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Surrogacy: Laws and Rights in India

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ABSTRACT

The gift of motherhood regrettably is not distributed evenly by God to every woman. Today, approximately 15% of couples around the world are infertile. Being a parent is what every couple dream and also in Indian society a child is believed to be old-age insurance. However, due to infertility, some couples have a child, for those medical technologies have brought a great change by resorting to the practice of Surrogacy which involves various types of Assisted Reproductive Technologies (ART). Surrogacy is an arrangement where a surrogate mother bears and delivers a child for another couple or person. Surrogacy has been a gift to these couples as it has granted them the joy of Parenthood. There are mainly two kinds of surrogacy, first Gestational Surrogacy and second Traditional Surrogacy. Despite that surrogacy has helped many intended parents, still, in India, it has raised several questions regarding its ethical concerns. India allows Commercial Surrogacy that is also known as 'Rent a Womb' which was legalised in the year 2002, and India soon after that became the hub of surrogacy. However, it has not got any legal status by the legislature. Recently, in the year 2020 the Surrogacy (Regulation) Bill, 2020 was approved by the Union Cabinet. This 2020 amended bill is the advanced bill of the draft legislation which was passed in August 2019. The bill aims to put a bar on commercial surrogacy and to permit altruistic surrogacy.

The main aim of the paper is to provide the Present Laws on surrogacy of Different Countries, Laws related to Surrogacy in India along with Landmark Judgements, Types of Surrogacy that are allowed in India, the Key Features of the 2020 Bill, and also What are the Rights and Duties of a Surrogate Mother.

I. INTRODUCTION

The word Surrogacy has originated from the Latin word subrogates which means "to substitute". Surrogacy is the process in which a woman comes into a contract with a couple or individual where she agrees to carries a child for them because they are not capable or have some trouble in conceiving a baby of their own. It is a method of Assisted Reproduction Technologies, where the couple or individual works with the surrogate woman, who will

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carry and take care of their child until birth.³ Surrogacy has become a blessing of parenthood for the individuals and couples who want to have a child and start a family but due to health issues cannot do so.

The concept of surrogacy can also be found in ancient times. In India, traces of surrogacy can be seen in the historical text, for example, in Mahabharata Rohini bared the child for Devaki and Vasudev.⁴ For a long period surrogacy was considered taboo and man society did not accept it. However, with the evolution of mankind people's understanding changed about surrogacy. Today, surrogacy has helped a lot of couples and individuals as a way by which they can have the joy of having their own child.

Today many countries like India, U.S.A., Netherland, etc. have accepted surrogacy and have legalised it. In India, commercial surrogacy got legalised in the year 2002. It was a huge step for the Indian legislation to legalise commercial surrogacy because India is a developing country and people in developing countries consider things like surrogacy as taboo. However, the citizens took it in a positive way and supported surrogacy.

(A) Kinds of Surrogacy.

Surrogacy can be broadly categorized into six types and they are Gestational Surrogacy, Traditional Surrogacy, Compensated Surrogacy, Altruistic Surrogacy, Independent Surrogacy, and Agency Assisted Surrogacy

Gestational Surrogacy: Gestational surrogacy is also known as "host surrogacy" or "full surrogacy". In this surrogacy, the intended mother's embryo and the intended father's sperm are transplanted in the womb of the surrogate. So, in gestational surrogacy, the child will not be biologically related to the surrogate. The surrogate is referred to as a gestational carrier.⁵

Pros of Gestational Surrogacy are-

Through this type of surrogacy, infertile couples, members of the LGBT community, or even single parents can enjoy the feeling of parenthood and can become parents to complete their families.

In this surrogacy, the child is genetically related to the parents and due to this, gestational

³ Dr. Ranjana Kumari, *Surrogate Motherhood Ethical or Commercial*, MINISTRY OF WOMEN & CHILD DEVELOPMENT, available at <https://wcd.nic.in/sites/default/files/final%20report.pdf> (Last visited December 20, 2020).

⁴ Monica Saini, *Surrogacy Laws: National and International Perspective*, SCRIB, available at <https://www.scribd.com/document/368028306/SURROGACY-LAWS> (Last visited December 20, 2020).

⁵ *What is Gestational Surrogacy?*, SURROGATE.COM, available at <https://surrogate.com/about-surrogacy/types-of-surrogacy/what-is-gestational-surrogacy/> (Last visited December 22, 2020).

surrogacy becomes less legally complicated than the other types of surrogacy.⁶

Cons of gestational surrogacy-

- Gestational Surrogacy is a long, challenging, and expensive process.
- In this, the intended couple or individual has to renounce some control as someone else carries the child for them.

Traditional Surrogacy: This type is also referred to as Partial Surrogacy or Genetic surrogacy. In Traditional Surrogacy, the intended father's sperm is used and the surrogate mother's eggs. Therefore, in traditional surrogacy, the child will be biologically related to the surrogate and due to this, traditional Surrogacy's legal procedure is a bit complicated. In some states traditional surrogacy is illegal.⁷

Pros of Traditional Surrogacy are-

- It is less expensive, compared to gestational surrogacy.
- The intended mother does not have to go through any medical procedures.

Cons of Traditional Surrogacy are-

- Traditional Surrogacy is prohibited in many countries.
- There have been many instances where the surrogate mother keeps the child after delivery because she has right over the child.

Compensated surrogacy: This form is also known as Commercial Surrogacy. In compensated surrogacy, the surrogate mother is been given compensation for carrying the child, for her time and energy, and additional compensation for medical expenses is also provided o her. Commercial Surrogacy is a hugely debatable issue yet, as on side of a coin people feel that it takes advantages of the infertile women and even human life is commercialised and on the other phase/face it is unfair for the women, who is carrying the child and bearing with pain that too for some other women.⁸

Pros of Commercial Surrogacy are-

- Commercial surrogacy allows a surrogate to be compensated fairly for her commitment to the intended couple or individual.

⁶ Monica Saini, *Surrogacy Laws: National and International Perspective*, SCRIB, available at <https://www.scribd.com/document/368028306/SURROGACY-LAWS> (Last visited December 22, 2020).

⁷ *What is Traditional Surrogacy?*, SURROGATE.COM, available at <https://surrogate.com/about-surrogacy/types-of-surrogacy/what-is-traditional-surrogacy/> (Last visited December 22, 2020).

⁸ *Ibid.*

- In Commercial Surrogacy, contracts for the monetary compensation are predefined, so that no disputes take place over monetary compensation during or after pregnancy.
- Both the intended parents as well as surrogate mothers' rights are legally protected in this surrogacy.

Cons of Commercial surrogacy are-

- Commercial Surrogacy has been declared illegal in many countries due to its legal complications.
- It is more expensive compared to altruistic surrogacy.

Altruistic Surrogacy: Altruistic surrogacy is generally done between family members only in selfless regard. So, this surrogacy is sort of a non-economic activity, as in this there's no compensation for surrogate except for medical expenses.⁹

Pros of Altruistic Surrogacy are-

- It is cost-effective, as it is done in between family members.
- Altruistic Surrogacy is legal in most countries.
- As the child is been taken care of by a family member so the intended parents are familiar with the surrogate very well, so it serves as a relief to them.

Cons of Altruistic Surrogacy are-

- In this Altruistic Surrogacy, intended parents might have less control over surrogacy as the surrogate is not compensated and may feel hesitant to take decisions.
- Due to family pressure, the surrogate may not get the chance to think and take her own decisions.

Independent Surrogacy: Independent Surrogacy is also known as private surrogacy, as in this there is no agent or agency which finds the surrogate for the intended parents. In this form, the intended parents have to find the right person to be the surrogate for carrying their child on their own. The intended parents may work with all the legal matters by themselves and not include any third parties¹⁰

Pros of Independent Surrogacy are-

⁹ *What is Altruistic Surrogacy?*, SURROGATE.COM, available at <https://surrogate.com/about-surrogacy/types-of-surrogacy/what-is-altruistic-surrogacy/> (Last visited December 22, 2020).

¹⁰ *What is Independent/Private Surrogacy?*, SURROGATE.COM, available at <https://surrogate.com/about-surrogacy/types-of-surrogacy/what-is-independentprivate-surrogacy/> (Last visited December 22, 2020).

- In this form, there may not be any third party included so, there be no interference of any third party to take decisions.
- In this form of surrogacy, the intended parents have the full knowledge of the surrogate mother's background and accordingly, they can choose the mother.
- Independent surrogacy is very cost-efficient as there is an agency involved.

Cons of Independent Surrogacy are-

- It may be difficult to coordinate with the surrogate mother.
- The intended parents have to oversee everything by themselves.
- There may be no legal contract between the intended parents and the surrogate in an independent surrogacy.
- If the child is born with any deformity or disability, the intended parents may refuse to take the child as there is no legal contract between them.

Agency Assisted Surrogacy: In this form of surrogacy agencies are taken into consideration. Here, the agency serves as a link between the intended parents as well as the surrogate and they also assist both of them in taking decisions. In this form, the agency provides the three main types of facilities, matching and screening, case management, and counseling.¹¹

Pros of Agency Assisted Surrogacy are-

- The agency helps both the intended parents as well as a surrogate mother by assisting them.
- In agency assisted surrogacy both the intended parent and the surrogate are given ample choices.

Cons of Agency Assisted Surrogacy are-

- In agency assisted surrogacy, the whole information about the surrogate mother is not given to the intended parents.
- Agency assisted surrogacy is not feasible and affordable for everyone.
- In agency assisted surrogacy the surrogate does not earn much because the agency takes most of the fees as commission.

¹¹ *What is Assisted Surrogacy?*, SURROGATE.COM, available at <https://surrogate.com/about-surrogacy/types-of-surrogacy/what-is-altruistic-surrogacy/> (Last visited December 22, 2020).

II. LAW REFORMS

(A) Present laws of Different Countries

Many times, the intended couple or individual do surrogacy from other countries because either surrogacy is very expensive in their country or it is ban in their countries. Surrogacy Laws vary from country to country and in some countries, surrogacy is prohibited. There is no uniform law, rules, or regulations on surrogacy that is adhered to by all nations. As present laws on surrogacy differ based on countries so it becoming stressful for intended parents because many countries do not allow surrogacy and in other countries, there are certain rules and regulations due to which surrogate child will not be given the nationality if he is born in a different nation. Current surrogacy laws of different countries are-

- United States: Section 301, and/or 309 of the Immigration and Nationality Act (INA) governs the citizenship of the United States. If any citizen has done surrogacy from any foreign country, so in order to become a citizen of the US, the child needs to have a direct genetic relation with his intended parents. Therefore, it means that the child must have at least one of his parent's genes in order to gain US citizenship.¹²
- Germany: In Germany, The Courts of Justice have held that surrogacy is violative of Article 1 of the German Constitution because, using a third party's body for creating a child, is subject to a contract and a contract for the reproduction of human life is prohibited there.¹³
- Belgium: In Belgium, Commercial Surrogacy is prohibited. However altruistic surrogacy is legal, and there's only one hospital involved that has been allowed to do altruistic surrogacy and that too with rigid rules and norms, therefore, intended parents tend to have treatment from outside the national boundaries.¹⁴
- Netherlands: In Netherland commercial surrogacy has been declared illegal and altruistic surrogacy is legal there. There are only a few hospitals having strict rules to perform altruistic surrogacy and hence couples or individuals tend to move outside the country for surrogacy.¹⁵

¹² *International Surrogacy Laws*, UKRAINIAN FAMILY LAW KYIV, UKRIANE, available at http://www.familylaw.com.ua/index.php?option=com_content&view=article&id=69&Itemid=98&lang=en (Last visited December 22, 2020).

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

- Sweden: Surrogacy is completely banned in Sweden for many years. However, recently the Riksdag's committee of Social Affairs, with a majority of votes, gave the government permission to examine the surrogate motherhood. So, Sweden has started taking steps towards implementing surrogacy, though it may take time in order to remove all restrictions on surrogacy.¹⁶
- United Kingdom: surrogacy is not completely prohibited in the United Kingdom, only commercial surrogacy has been declared illegal by the Surrogacy Arrangements Act, 1985. It is mandatory to clearly state in the surrogacy contract that till the time the intended couple or individual legally adopts the child, all the rights over the child will be with the surrogate mother, as per the Surrogacy Arrangements Act.¹⁷
- India: Commercial surrogacy has been legalised in India since 2002 and it is been an emerging country in this technology. In India the cost of surrogacy is relatively cheaper compared to other countries, which is the main reason why people from foreign countries are come to India for the process of surrogacy. Due to the increase in popularity of commercial surrogacy, there has been an increase in surrogacy clinics and due to this, these clinics are increasing their rates for conducting the process of surrogacy.¹⁸ In India commercial surrogacy is strictly restricted to the citizens only, therefore no person from another country is allowed to do surrogacy from India.

(B) 228th Law Commission Report

The Law Commission of India submitted the 228th Law Commission Report on 5th August 2009 by the title "Need for Legislation to regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of parties to a Surrogacy".¹⁹ The report mainly focuses on different areas of surrogacy in India, the prevailing scenario of surrogacy, and also the committee recommended several standards for it. The law commission report observed the following in the report-

- A surrogacy contract should be made if both the intended parents and the surrogate agrees for surrogacy and the contract should fulfill all the necessary requirements, i.e., the surrogate mother's consent, husband as well as the family members should agree of the surrogate child, all the expenses of the surrogate mother in monetary terms as

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Monica Saini, *Surrogacy Laws: National and International Perspective*, SCRIB, available at <https://www.scribd.com/document/368028306/SURROGACY-LAWS> (Last visited December 23, 2020).

¹⁹ Neha Behl, *Law and Policy on Surrogacy: A Socio-Legal Study in India*, SHODHGANGA, available at <http://hdl.handle.net/10603/93605> (Last visited December 23, 2020).

well as it should contain the medical expenses of her to full term. The contract should also contain a clause that specifies that after the birth of the child the surrogate mother will hand over the child to the intended parent.²⁰

- It was suggested by the law commission to add a financial support clause for the child in the surrogacy arrangement just in case if the intended couple or individual dies or if divorce is taken place between the intended couple during the surrogacy process and no one is there to take the delivery of the child.²¹
- The life insurance of the surrogate should be covered under the surrogacy contract.²²
- It was recommended that at least one of the intended parents should have genetic relation with the child that means, either the father's sperm should be used in surrogacy or both the father's sperm and the mother's egg should be used in the process. This is because this will make the bond between the parents and the child more fruitful and strong, and also it will further reduce child abuse, which has been observed in many cases.²³
- The legislation should add a provision on considering the surrogate child to be the legal child of intended parents as soon as the child is born.²⁴
- Only the names of the intended parent should be written in the birth testament of the surrogate child.²⁵
- The intended parents as well as the surrogate mother's privacy should be fully protected.
- Sex-selective surrogacy should be declared as illegal.
- If there is a case of abortion of the surrogate mother, then it should be governed under the Medical Termination of Pregnancy Act, 1971.

(C) Surrogacy (Regulation) Bill, 2020

On 26th February 2020, the Union Council of Ministers endorsed the Surrogacy (Regulation) Bill, 2020 after consolidation suggestions of a Select Committee of the Rajya Sabha. The

²⁰ 228th Law Commission of India Report, *Need for Legislation to Regulate Assisted Reproductive Technology Clinics as Well as Rights and Obligations of Parties to a Surrogacy*, Report No.228, 25 (August 2009), available at <https://lawcommissionofindia.nic.in/reports/report228.pdf> (Last visited on December 23, 2020).

²¹ 228th Law Commission of India Report, *Need for Legislation to Regulate Assisted Reproductive Technology Clinics as Well as Rights and Obligations of Parties to a Surrogacy*, Report No.228, 26 (August 2009), available at <https://lawcommissionofindia.nic.in/reports/report228.pdf> (Last visited on December 23, 2020).

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

Surrogacy (Regulation) Bill, 2020 mainly focus is to establish a National Board at the central level and State Boards in order to regulate surrogacy in India.²⁶ The Surrogacy (Regulation) Bill, 2020 brought some major changes with it and they are-

- The Surrogacy (Regulation) Bill, 2020 only permits altruistic surrogacy and totally prohibits commercial surrogacy in India. Due to this, the surrogate mother will not be able to get any financial compensation from the commissioning parents any longer, except for the medical expenses and insurance coverage.
- The Committee has deleted the definition of ‘infertility’ in the 2020 Bill because they came to a view that 5 years is a very long period for a couple to wait for a child, therefore they concluded the definition of infertility as against the main objective of the Act and unreasonable.²⁷
- The Surrogacy (Regulation) Bill, 2020 has also permitted Indian married couples to be surrogates. According to the Bill, the age for a wife should be between 23 to 50 years and for a husband’s age should be between 26 to 55 years. This bill has also expanded the applicability to include Indian single women who are widows and divorcees who age between 35 to 45 years.²⁸
- It has been proposed to increase the Insurance cover of surrogate mothers from 16 months to 36 months.²⁹
- The certificate of essentiality and the certificate of eligibility that proves their infertility before the surrogacy contract have been made compulsory to be obtained by the intended parents.³⁰
- According to the bill, the surrogate child should not be abandon by the commissioning parents under any circumstances.³¹
- The Surrogacy (Regulation) Bill, 2020 has made it compulsory for the ART clinics to get themselves registered with an appropriate authority.³²

²⁶ Cabinet approves the Assisted Reproductive Technology Regulation Bill 2020, PMINDIA (Feb. 19, 2020), available at https://www.pmindia.gov.in/en/news_updates/cabinet-approves-the-assisted-reproductive-technology-regulation-bill-2020/ (Last visited on December 23, 2020).

²⁷ Govind Hari Lath, *Surrogacy (Regulation) Bill, 2020: The Way Forward*, IPLEADERS (June 24, 2020), available at <https://blog.ipleaders.in/surrogacy-regulation-bill-2020-way-forward/> (Last visited December 24, 2020).

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

- Advertising or undertaking commercial surrogacy, selling or importing human embryos for surrogacy, exploiting the surrogating mother or the surrogate child, and disowning the child are considered to be offences under the 2020 Bill and the penalties for such offenses is 10 years of imprisonments or a fine of 10 lakh rupees.³³
- The Surrogacy (Regulation) Bill, 2020, has proposed to establish Surrogacy Boards, both at the National level as well as at the State level, as this will help the government in framing policy matters related to surrogacy clinics and also will help the government in supervising its functioning.³⁴

III. CASE ANALYSIS

*(A) Manji Yamada v. Union of India and Ors.*³⁵

This case is considered one of the most important cases on Surrogacy in India, as for the first time the matter of surrogacy came before the Indian Judicial System. Also, in India, there were no laws on surrogacy at that time. In this case, a petition was filed under Article 32 of the Indian Constitution. Emiko Yamada filed the case in order to have the custody of her surrogate grandchild, Baby Manji Yamada. In this case, Emiko Yamada claimed to be the grandmother of the surrogate child.

Dr. Yuki Yamada and Dr. Ikufumi Yamada were the biological parents of Baby Manji Yamada, they were from Japan and they came to India for surrogacy in the year 2007. Here, with the help of a surrogacy clinic in Gujarat, they found a surrogate mother and in India, it is illegal to come in a surrogate contact with a couple or individual from another country. So, the surrogacy agreement here was illegal.

On 25th July 2008 Baby Manji Yamada was born. However, during the surrogacy process, the commissioning parents developed some matrimonial discords and got separated. Due to which Dr. Yuki Yamada, the commissioning mother returned back to Japan, and soon Dr. Ikufumi Yamada also had to return back to Japan because his VISA got expired. As both, the parent returned back to Japan and Baby Manji Yamada was under the care of her paternal grandmother.

In the present case, the Hon'ble Court observed that in this case there was no ground on filing a petition in High Court because there is no public interest found. The Apex Court also gave

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Manji Yamada v. Union of India and Ors. AIR 2009 SC 84.*

the definition of “Commercial surrogacy”.³⁶

The Apex court issued an Identification Certificate for Baby Manji Yamada so that she could be travel out of the Indian Territory. In this case, the Hon’ble Court also formally legalised Commercial Surrogacy.

(B) Union of India vs. Jan Balaz³⁷

This landmark case dealt with the issues of the Inconsistent Surrogacy laws of two countries. In this case, the intending partners were from Germany and the surrogate was from India. They took the surrogacy services from an ART Clinic in Gujarat, India. In this case, twins were born and the children were biologically related to the father, Jan Balaz. As surrogacy for non-citizens is banned in India and also German laws prohibits surrogacy, so because of this the passports for the surrogate twins were refused. In this case, a lot of issues got raised on inconsistent surrogacy laws of the two nations at international law consequent non-recognition and validity, and some other issues like legitimacy, parenthood, nationality, citizenship, inheritance, succession rights over the surrogate child, and overall, the conflict of laws at international law.³⁸

The Supreme Court allowed the German couple to adopt the twins and also issued them the passports because of the reason that this will save the children from being parentless.³⁹ In this case, the Apex court also reiterated on the legal status of commercial surrogacy in India and the court also held that when it comes to the legitimacy of the surrogacy that takes place between an Indian surrogate and a foreign couple then legal complications arise.

IV. RIGHTS AND DUTIES OF A SURROGATE MOTHER

Surrogacy continues to grow by the day in India because surrogacy has become a viable option for those couples and individuals who unable to have any children. A surrogate mother is defined by the Oxford Dictionary as, “A woman who bears a child on behalf of another woman.” Commercial surrogacy was legalised in Indian in 2002, since then many debates have been over it. In the year 2010, The Assisted Reproductive Technologies (Regulation) Bill was passed by both the Houses and Section 34 of the bill stated all rights and duties that surrogate mother has. The rights and duties of a surrogate mother under Section 34 of The Assisted Reproductive Technologies (Regulation) Bill, 2010 are:

³⁶ *Ibid.*

³⁷ Union of India v. Jan Balaz JT 2008 (11) SC 150.

³⁸ Sonali Kusum, *Overview of Surrogacy Laws in India*, WRITINGSONSURROGACY.WORDPRESS.COM (Oct. 18, 2016), <https://writingsonsurrogacy.wordpress.com/tag/court-judicial-decisions-on-surrogacy/>

³⁹ *Ibid.*

- Expenses- Each and every expense that is or will be related to the pregnancy, including insurance, of the surrogate that is achieved in the surrogacy will be borne by the intended parents, it includes expenses during the pregnancy period and after the delivery till the time the surrogate child is ready to be delivered to the commissioning parents.⁴⁰ Therefore, in order to provide all the essential necessities that are required for the betterment of the infant, all the expenses and costs that are incurred in a surrogacy contract and related to the pregnancy of the surrogated mother will be covered by the commissioning couple or individual.
- Monetary Compensation- The intended couple or individual can give the surrogate some monetary compensation when the surrogacy agreement is finalized between them, as a gesture for agreeing to be their surrogate.⁴¹ It solely depends upon the intended couples or individuals will whether to give any monetary compensation to the surrogate mother or not so, the surrogate mother cannot demand it.
- Right to Privacy- It is the duty of the surrogacy clinics to keep all information of the surrogate mother confidential and they are not allowed to disclose this information about the surrogacy to anyone except to the central database of the Department of Health Research, only on the order of court who has jurisdiction on it.⁴² Therefore, the surrogate mother's right to privacy is completely secured but only if the privacy does not lead to any kind of harm to the fetus.
- Parental Rights- A surrogate mother has to voluntarily give up all her parental rights over the surrogate child.⁴³ Therefore, it is the surrogate mother's duty to voluntarily cease her claim over the child once it is born. However, in traditional surrogacy consent forms are usually signed after the surrogate child is born, so the surrogate mother can change her mind. In gestational surrogacy, a pre-birth court paper is formulated in which the commissioning couples are listed as the biological parents of the surrogate child and so in the birth certificate also the commissioning couple's name will be mentioned.
- Counseling- The surrogate mother has the right to ask and opt for professional counseling. The counseling can opt from the early months of the pregnancy till the

⁴⁰ The Assisted Reproductive Technologies (Regulation) Bill, 2010 §34 (2)

⁴¹ *Id.* § 34 (3)

⁴² *Id.* § 34 (12)

⁴³ *Id.* § 34 (4)

child is born. Even sometimes the counseling can extend after the birth of the child till the time the surrogate child is delivered to the commissioning parents.⁴⁴

Therefore, many rights and duties are given to the surrogate mother when she enters into a surrogacy contract like the right to protect her privacy, the commissioning parents will cover all the expenses and cost of the surrogate mother during the pregnancy period, and she can also choose professional counseling for herself this, however, the surrogate mother will lose all her rights over the surrogate child and it will be given to the commissioning parents as soon as the child is born.

V. CONCLUSION

Today adoption is legally permissible but surrogacy has been declared illegal in many countries. Surrogacy has helped many people throughout the world who has given up hope of becoming a parent and having their own child. However, many countries have still not accepted surrogacy mainly due to some ethical norms. On the other hand, surrogacy has helped many countries in increasing the economy.

Today, many developed nations have not accepted surrogacy, but a developing nation like India in 2002 has taken a great step by legalising commercial surrogacy and in February 2020, India again took a huge step by accepting the Surrogacy (Regulation) Bill, 2020. Though India has initiated its steps towards implementing laws for surrogacy, still a few loopholes are left that are believed to be solved in the upcoming future.

We can clearly see that surrogacy has helped many poor women throughout the world to get the needed money, it has also helped many infertile couples and individuals to get their long-desired biologically related child, and the country earns a good economy because of it. Therefore, surrogacy should be legalised and should be accepted everywhere.

VI. SUGGESTIONS

It is suggested that:

- It should be made compulsory to formulate a detailed surrogacy contract and it should contain all the necessary points about the surrogacy process so that there is no inconsistency between the intended parents and the surrogate mother.
- The government should legalise commercial surrogacy for non-citizens.

⁴⁴ *Rights of Surrogate Mothers*, LAW SERVICES INDIA (May 3, 2018), available at <http://www.legalservicesindia.com/law/article/950/16/Rights-of-Surrogate-Mothers> (Last visited December 26, 2020).

- The surrogate child should be given the commissioning parent's nationality.
- A specialized court called "Surrogacy Court" can be created.
- Gender selective surrogacy should be declared illegal.
- The surrogate mother's rights should be protected in every manner.
- The Government should open its own ART clinics so that illegal surrogacy can be stopped.
