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Ethical Aspect of Surrogacy Laws in India

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ABSTRACT

This study aims to understand the concept of surrogacy and critically analyse the laws related to it. The rules are designed to prevent the exploitation of surrogates, but these laws are only sometimes effective in practice. Further, this study evaluates instances where surrogacy can negatively impact the parties concerned.

This paper also aims to analyse the topic's legal and ethical debates. Finally, the paper also seeks to scrutinise the commercialisation of surrogacy.

The investigation in this work has been constrained to an analysis of the modifications made by the brought about its operation and its impact on its current and future conditions.

Also other limitations are that there needs to be more data available and also the scarcity of time.

Keywords: Surrogacy, Rights, Commercialisation, Infertility, LGBTQ+.

I. INTRODUCTION

Infertility is a significant problem that impacts married couples' marital and social lives. The use of assisted reproductive technologies has grown in popularity. It has come to the aid of childless couples; they had just two alternatives until recently: adopting a child or remaining childless. However, with the advancing of modern reproductive technologies, infertile couples now have the option of choosing from a diversity of choices, including artificial insemination, in-vitro fertilisation, and surrogacy. Therefore, human procreation is possible using several reproductive methods that do not entail sexual intercourse. Surrogacy is undoubtedly the most contentious of these new technologies.

Surrogacy entails artificially inseminating a woman with a man's sperm². The lady not only carries his child in her womb, but she also gives the child to the guy and his wife once the child is born to raise as their child. In this method, the egg and sperm are combined in a dish, fertilising the egg and embryo in the woman's womb. Surrogacy has become an appealing option for young couples seeking to avoid the difficulties of adopting children and therefore reduce high infertility rates. Nonetheless, during the last fifteen years, surrogacy has gained acceptance as a valid reproductive option for infertile couples seeking to have a child biologically related

¹ Author is a student at Symbiosis Law School, Hyderabad, India.

² Taylor, R.B. (2021) *Surrogate mothers: What it is and how does surrogacy work* Rebecca Buffum Taylor, WebMD.

to at least one of them.

Surrogacy has received universal support throughout the world, particularly in India, due to its numerous advantages over adoption and other reproductive procedures. “Developments in the procedures such as artificial insemination and in-vitro fertilisation have made surrogacy a viable alternative means of reproduction in infertile couples. Like any other technological advancement in science, surrogacy has pros and cons that must be addressed.” Surrogacy has received widespread acceptance worldwide, particularly in India, because of its numerous advantages over adoption and other reproductive technologies. Surrogacy is an essential way of assisted human reproduction for persons who cannot procreate traditionally. Surrogacy is one of the most dramatic of the new reproductive technologies, in which a woman accepts to be impregnated by assisted conception, bears the ensuing fetus, and then relinquishes all parental rights of the kid upon birth. This ART approach³ is a blessing for married women who are unable to conceive for a variety of physical, genetic, and medical reasons. A mother may not be able to carry her own genetic offspring at times. A woman, for example, may be unable to ovulate or carry a pregnancy if she has lost her womb and ovaries due to cancer or if she was not born with them.

Similarly, a woman may be able to ovulate but unable to carry a pregnancy due to excessive blood pressure or potentially dangerous skin conditions. Such ladies could still raise a child who is their partner's biological child by employing a surrogate. Furthermore, a woman who is unable to keep the created baby due to a history of spontaneous abortion may insist on this arrangement in order to realise her ambition of having a biological child. Women with life-threatening conditions such as renal disease or multiple sclerosis may also choose this procedure. Similarly, in this commercial and materialistic society, it is not surprising that examples have been documented in which figure-conscious women have chosen this procedure in order to keep their attractiveness and thus have permitted another woman to bear a child for them. Career may also be cited as a motivator for the spouse to pursue a surrogacy arrangement.

Surrogacy is typically characterised as the technique in which a couple of contracts with a woman who is called the surrogate to conceive a child for them, bear it to term, and then renounce all parental rights to the couple. The term 'surrogate' comes from the Latin word *surrogatus*, which means a substitute or someone designated to act in the place of another. As a result, a surrogate mother is a woman who carries a child on behalf of another woman, either

³ Molina, G. F., Cabral, R. J., & Frencken, J. E. (2009). The ART approach: clinical aspects reviewed. *Journal of applied oral science : revista FOB*, 17 Suppl(spe), 89–98.

from her own ovum or from the implantation in her womb of a fertilised egg from another woman. As a result, a surrogate is someone who is arranged to act in the place of the mother. When employed as a verb, the term mother contains the meaning is to give birth. A surrogate mother is a woman who is appointed to give birth to a kid in the place of another or a woman who is artificially inseminated and will carry the ensuing child to term before handing the child over to the biological father and his wife. However, the word also refers to the procedure of fertilising an ovum in another woman's womb or in a test tube and then implanting the embryo in the womb of the surrogate who would carry the child to term. Thus, surrogacy is the practice of a woman holding a child for another with the aim of handing over the child after birth which can be done freely or for a fee. This carrying of a child might take various forms. "A woman who is unable to bear a child for herself may contract another woman to carry a kid for her. The woman who asks someone else to carry her pregnancy is known as the 'Commissioning Mother,' and the woman who accepts to carry the child in her womb is known as the 'Carrying Mother.' Because the commissioning mother may donate the egg, she is often referred to as the "Genetic Mother." The genetic father is the commissioning mother's husband or, in rare situations, an anonymous donor." "Surrogate motherhood is not a therapy for the historical problem of infertility but rather a method of obtaining a kid that is genetically linked to at least one of the parents of a childless marriage⁴." This technology is suitable for the following groups of people: married fertile couples, infertile couples, singles, gays, lesbians, widowers, divorced, and post-menopausal women. The uses of surrogacy as a technique of obtaining a biological child has been increasingly common and widely recognised in recent decades, it should be recalled that this approach was not only known in the 20th century but it was also known in the past."

(A) Research questions

The paper deals with the following research questions:

1. Do surrogacy laws in India effectively safeguard the rights of surrogates?
2. Is surrogacy a boon or a bane?
3. How does the commercialisation of surrogacy exploit the surrogates?

(B) Objectives of the study

- To evaluate the various laws relating to surrogacy in India
- To understand how the commercialisation of surrogacy can affect the parties involved in it.

⁴ Robertson, J. A. (1983). Surrogate Mothers: Not So Novel after All. *The Hastings Center Report*, 13(5), 28–34.

- To evaluate landmark bills and cases that contributed to the evolution of modern surrogacy.
- To examine various literature reviews that further elaborate on the subject of this paper.
- To assess the legal and ethical conflicts related to the practice of surrogacy

(C) Statement of the research problem

Understanding the concept of surrogacy and evaluating the applicable laws critically are the goals of this study. Although the rules are meant to prevent the exploitation of surrogates, they sometimes have a different effect. This study also evaluates circumstances in which surrogacy could be harmful to the people involved.

(D) Significance of the study

Surrogacy is a contentious procedure primarily used to treat infertility in women brought on by uterine issues. The purpose of this study is to comprehend the idea of surrogacy and critically evaluate the legislation pertaining to it. The laws are intended to stop the exploitation of surrogates, but they don't always work as intended. This study also assesses situations in which surrogacy may have a detrimental effect on the persons involved.

(E) Research methodology

The research methods are classified as Doctrinal and Non-Doctrinal, with the former dealing with the examination of various research sources and the latter focusing on fieldwork research. This study illustrates a Doctrinal way of conducting primary research. The research was conducted using research instruments and followed a descriptive and analytical research methodology.

(F) Sources of data

Data sources are further divided into primary and secondary sources. As previously stated, the researcher in this work concentrated on the examination of available primary and secondary data. For primary data sources, the researcher focuses on legislation, reports, court precedents, and notifications. Furthermore, secondary material is based on the commentary, research articles, journals, case laws, and books.

(G) Review of literature

“An Overview of Surrogacy Around the World: Trends, Questions and Ethical Issues by Kim. L.Armour⁵”

⁵ Armour K. L. (2012). An overview of surrogacy around the world: trends, questions and ethical issues. *Nursing*

“This article discusses surrogacy all around the world, covering professional, societal, and ethical concerns and how although the birth of a child is often regarded as a joyous occasion for parents, surrogacy is frequently uncharted territory that may be quite difficult for all parties involved. Part of the anxiety derives from the fact that surrogacy laws and regulations range from state to state and country to country.”

“Surrogacy: Ethical and Legal Issues by Pike, Archana Mishra, and Sonia Malik”⁶

“In this article, they discuss how surrogacy is a legal agreement in which a woman carries a pregnancy "for" another partner. A large number of infertile couples from throughout the world travel to India, where commercial surrogacy is permitted. Although this arrangement appears to benefit all parties involved, several delicate concerns must be handled through properly drafted laws in order to protect the rights of the surrogate mother and the intended parents.”

“Surrogacy: Ethical, legal, and social aspects by David R. Bromham.”⁷

“David realises that society has long tolerated the delegation of certain parental tasks and analyses the position of a surrogate in relation to this, as well as pointing to commoner similarities with prostitution and adultery. The "birth mother" rule, public opposition to "commercial" surrogacy, and restrictive legislation are all investigated and found to be unsuitable. It is decided that the regulation, surveillance, and assessment required to secure the greatest possible outcome for all parties involved would be most easily implemented in programs that are properly licensed under permissive legislation and adequately funded by "commercial" methods.”

II. DO SURROGACY LAWS IN INDIA EFFECTIVELY SAFEGUARD THE RIGHTS OF SURROGATES?

(A) Life of a Surrogate in India

Around 186 million women worldwide, according to the WHO, cannot get pregnant. Couples who are biologically incapable of having children are compelled to use surrogacy services for various medical reasons. Teams are obligated to choose surrogacy due to an unknown endometrial component that causes repeated IVF failures. 70% of infertile couples are assisted in becoming parents by surrogacy. In the paper "Surrogate Motherhood- Ethical or

for women's health, 16(3), 231–236.

⁶ Saxena, P., Mishra, A., & Malik, S. (2012). Surrogacy: Ethical and Legal Issues. *Indian Journal of Community Medicine : Official Publication of Indian Association of Preventive & Social Medicine*, 37(4), 211-213.

⁷ Bromham D. R. (1995). Surrogacy: ethical, legal, and social aspects. *Journal of assisted reproduction and genetics*, 12(8), 509–516.

Commercial⁸," 50 commissioning parents and their households from Delhi and Mumbai, along with 100 surrogate moms, were studied. The majority of them lack education, and it is contested whether they fully understood the terms and facts before signing the contract. The government has no involvement in the drafting or signing of the agreement, and the documents themselves are kept secret. The second parent receives between three and four lakh rupees from the contract and an additional 25,000 to 40,000 rupees if she delivers twins or has a caesarean section. Uncertainty exists regarding the sum that would be paid out in the case that a pregnancy was terminated, experienced problems, or continued throughout gestation. 3.2%, 10%, and 1.1% of surrogate mothers, respectively, experienced hypertensive issues during pregnancy.

(B) Legal issues

India legalised surrogacy in 2002, but the ICMR developed the guidelines after considering the negative aspects and establishing limits for commercial surrogacy.

However, between the years 2005 and 2008, legislators tried to put forth strict recommendations that were a result of discussions and disagreements with legal organisations. The strategy was to develop guiding principles that addressed only the eligibility requirements and not the long-term problems. These days, a number of illicit practices are being carried out, which are not only dangerous but also affect the reputation of the country. The intercessor's engagement in the money flow from intended parents to surrogate mothers causes a number of social, medical, and ethical issues.

India gained a reputation as a "baby farm" in 2016, and as a result, there was persistent pressure on the government to drop the moniker.

The 2016 Surrogacy Bill was updated by the government, and all of the requirements are listed below the definition of ART (ART). The use of technology in an unethical manner was opposed by the government.

The government attempted to eliminate the crucial role played by money within the surrogacy process and put a stop to victim exploitation by outlawing commercial surrogacy in its entirety. In addition to the current situation, the government wants to stop the commodification of kinship. The introduction of the insurance programme and medical costs was a plus and demonstrated the government's foresight, given that the surrogate mother had to undergo a caesarean section to recover and had to deal with the numerous pregnancy-related side effects. On the other hand, by denying international infertile couples a seat, the medical industry has

⁸ Kumari, D.R. (no date) *Surrogate Motherhood- Ethical or Commercial*. Centre for Social Research.

been discouraged. In order to curb the unethical practice and give life a higher value, various medical guidelines were concurrently created. The terms of the agreement were strengthened further, which also lessens the disadvantage postpartum women experience. Overall, the new measure included a number of provisions addressing the many issues.

1. Baby Manji Yamada case⁹

“Dr Yuki Yamada” and “Dr Ikufumi Yamada”, a Japanese couple, travelled in 2007 to India to obtain surrogacy services. The biological parents/intending partners and the mother acting as the surrogate entered into a surrogacy agreement following consulting a surrogacy facility and selecting a surrogate mother in the Gujarati district of Anand.

The biological father, Dr Ifukumi Yamada, left for Japan as a result of the couple's divorce and the visa's expiration. The infant is nursed and cared for in the clinic after being delivered on July 25, 2008. The name of the genetic father is listed on a birth certificate that was issued by the municipality of Anand. To return the child to Japan, the baby's grandmother, Ms Emiko Yamada, requested a Certification of Authenticity from the Regional Passport Authority. Her appeal was turned down, though, because single men cannot adopt in India, where children must be adopted at birth before leaving the country. After the baby's father was refused travel authorisation, a Supreme Court petition was submitted. Following the Supreme Court's instructions, the Regional Passport Board in Rajasthan issued a Document of Recognition rather than a passport to India in order to allow travel outside of Indian territory.

2. Jan Balaz case¹⁰

German nationals Mr Jan Balaz and Mrs Susanne Anna Lohle became parents to twins, "Balaz Nikolas" and "Balaz Leonard," after fertilising a donated egg with Jan Balaz's sperm, via an Indian surrogate mother, Ms Marthaben Immanuel Khristi. However, the birth certificate for the twins was issued with Jan Balaz's name listed as the father and Marthaben Immanuel Khristi, the title of a surrogate mother, listed as the mother instead of Susanne Anna Lohle, Jan Balaz's wife. In order to bring the twin newborns home, the couples sought passports, which were then issued in the babies' names.

However, Mr Jan Balaz received a note requesting the return of the passports. After that, a case involving the citizenship of twins conceived to an Indian surrogate was filed at the Gujarat High Court. After thorough research and consideration of Baby Manji's case precedent, the court ordered consular officials to issue proof of identity.

⁹ *Baby Manji Yamada vs Union Of India & Anr* (2008).

¹⁰ *Baby Manji Yamada vs Union Of India & Anr* (2008).

These two incidents demonstrated the need for surrogacy regulation and control, which led to extensive coverage in Indian and international media regarding legal and diplomatic issues and the enactment of numerous laws.

Table 1: Landmarks in the evolution of surrogacy cover to table.

Year	Landmark
1980	The lawyer named Michigan Noel Keane first introduced the surrogacy contract
1985	In America a first successful gestational pregnancy was carried by the lady
1986	In America, Melissa Stern, also called "baby M," was born; however, the custody of baby was refused by the surrogate and biological mother to the intended couple
1990	The intended parents Mr. and Mrs. Calvert lived in California were refused by the Anna Johnson the surrogate for the couple; the couple sued her for authority (Calvert V. Johnson), and the court maintained their parental rights. In doing so, it lawfully characterized the genuine mother as the one who, as indicated by the surrogacy arrangement, expects to make and bring up a child

Table 2: Enlist all the guidelines and laws pertaining to surrogacy in India.

Year	Highlight
2005	Passed the guidelines by ICMR that was made within the year 2002
	Commercial surrogacy: the surrogate should be paid for the service
	Donation of surrogate mother gametocyte is illegal
	She should transfer her parentage rights ³³
2008 ART (regulation) bill	Restrict the art clinics for revealing the knowledge of surrogate
	Oocytes can be donated by surrogate
	Foreigner's got to appoint the native guardian throughout the method
	It permits people and unwed couples to possess the baby ³⁴
ART bill 2013	Surrogacy was restricted for foreign gay couples and single guardians ³⁵
ART (regulation) bill, 2015	Banned foreigner's ³⁶
Surrogacy bill 2016	Rule for couple
	Bann for foreigners for commercial surrogacy
	Altruistic surrogacy
	Clear no to homosexual or couple in live in relation
Year	Highlight
Surrogacy [regulation] bill 2019	Only NRI's, overseas citizen of India, people of Indian origin and married Indian couple can participate in the surrogacy
	Permitted the parentage right irrespective of abnormalities of kid
	Rules for surrogate mother
	Widowed or divorced women are allowed to be surrogate
	Age – 23 to 35 years
	Woman must have her own child
	Woman can act as surrogate once in her life time
	No sex determination ³⁶⁻³⁹
Surrogacy bill 2020	For couple
	Must be married for 5 years
	Age limit for wife is 23 to 50 years and for husband 26 to 55 years
	No extant child or if any he must be stricken by the fatal illness
	Must show 'certificate of eligibility' and 'certificate of essentiality for surrogate mothers
	Compensation of 16 months
	Close relatives
	Married women with atleast single child ⁴⁰
Surrogacy bill 2020	'Willing women' can become surrogate
	Divorced or widowed women can take advantage of this
	Insurance coverage in extended upto 36 months
The bill gave the opportunity to the NRI's, Indian married couple and Indian single surrogate ⁴¹	

(C) Legal Ambiguities

The 228th Law Commission Committee Report placed a strong focus on the necessity of having appropriate legislative safeguards to control the application of new assisted reproduction and, in doing so, resolve ethical transgressions and moral conundrums arising from new human

reproductive technology.

A new regulation Bill issued by the Indian government has finally put an end to surrogacy, a contentious topic fraught with moral, societal, and legal conundrums. The Surrogacy (Regulation) Bill 2019¹¹, which was proposed by the Minister of Health and Family Welfare on July 15th, was passed by the Lok Sabha on August 5 and is still awaiting approval by the Upper House.

The definition of surrogacy in the Bill is "a practice in which a woman gives birth to a baby for intended parents with the intention to pass the child over to the intending couple following the birth," where the intending pair is the one who wants a child via surrogacy. The act of surrogacy by itself is not unethical. If such were the case, the Bill might have entirely prohibited it. However, even though the government had made it legal, it could not have rendered it any less harmful or exploitative to women. Instead, the Bill barred commercial surrogacy and limited it to charitable purposes. "Altruistic Surrogacy" refers to surrogacy in which the surrogate mother receives no payments of any kind other than the medical costs she incurs and also the insurance coverage that is provided to her. Altruistic surrogacy, it is stated, does not seek to treat human life as a product, as is the scenario with commercial surrogacy, when surrogates are supposed to have no emotional ties to the baby they bear for nine months. Even after the baby is born, they are not permitted to see them. There doesn't seem to be anything more to it than the monetisation of infants who are grown in a surrogate's uterus and marketed to a childless spouse. Inherently artificial insemination has little to stand on ethical grounds, while it may be a blessing for such couples who have no other options available. According to the Bill, moral, altruistic surrogacy is only permitted for infertile Indian couples who have been together for at minimum five years and have no living children, except any special or very ill children. Every surrogate mother should only ever be used as a surrogate once in her lifetime, be married, have her own kid, and be a "close relative" of the intended parents. She should also be between the ages of 25 and 35. First off, Bill's prohibition against live-in couples, same-sex couples, single parents, and divorced and widowed people using surrogacy services makes clear how poisonous it is.

Second, the requirement that the surrogate be a "near relative" is founded on the false notion that women are not taken advantage of within the family. Given the patriarchal nature of Indian families, the stigma associated with infertility, the pressure to bear infants in order to perpetuate a family's lineage, and the weak bargaining position of women, it is to be believed that young mothers will indeed be forced into serving as surrogates for their kin. Exploitation arises when

¹¹ *The Surrogacy (Regulation) Bill, 2019.*

a daughter-in-law is coerced into acting as a surrogate for the family's daughter and may not be able to refuse. Evidently, the Bill has relocated the exploitation location inside the secretive confines of family and home.

There is a school of thinking that claims the Bill eliminates a woman's ability to achieve financial independence if she decides to serve as a surrogate. But the new law prevents her from doing so. The paternalistic state is said to have eliminated women's agency regarding their reproductive systems and mystified parenthood as a hallowed institution.

The Bill seeks to uphold the rights and dignity of all women while significantly curtailing the unethical practises of selling infants and human embryos. It makes an initiative to overcome the issue of surrogates' widespread commercialisation and exploitation. But in order for the intended couple and the surrogacy to be eligible for surrogacy, it sets numerous pointless and ambiguous requirements. Specific phrases in the bill, including "near related," need to be defined. The government is attempting to regulate the incredibly complex field of surrogacy through this Bill. To make this process more straightforward for the parties involved, it must examine and redefine some provisions before it can achieve this goal. However, there will still be doubts about Bill's ability to delicately strike a balance between the demands of "intending parents" and surrogates.

III. ETHICAL AND LEGAL CONFLICTS RELATING TO SURROGACY

(A) The surrogacy debate:

Surrogacy has been a godsend for infertile couples. Simultaneously, the increased usage of this technology has resulted in a number of conflicts and contradicting legal issues. These disagreements have occasionally exploded into a heated dispute about the legality of surrogacy.

This debate must be discussed in order to comprehend the arguments supporting surrogacy.

“Furthermore, because leading surrogacy cases around the world, along with arguments made by legal scholars and commentators, have brought the controversy surrounding surrogacy to the forefront, one such discussion is critical in determining how surrogacy should be dealt with by legal systems in various countries in the future. The majority of the objections to surrogacy are founded on diverse ethical, moral, religious, and legal concerns. To be sure, the effect of ethics, morality, and religious practices cannot be ignored in a legal discussion, as ethics and morality have played a vital part in creating society's attitude toward legal concerns, as well as the foundation of the majority of the world's legal systems.”

(B) Objections against surrogacy

“Surrogacy is morally, ethically, and religiously objectionable since life is a creation of God and humans should not try to play God by meddling with natural processes”. Another significant concern in this regard is that the surrogacy method entails numerous trials using either male or female genetic material or a human fetus. Human embryo waste is equated with murder, according to some scholars, because human life begins with fertilisation. The main legal obstacle against surrogacy goes to the heart of the surrogacy operation, which is the need and requirement for a woman to function as a surrogate.”

Surrogate motherhood has been attacked by a number of academics for posing unacceptable dangers to women, including physical, psychological, and symbolic hazards such as objectification and commodification. According to Carl Schneider, “Some surrogate moms will fall ill or possibly die. Some observers argue that the surrogate will be mentally injured by the process, comparing it to the psychological harm experienced by birth mothers who give up their children for adoption. Some surrogates regret bearing a child for another marriage, as shown by their decision to attempt to keep the child. Furthermore, many opponents of surrogacy have argued that these arrangements reduce women to the value of their wombs.”

Both the “Royal Commission and the Quebec Council for the Status of Women in Canada issued similar warnings, claiming that reproductive technologies risk fragmenting the reproductive process and it is disconnecting women from their own reproductive potential. This is because the surrogacy method divides parenthood into gestational, genetic, and planned motherhood. Furthermore, once a woman agrees to be a surrogate mother, she must follow all of the contract's terms and conditions during the entire procedure, as well as abandon all rights to the kid after birth. It is asserted that the entire reproductive process is an integral part of a woman's existence and therefore transferring the child to someone else upon its 90th birthday is unethical.”

Surrogacy symbolises harm to society in that it might be defined as baby selling, which is entirely unacceptable in a civilised society. According to some academics, surrogacy portrays children as commodities that can be bought or sold for a fee. Others argue that surrogacy should be illegal for the same reasons that the sale of organs for transplantation is.

It is also said that agreeing to participate in a surrogacy process is the same as prostitution, adultery, or slavery. Furthermore, it's believed that surrogacy diminishes a woman's basic human dignity.

An argument has been advanced that “surrogacy should be prohibited due to the potential medical, psychological, and symbolic risks to the children born as a consequence. It has been

said that a surrogate who will be carrying a kid she would not later rear will lie about her health or fail to take sufficient care throughout pregnancy because she will not be concerned about the child's subsequent condition". In addition to the hazards that the surrogate mother may pose to the kid, critics of surrogacy claim that the child may be injured by parents who have not been pre-screened for parental suitability. Another key concern that cannot be dismissed is that a surrogate child may suffer significant psychological injury if the child learns about its parentage or origin. Critics also point out that surrogacy poses a symbolic risk to the kid.

Furthermore, it is argued that surrogacy diminishes a woman's basic human dignity.

And that it may result in the commodification of children and the selection of children with specific desirable characteristics. It is further maintained that the current most significant risk to children in the surrogacy setting stems not from the acts of either set of parents but from the law's ambiguity. When surrogacy techniques or contracts are prohibited, the resulting offspring may be stigmatised as the product of a criminal act. When surrogate agreements are unenforceable, the kid may be subjected to years of litigation to decide who will be regarded as their legal parents.

(C) The need for surrogacy:

Despite all of the concerns and critiques towards surrogacy, it can't be denied that it provides a beam of comfort to those who have exhausted all other options for having a child. Thus, surrogacy can be regarded as one of the best accessible methods for treating both medical and social infertility. Therefore it addresses the requirements of people who want to have a biological kid. Surrogacy supporters say that if the right of individuals to procreate naturally through sexual intercourse is a protected right, then having a child using assisted human reproductive technology, including surrogacy, should also be covered. These advocates claim that the notion of "liberty interests protected by the Constitution does not change due to the presence or lack of reproductive technologies. Surrogacy supporters further distinguish surrogacy from baby selling and adoption on the grounds that a surrogacy contract is entered into before pregnancy and the contractual father, contracting mother, or both are frequently present."

Thus, surrogacy is one of the most contentious advancements in recent times, with severe implications for fundamental human rights. The multiple challenging and contradicting concerns generated by surrogacy present a daunting challenge to courts, legislatures, and policymakers alike. The method by which these disagreements are resolved will have a significant effect on how society views the connection between parent and kid. It would have

far-reaching ramifications for the future reality of the relationship between parents and children, as well as the state's ability to control that relationship.

IV. HOW DOES THE COMMERCIALISATION OF SURROGACY EXPLOIT THE SURROGATES?

(A) The commercialisation of surrogacy

It's hard to envision the child as a commodity. After all, infants are the consequence of love, not money, and their conception takes place far away from any commercial activity. Poor parents have viewed their children as potential economic assets throughout history, measuring their eventual financial investment in the rice field, industry, or manor in comparison to the expense of raising children. Surrogacy has become a commercial sector in nations like India, raising various problems that have sparked political controversy. Feminists have debated the alienability of women's bodies, while legal experts have investigated contractual and jurisdictional difficulties. Surrogacy is a significant and developing market.

Hundreds of Thousands of potential parents throughout the earth have both the desire and the financial power to involve another woman to bear their children.

It is also known as "wombs for rent" and is a thriving industry in India. Critics have referred to surrogacy arrangements in India as "baby flourishing business," "womb on hire," "baby firm," and "parenthood by proxy."

“Surrogacy has commercialised a natural biological function of a woman's body. Surrogacy services are advertised, surrogates are recruited, and running agencies earn handsomely.”

Concerns

The commercialisation of surrogacy raises concerns about a criminal economy and baby selling, breeding farms, turning destitute women into baby producers, and the prospect of selective breeding for a fee. Surrogacy is becoming a thriving industry in India since surrogate moms are readily available, and the overall cost of this approach is relatively low in comparison to other countries. Surrogates are in high demand in India because of the relative ease with which foreigners can find surrogate moms. “Surrogacy had become a thorny subject in India due to the absence of legal action. Surrogate motherhood is currently a \$445 billion business in India that is under significant strain from a variety of social concerns. India is the only country in the world where commercial surrogacy is permitted. Legalised in India in 2002, it is now a \$500 million-a-year industry, with at least 350 facilities offering surrogacy services.”

Most Indian surrogates' moms are paid in parts over a 9-month period. They are frequently not

paid at all if they are unable to conceive, and they may be required to forfeit a portion of their fee if they miscarry. “The amount of money donated to a surrogate mother in India may appear insignificant from any realistic perspective; nonetheless, the amount may serve as the families' economic lifeblood and will be spent on the family's requirements (a house, education of the children, medical treatment). At the same time, Indian clinics are becoming more competitive, not only in terms of pricing but also in terms of hiring and retaining Indian female surrogates. Clinics charge patients between \$10,000 and \$28,000 for the entire package, which includes fertilisation, the surrogate's pay, and hospital delivery of the baby. When travel tickets, medical procedures, and hotels are included in, the total cost is around one-third of what it would be in the UK. Surrogacy instances in India have increased by more than 150% in the last few years. Surrogate mother-hunting hotspots in India include Anand, Gujarat, Indore, Madhya Pradesh, Pune, Mumbai, Maharashtra, Delhi, Kolkata, and Thiruvananthapuram. Private clinics have proliferated in Indore, Pune, Surat, and Anand. These clinics serve as go-betweens for overseas couples and willing surrogate mothers. Due to the availability of poor Indian surrogate mothers at considerably reduced costs, childless couples from all over the world are flocking to India in quest of surrogate mothers. Several American, Russian, and British women have registered for the surgery at “Anand’s Akankshya Clinic and Bhopal's Test Tube Baby Centre”. Surrogacy arrangements are generally drawn up at random and can be exploitative, especially as surrogates are typically from socioeconomically disadvantaged backgrounds.”

(B) The current state of surrogates in India:

In India, the act of commercial surrogacy exploits the poorest and most vulnerable surrogate mothers, subjecting them to unneeded and unwanted dangers. They have no legal representation and no contractual rights: “There is no grace period following birth during which they can change their minds, and they are owed no compensation if they fail to produce a child. 10 The surrogacy market in India is believed to be worth between Rs 1,000 to 5,000 crore, which is significantly less (approximately one-fourth of what it would cost in the United States). This has boosted foreign interest in surrogacy in India once more. The status-conscious lower middle class is turning to surrogacy to meet its material and financial needs.”

“According to data compiled by the National ART (artificial reproductive methods) Registry of India (NARI), there was an almost 300 per cent increase from 50-odd cases in 2004 to 158 points in 2005. Gujarat is responsible for 75 of these instances, with 16 reported from Chennai, Fifteen from Hyderabad, and the remainder from other large cities in India.”

Surrogate womb employment exists in India despite the fact that the “Transplantation of Human

Organs Act of 1994 prohibits the sale, loaning, and marketing of human organ trade. Furthermore, surrogates are not as readily available to single parents, gay and unmarried partners as they are in India”, despite the fact that same-sex relationships are not permitted in India. The desire to have a biological child of one's own flesh, blood, and DNA, aided by technology and financial purchasing power, combined with the Indian entrepreneurial spirit, has resulted in this thriving Indian reproductive tourism industry.

V. CONCLUSION AND SUGGESTIONS

Surrogacy is a popular option for obtaining a biologically related child all around the world, particularly in India. Surrogacy has been both praised and criticised. Depending on one's perspective, it has been defined as a "gift of love" or "gift of life," as well as "rent a womb." Surrogacy, despite its benefits, has sparked significant legal, moral, and ethical debate²⁴⁰. Because of the uncertainty surrounding the different difficulties regarding surrogacy, it is regarded as a legal and ethical minefield.

Surrogate pregnancy has sparked a firestorm of debate in recent years, with scholars, politicians, judges, scientists, and religious leaders debating the definitions of family and kinship. Surrogate pregnancy, like adoption, is not an isolated phenomenon; rather, it intersects with a slew of other social issues, including income distribution, race and colour blindness, gender equality, and children's rights, all of which play a role in establishing family bonds and relationships. It is tough to settle these concerns in the absence of particular laws. Because India is quickly becoming a popular surrogacy destination, these difficulties must be addressed as soon as possible. Furthermore, there are no credible figures on how many surrogacy arrangements have been made in India. Surrogacy demand is expected to climb as a result of greater awareness created by major media outlets such as the New York Times and Oprah, which showcase villages such as Gujarat, where more than fifty surrogate women are pregnant with children destined for all over the world. The incidents of Nirmala and Baby Manji exposed a flaw in the Indian legal system's attitude to surrogacy. In the first instance, Nirmala petitioned the Chandigarh High Court for permission to rent her womb in order to collect income for her disabled husband's treatment.”

The Nirmala and Baby Manji cases highlighted a gap in the Indian judicial system's approach to surrogacy. In the first instance, a woman called Nirmala asked the “Chandigarh High Court” for permission to rent her womb in order to raise funds to treat her disabled husband. The Baby Manji case is a highly publicised custody issue involving a Japanese father and a kid conceived with the use of an Indian surrogate mother. When the biological father divorced the kid's

intended mother, he faced legal issues because he was not allowed to adopt the child as a single man under Indian law. The case gained international attention and ended in a judgment by India's Supreme Court upholding the commercial surrogacy pact. Surrogacy-related controversies and disputes raise the question of whether India's current legal system is competent to deal with the complex legal and ethical issues raised by surrogacy arrangements. As a result, India's lax regulation of surrogacy arrangements poses a slew of legal and ethical difficulties.

Suggestions

- Typically, the surrogate mother is left without medical treatment after the birth; nevertheless, it is advised that intense care and medical check-ups of their reproductive organs be provided during the three months following pregnancy. Legal acknowledgement of parental rights termination and transfer.”
- Similarly, while we should embrace and support various family formations, commercial surrogacy should not be "sold" to anyone looking to have a family.
- India should prioritise allowing altruistic surrogacy while outlawing commercial surrogacy.
- To avoid unwarranted scrutiny, disclosure of the surrogate relationship should be limited, and the requirements for becoming a surrogate should be explicitly specified
- Before agreeing to and signing a contract, both the surrogate and the infertile couple should seek legal advice.

VI. REFERENCES

- Saxena, P., Mishra, A., & Malik, S. (2012). Surrogacy: Ethical and Legal Issues. *Indian Journal of Community Medicine*, 37(4), 211.
- Bromham, D. R. (1995, September). Surrogacy: Ethical, legal, and social aspects. *Journal of Assisted Reproduction and Genetics*, 12(8), 509–516.
- Armour, K. L. (2012, June). An Overview of Surrogacy Around the World: Trends, Questions and Ethical Issues. *Nursing for Women's Health*, 16(3), 231–236.
- Kaur, G., & Chawla, R. (2021, June 25). Surrogacy in India: ethics versus incentive. *International Journal of Community Medicine and Public Health*, 8(7), 3713.
- Chatterjee, P. (2014, October 15). Human Trafficking and Commercialization of Surrogacy in India. *European Researcher*, 85(10–2), 1835–1842.
- Surrogacy tourism to rise. (2012, March 26). *Nature India*.
- Chandra, S. (2011). Surrogacy and India. *SSRN Electronic Journal*.
