

Panel Discussion on the Surrogacy Bill

Gandhinagar, March 03, 2020: Gujarat National Law University (GNLU) organized a panel discussion on “**Surrogacy: The Ethical Dilemma,**” today. The distinguished Panelists were:

01. Dr Nayana H. Patel

Surrogacy and Infertility Expert

02. Dr Tanistha Samanta

Assistant Professor, Humanities and Social Sciences
IIT Gandhinagar

03. Dr K. Parameswaran

Associate Professor of Law
GNLU

04. Ms Kelly Dhru

An alumna of GNLU and currently a
Doctoral Scholar and Research Associate at Hamburg University, Germany

The discussion highlighted the various lacunae in the Surrogacy (Regulation) Bill, 2019, passed by the Lok Sabha in 2019 and pending approval by Rajya Sabha.

Each of the speakers brought to the table interesting aspects of the issue with Dr Nayana Patel discussing the medical aspects, Dr Samantha about the sociological aspects, Dr Parameswaran about the legal and spiritual aspects, and Ms Kelly Dhru about the bioethical aspects. The panel concluded that the bill requires revisiting and redrafting in many areas:

01. The bill provides for the payment of medical expenses, insurance cost and any other expenses incurred to the surrogate mother. The bill should provide for the payment of some compensation over and above the medical and other expenses incurred because the surrogate mother has lost her working time and, therefore, wages and she has also carried the child for the intending couple. It may be noted that there are only 1500 to 2000 surrogacy cycles in India as against 40,000 in the USA where the whole process is open and transparent as well as compensation is payable to surrogate mother. Provision for payment of compensation should be incorporated for the altruistic model to become successful. If it is not done, the whole process may go underground. It was pointed out that

the similar altruistic surrogacy model was introduced in Australia which only led to a decline in the number of surrogacy cases.

02. As per the bill, a single woman who was once married and who is now divorced or a widow is eligible for surrogacy. This provision is discriminatory against a single woman who was never married but who wants a child will not be able to get a child through surrogacy.

03. Further, live-in relationship couples, single man and same-sex-couples have been left out. They are not eligible for a surrogate child under the bill. This is discriminatory. It is highly judgmental to assume that only straight hetero-sexual couples can raise a child. We cannot discriminate that a single woman can do it better and a single man cannot. The issue of permissibility to go for surrogacy needs to be revisited.

04. There is a serious medical flaw in the bill. The bill says that embryos cannot be frozen. If on the day of the embryo transfer, if the surrogate develops fever or diarrhoea, the doctor cannot transfer the embryo; he/she has to first take care of the woman's own health. Or, if the surrogate has some social problem and cannot come for the transfer, what happens to the embryos? If we discard them, there is a human life involved. That is the property of the infertile couple. If we discard the embryo and the infertile couple plans for surrogacy again, they will have to go for the whole process of IVF again which will involve huge cost, not to mention other physical and emotional aspects. So, the freezing of embryos has to be permitted if we have to do surrogacy successfully and comfortably for the couple involved.

05. There is no clarity about the sperm donation or egg donation in the bill. The bill provides that a single woman can go for surrogacy but, in that case, the sperm has to come from a sperm bank. The same is implied about the egg. People come for surrogacy after trying everything possible. In many cases, the lady does not have her own good genetic material and egg has to come from a donor. So, there should be a provision for sperm donation and egg donation along with surrogacy.

06. The bill provides for 10 years' of imprisonment and a fine of Rs.10 Lakhs for a medical practitioner for contravention of any provision of the Act. This is a very harsh provision. It will put off all doctors and they will not undertake surrogacy procedures. No other country in the world has such a harsh provision.

On this occasion, the **Indian Bioethics Project** was launched as an independent project under Gujarat National Law University. The project aims at contributing to the Indian discourses on the Intersections between Bioethics and Law. The project intends to undertake research in the following broad areas:

Issues at the Beginning of Life:

01. Technology and the Womb;

02. Dilemmas at Birth;
03. Responsibilities of Parents and Guardians;
04. Ethics of Contraception;
05. Ethics of Abortion;
06. Ethics of Pre-Natal Diagnosis for Sex Selection;
07. Ethics of the Human Genome Project;
08. Ethics of Cloning;
09. Ethics of Population Growth.
10. Designer Babies and CRISPR-Cas9
11. Paediatric Ethics

Issues at the End of Life:

01. Ethics of Suicide and voluntary ending of life;
02. Ethics of Euthanasia;
03. Ethics of Aging and Advance Care Planning;
04. Ethics of Dying

Questions about Neurotechnology:

01. Deep Brain Stimulation and Transcranial Magnetic/Direct Current Stimulation
02. Brain Machine/Computer Interface and Brain-to-Brain Interface, Brain-to-
03. Cloud interface
04. Chips in the Brain
05. The status of the human brain and the mind-body relations

On the launch of the Indian Bioethics Project, GNLU Director Dr Shanthakumar said that every aspect of human life cannot be regulated by law. Even if there is a law, there is a need for discourse on the moral and ethical aspects of various important issues. Through this project, GNLU intends to contribute soft laws in such vital areas.

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