her diseases or herself concealed past medical history for financial gains. As per the guidelines of ICMR which were followed before the approval of Surrogacy Regulation Bill, she was not a suitable surrogate to carry fetus. Still somehow she was chosen to carry babies overlooking her medical conditions. Surrogacy regulation Law aims to avoid such tragedies through firm rules and regulations. The salient features of the newly passed surrogacy bill, 2018 are as follows-

Salient features of Surrogacy regulation law 2018

1. Permits only altruistic ethical surrogacy to infertile couples between the age 23-50 years for females and 26-55 for males. Below and above this age limit surrogacy as an option for artificial reproductive treatment is not available to intending couples.
2. Couples intending for surrogacy should be Indian citizens and legally married for at least five years.
3. The intending couple should not be having any surviving healthy biological or adopted child except if the living child is mentally or physically challenged or suffer from life threatening disorders with no prognosis of cure.
4. The child born through surrogacy should not be abandoned by intending couples under any conditions.
5. The surrogate child will have same rights as the biological child.
6. The surrogate mother should be a close relative the intending couple, her age should be between 25-35 years and should be surrogate just once.
7. Surrogate mother should carry fetus genetically related to intending parents.
8. An order from court of first class magistrate has to be obtained concerning parentage and custody of the child born through surrogacy.

9. A reasonable and adequate insurance should be given to surrogate mother for a period of 16 months covering post-partum complications.
10. National surrogacy board will have powers to function and policy making under this act
11. A surrogacy clinic has to be registered under this act and should have facilities, equipments and standards including specialized manpower, physical infrastructure and diagnostic facilities according to rules and regulations National Surrogacy Board.
12. Violation of the rules and regulation is a punishable offence with imprisonment for a term not less than ten years and with fine which may extend to ten lakh rupees.
13. Surrogacy clinics should maintain records for a period of 25 years.

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