

2023

SURROGATE MOTHER V. LEGAL PARENT

Niyati Srivastava

Recommended Citation

Niyati Srivastava, 'Surrogate Mother v. Legal Parent' (2023) 2 JJLR 1-11.
Available at www.jurynesia.com/vol-2-issue-3/.

This Art. is brought to you for free and open access by the Jurynesia Journal of Legal Research by an authorized Lex Assisto Media and Publications administrator. For more information, please get in touch with lamp@lexassisto.com.

SURROGATE MOTHER V. LEGAL PARENT

Niyati Srivastava¹

INTRODUCTION

Surrogacy is a type of assisted reproductive technology in which a woman becomes pregnant and appoints another person or couple who are intended to be the child's legal parents. This arrangement is now considered typical and socially acceptable in today's world. If a mother or woman who wishes to conceive cannot conceive for various medical or personal reasons, many people choose surrogacy. Having a child can put a mother's life in danger. Surrogacy is a godsend for parents and those who want but cannot have children, so proper legislation on this issue is essential.

Gestational surrogacy is a form of legal surrogacy in India. The surrogacy process raises complex legal and ethical questions, especially regarding the child's legal parentage. In many countries, including the United States, the biological mother determines legal custody regardless of her genetic relationship with the child. This means that a surrogate mother is considered the child's legal mother, even if she has no genetic relationship with the child. can pose legal and emotional challenges for Intended Parents who must navigate This paper reviews the legal and ethical issues surrounding surrogacy and the challenges faced by intended parents in establishing legal parentage.

SURROGATE MOTHER & LEGAL PARENT

Surrogacy is a reproductive arrangement in which a woman, known as a surrogate mother, agrees to conceive to term and give birth to a child on behalf of another person or couple, known as the intended parents. The

¹ Law Student, 3rd Year, BBA LL.B., Symbiosis Law School, Noida.

surrogacy process raises complex legal, ethical, and emotional issues, especially regarding the child's legal parentage.

TYPES OF SURROGACIES

There are two types of surrogacies:

Traditional Surrogacy and Gestational Surrogacy. Traditional surrogacy uses the surrogate mother's own eggs to conceive a child. That is, “the surrogate mother has a genetic relationship with the child.”² Gestational surrogacy uses eggs from the intended mother or donor and sperm from the intended father or donor to create a child. In other words, the surrogate mother has no genetic relationship with the child.

A legal parentage is a legal relationship between a parent and a child. It is an important legal position that defines parental rights and responsibilities. The right to make decisions about the upbringing, education and health care of children. Legal parentage can be established in a variety of ways, including biological means and adoption.

ESTABLISHING LEGAL PARENTAGE

In most jurisdictions, legal parentage is established by the biological relationship between parent and child. If a child is born to a woman, she is presumed to be the child's legal mother. For heterosexual couples, a man is considered the legal father of a child if he is married to the mother. For unmarried couples or same-sex couples, legal descent can be established through a voluntary paternity process or court order.

Legal parentage can also be established through adoption. Adoption involves the legal transfer of ancestry from birth parents to adoptive

² Ananya Bose, 'Is surrogacy legal in India' (*Ipleaders*, 21 July 2022) <<https://blog.ipleaders.in/is-surrogacy-legal-in-india/>> accessed 20 February 2023.

parents. Adoptive parents assume all legal parental rights and responsibilities, and biological parents renounce parental rights.

LEGAL AND ETHICAL ISSUES RELATING TO SURROGATE MOTHER & LEGAL PARENT

Surrogate Mother

The legal and ethical issues surrounding surrogacy are complex and vary widely by country and jurisdiction. In many countries, including the United States, the biological mother determines legal custody regardless of her genetic relationship with the child. This means that the surrogate mother is considered the child's legal mother, even if she has no genetic relationship with the child. A legal parent-child relationship must be established through a process called adoption or parentage statute.

Overall, surrogate mothers face many legal and ethical challenges that require careful consideration of the rights and interests of the surrogate mother and the rights and interests of the child carried by the intended parent and surrogate mother. . It is important for all parties involved in a surrogacy arrangement to ensure that the arrangement is entered into voluntarily and with full consent and that the rights and interests of all parties are respected and protected. Surrogates can benefit from seeking help from legal and social services, as well as surrogacy support networks and advocacy groups.

In addition to adopting biomedical research on human participants for assisted reproductive standards, in 2000 ICMR also published a Statement of Certain Principles on Assisted Reproductive Technologies, 2000.

ICMR took another important step towards the legality of commercial surrogacy in India in 2002 by submitting the draft National Guidelines for Accreditation, “Supervision and Regulation of ART Facilities, 2002 to

the Ministry of Health and Family Welfare.”³ I have taken a step forward. Although the ICMR revised it in 2005 with input from the National Academy of Medical Sciences, ART experts, and the Ministry of Health and Family Welfare, the Indian government did not approve the draft, making the guidelines legal for commercial surrogacy in India.

The Indian Legal Commission published its 228th Legal Commission Report in 2009 titled 'The Need for Legislation to Regulate Rights and Obligations of Parties in Assisted Reproductive Technology and Surrogacy'. Considering the actual situation related to surrogacy activities in India, the Legal Commission made the following recommendations in its report:

1. The terms of any surrogacy arrangement will continue to be governed by the parties' contract. The contract includes a clause requiring the surrogate mother to agree to carry her child to her term and that her husband and other family members agree to the same medical procedures. Such as assisted reproduction, reimbursement of all reasonable costs of carrying the child to term, and intention to hand over the child to the ordering parent.
2. Surrogacy agreements include if the surrogate couple or individual died before the child was born, if the intended parents divorced, or if neither decided to adopt the child after birth. should include provision for financial support of a surrogate child, if applicable.
3. The surrogacy contract must mention the surrogate mother's life insurance coverage.
4. One of the intended parents must also be the donor, as the child's biological relationship is a large part of the bond of love and affection. They are also less likely to experience the various forms

³ Manali Singh, 'Surrogacy in India and its legal aspects' (2020) 10 Pen Acclaims 17.

of child abuse reported in adoption settings. In order to have children, the intended parent must be a donor if he or she is single.

The Assisted Reproduction (Regulation) Bill of 2014 followed this. Its provisions include:

1. Only women between the ages of 21 and 35 may serve as surrogates,
2. Outlines the prerequisites for a foreign couple to seek surrogacy in India.
3. ART clinics will not be involved in the compensation to be given; rather, it will be arranged privately between the commissioning parents and the surrogate.
4. The bill prohibits live-in couples, single parents, and homosexuals from becoming parents through surrogacy.

The bill's main flaw was the lack of provisions to protect the rights of women used as surrogate mothers and undergoing in vitro fertilization.

Legal Parent

Legal parents face a range of legal and ethical issues, some of which are specific to their role as parents and others which arise from broader societal and legal contexts. Some of the key legal and ethical issues faced by legal parents are discussed below:

- 1. Custody and Visitation Disputes:** Legal parents may face disputes with their ex-spouses or partners over custody and visitation rights of their child. These disputes can be emotionally charged and may require legal intervention.

2. **Child Support:** Legal parents are legally obligated to provide financial support for their child, which can be a significant financial burden. Legal parents may also face legal action if they fail to meet their child support obligations.
3. **Medical Decisions:** Legal parents are responsible for making medical decisions on behalf of their child, which can be particularly challenging if the child has complex medical needs or if there is disagreement between the parents about the best course of treatment.
4. **Education and Schooling:** Legal parents are responsible for making decisions about their child's education and schooling, including which schools their child attends and which educational programs they participate in.
5. **Privacy and Data Protection:** Legal parents must balance their child's right to privacy and data protection with the need to provide necessary information to schools, healthcare providers, and other organizations that interact with their child.
6. **Ethical issues related to Parenting:** Legal parents must also navigate a range of ethical issues related to their role as a parent, such as how to discipline their child, how to balance work and family responsibilities, and how to handle situations where their child's behaviour may conflict with their own values and beliefs.

In addition to these issues, legal parents may also face broader societal and legal challenges related to discrimination, prejudice, and inequality. For example, same-sex parents may face legal barriers to establishing legal parentage, and parents from marginalized communities may face discrimination and bias in accessing healthcare, education, and other resources for their child.

The legal parents must navigate a complex and challenging legal and ethical landscape, which requires careful consideration of their child's needs, as well as the legal and societal contexts in which they are parenting. Legal parents may benefit from seeking support from legal and social services, as well as from other parents and parenting communities.

CHALLENGES FACED BY LEGAL PARENTS

The surrogacy process can be emotionally and financially challenging for intended parents. Finding a surrogate mother can be a difficult and time-consuming process. Intended parents must often rely on surrogacy agencies or online forums to find a surrogate mother, which can be a stressful and uncertain process.

Additionally, the intended parent must establish a relationship with the surrogate mother, which can be difficult. They have to manage the complex emotional and psychological issues associated with surrogacy. The role of the surrogate mother in the child's life and the emotional bond between the surrogate mother and the child.

Establishing legal parentage can also be a significant challenge for intended parents. The legal framework for surrogacy varies widely across different countries and jurisdictions, and the process of establishing legal parentage can be time-consuming and expensive. Intended parents must navigate the legal system, which can be complicated and difficult to understand. They must also hire an attorney to represent them in court, which can be expensive.

THE STATE OF SURROGACY IN INDIA RIGHT NOW AND WHAT LIES AHEAD

Surrogacy in India is a complex and ever-evolving issue. In 2020, the Indian government passed the Surrogacy (Regulation) Bill. The bill will

ban commercial surrogacy in India and allow altruistic surrogacy only to infertile Indian couples who have been married for at least five years.

Under the new law, surrogacy can only be done by close relatives of the intended parents and only if the surrogacy is married and has children of their own. You must also be a citizen of and hold a Certificate of Importance and Certificate of Eligibility from an accredited government agency.

The law also aims to prevent the exploitation of surrogate mothers by ensuring that they have access to appropriate medical care and receive financial compensation for their services. It has also established the National Surrogacy Board to supervise and regulate surrogacy in India.

The new law has received mixed reactions, with some praising it for protecting the rights of surrogate mothers and preventing commercial exploitation, while others criticize it for being too restrictive and limiting access to surrogacy for those who need it.

The current scenario of surrogacy in India is one of transition and uncertainty as the country adapts to the new regulations and balances the competing interests of intended parents, surrogate mothers, and society as a whole.

SOME IMPORTANT CASES

1. Jan Balaz v. Anand Municipality (2008)

In this case, the intended parents, a German couple, used a surrogate mother who gave birth to the twins. The twins of this German couple, who lived and worked in the UK, were required to travel on an Indian passport. bottom. Passport authorities rejected the twins' passport applications because they did not have citizenship, and a case over the proceedings was heard in court.

There was no law regarding surrogacy in Germany. The Supreme Court has given the children permission to leave the country. Permission to leave the country and the German authorities allowed them to adopt children and fight for their rights.

2. Suchita Srivastava v. Chandigarh Administration (2009)

In one case, a woman with a mental age of nine was raped and impregnated. In her ninth week of pregnancy, the state facility where she was staying learned that she was pregnant. Article 21 of the constitution protects a woman's right to privacy and dignity and other reproductive freedoms, including the ability to conceive and give birth to a child at full term or nine months, according to the court.

CONCLUSION

The relationship between a surrogate mother and legal parents is complex, and the conclusion of their arrangement will depend on a variety of factors, including the laws and regulations in the relevant jurisdiction, the terms of the surrogacy agreement, and the individual circumstances of the parties involved.

However, it is important for all parties involved to have a clear understanding of their rights and responsibilities before entering into a surrogacy arrangement. Legal agreements and contracts can help to outline the terms of the arrangement, including issues such as compensation, medical care, and custody of the child.

In many jurisdictions, legal parentage is determined through court orders or the adoption process. This may involve many legal, social and emotional considerations. Intended parents and surrogates work closely with legal and other professionals to manage the legal and emotional

complexities of surrogacy and ensure that the child's best interests are protected throughout the process. It is important to do so.

Ultimately, the conclusion of a surrogacy arrangement will depend on the specific circumstances of the parties involved, and it is important for all parties to approach the process with care, compassion, and respect for the legal and emotional complexities involved.