

Reproductive Rights of Single Men in India And Surrogacy As An Option

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Abstract: The Constitution of India confers upon its citizens some very important and fundamental rights like the right to equality and non-discrimination (Articles 14 and 15) and the right to life (Article 21) which include the right to health, dignity, personal liberty, and right to privacy. India is also a participant and signatory to several international conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the Convention on the Rights of the Child (CRC), all of which recognize reproductive rights. As Article 51 (c) of the Indian Constitution and the judiciary have recognized that the government has a constitutional obligation to respect international law and treaty obligations, the Apex court unequivocally held that Article 21 includes the “reproductive rights of a person.” The Supreme Court of India has acknowledged reproductive rights as a part of the right to health as well as a facet of personal liberty under Article 21. Is today’s youth ready to come forward and challenge the social norms, Indian culture, and the legal system to uphold their reproductive rights?

Keywords: Reproductive Rights, Surrogacy, Surrogacy Bill, Assisted Reproductive Techniques

INTRODUCTION:

What are Reproductive Rights: Reproductive rights in India include your legal capacity to make decisions about when and if you would want to have a child. This can also be termed as reproductive autonomy. It means you have the power of the judiciary to protect you and allow you the right to make your own choices about having or not having children, use of contraception, number of children, and spacing between children.

Safe procedures to end a pregnancy including abortion within specified weeks of pregnancy is one of the reproductive rights, but there are others. Your reproductive rights include access to:

- Right to Sex education and sexually transmitted diseases
- Family planning
- Use of Birth control techniques and methods (contraception) including emergency contraception
- Use of Assisted Reproduction Technology including IVF
- Sterilization, or permanent birth control. This includes:
 - **Women:** Tubal ligation -- closing your Fallopian tubes which prevents eggs from meeting with sperm, hysterectomy
 - **Men:** Vasectomy -- closing the tubes that carry sperm from the testicles to the penis

Reproductive rights are of utmost importance because they give all citizens access to safe reproductive health care. Reproductive rights don’t just apply to women, but men and people of all genders including the LGBTQ community.

All of us are aware that, in order to exercise the reproductive right and to have a child, there are, three ingredients that are essential – eggs, sperm, and a uterus. Further, when we say that the child is genetically related to the parent, it means, that the mother has conceived by using her own eggs for the purpose of producing the child and her genes have been transmitted to the baby. Whereas a biological father can be a person who has sired and whose sperm has been used to fertilize the egg and whose genes are therefore transmitted to the child. Now, in the case of a single woman, she is most likely to choose, to use her own eggs and uterus. However, due to some complications and medical conditions, a woman is unable to produce fertile eggs or is incapable of carrying the pregnancy for a full term of 9 months. Apart from these, for a couple, there could be various other reasons why using a donor’s egg or embryo, and/or a surrogate, maybe the most appropriate option to have a child of their own.

SURROGACY:

Surrogacy can be defined in simple words, as an arrangement in which a woman (the surrogate mother) willingly agrees to carry a baby in her own womb for the entire term of pregnancy and give birth to a child on behalf of another person or couple.

Surrogacy can be obtained through two types:

- 1. Traditional surrogacy:** In traditional surrogacy, the surrogate mother offers or provides her own egg, which is inseminated with the commissioning or intended father's sperm.
- 2. Gestational surrogacy:** In gestational surrogacy, an embryo is transferred to a woman who has agreed to become the surrogate mother. The surrogate carries the pregnancy for full-term and delivers the child. Here, the embryo may have been created from sperm and/or egg from the intended parents or donor gametes.

SURROGACY BILL:

The present government does not support commercial surrogacy and has put restrictions on the process. In 2019, the government revived the 2016 bill banning commercial surrogacy that was pending approval in the lower house of Parliament. The bill proposes to allow only “altruistic surrogacy”—where the only compensation is for medical expenses incurred by the surrogate and the medical insurance—Further surrogacy options would be limited to childless Indian heterosexual couples who had been married for at least 5 years, and had a doctor's certificate stating their infertility, and were aged between 23 to 50 years for women and 26 to 55 for men. Under these policy guidelines, only a close relative could act as a surrogate.

On 5th August 2019 the Surrogacy (Regulation) Bill, 2019 was passed in the Lok Sabha. However, it was then referred by the Rajya Sabha to a Select Committee to review and give its inputs and commendations. Thereafter, the Committee submitted its Report to the Rajya Sabha on 5th February 2020.

The Committee, after reviewing the bill, has suggested emendation to the eligibility norms to enlarge the availability of surrogacy services through (i) deletion of the prerequisite that the surrogate be a close relative of the intending couple and (ii) lessening the no conception period for an intending couple from 5 years to 1 year, and (iii) allowing live-in couples, divorced women and widows to access surrogacy services.

The Committee has diverged from Bill's emphasis on altruistic surrogacy and suggested allowing the surrogate mother to be paid for her service, bearing in mind, the loss suffered by her in terms of her health and wages, and proposed the deletion of Bill's ban on compensation other than surrogacy linked medical and insurance expenses to the surrogate.

CURRENT SCENARIO:

In today's hectic world, young men and women do not wish to get into a committed relationship like marriage. Unlike older times, many men and women from this generation, prefer to remain single and lead an unrestricted life. The reason for leading a life without a partner or a spouse is becoming a trend all over the globe. Not that it did not exist earlier but it is definitely becoming a favored way of life all across the world. It is very convenient for an individual be it a man or a woman to live his or her life without being answerable to any of the acts and activities. However, when a survey was conducted on single individuals about their reproductive rights and surrogacy, the findings were astounding.

In a study conducted on single individuals in India, it was found out that, out of the total participants, surprisingly 97% of participants were aware of the concept of surrogacy. Above 94% of participants were aware that in India, Bollywood celebrities like Karan Johar and Tushar Kapoor have successfully used surrogacy technology to have their own biological children. More than 85% of the participants were aware that single individuals (celebrities) without getting married, have been using surrogacy techniques to have their own biological children. Out of the total participants, more than 60% said that they were aware of their reproductive rights in India. More than 52% of participants who were single/unmarried individuals said that given an opportunity, they would like to have a biological child of their own without getting married. Out of the total participants, more than 58% said that they were aware of Assisted Reproductive Techniques. More than 36% said that they would like to explore surrogacy as an option to have a genetic child. Out of the total participants, more than 66% were aware that commercial surrogacy is banned in India. And 66.7% felt that commercial surrogacy should be legalized in the country.

SINGLE MEN AND THE IMPORTANCE OF SURROGACY:

Having a child without getting married is still taboo in Indian society. However, it won't be too long when single individuals, will think about having their own biological child/children without getting into the rituals and responsibilities of marriage. The fact that this is a controversial topic and heated debates are possible around the moral values, ethics, and culture of this country. Certainly, every human being would desire to live, see and experience the future world through their own children. Nature has given this privilege to every living being to reproduce their own kind and transfer their genes to the next generation. To reproduce is our nature and hence reproductive rights are a part of our right to life under article 21 guaranteed by the Constitution of India. Single women can think of having their own genetically related child with the help of assisted reproductive techniques and by using donor sperm. An individual belonging to the LGBTQ

community could also think of having a biological child with the help of ART. However, we need to look at the options available to single men if they desire to have their own child. And even though nobody talks openly about this topic in our society, it is important to consider this issue related to humankind with a practical approach and humanitarian mindset. Scientifically, the only option for a single man to have a child of his own is to have it by appointing a surrogate mother, who willingly agrees to bear and deliver a child for him. If that is the only option available to exercise reproductive rights, then is putting a blanket ban on surrogacy a sensible decision?

CONCLUSION:

The 2019 surrogacy bill, mentions certain terms and conditions in order to have a surrogacy arrangement. An analysis of the bill reveals that the eligibility criteria mentioned in it are irrational and unreasonable. It is ridiculous to impose a marriage in order to exercise reproductive rights. Further allowing only altruistic surrogacy will lead to the exploitation of women in the family. Additionally, it would also create complications keeping in mind the moral and ethical values of typical Indian families. Finding a surrogate who is ready to bear a child with altruistic intention will be a major challenge. Hence the only viable and practical option would be arranging a surrogate who is available on commercial terms. And therefore, it is imperative for the policymakers to consider these points while formulating legislation regarding surrogacy laws. Certainly, there is a need to bring in legislation to regularize surrogacy in India. There is a need for proper laws and rules to take care of these procedures. And a special Act needs to be drafted to take care of the entire procedure and the parties involved in it.

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