
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

RIGHTS OF SURROGATE MOTHERS IN COMMERCIAL SURROGACY¹**ABSTRACT**

Surrogacy is a term used for married couples incapable of creating a child dependent on another woman who takes the role of a surrogate mother to carry the child. During this process, the surrogate carries the baby in the womb for the period of her pregnancy and gives the baby to the intended parents upon delivery. This practice was first introduced in the year of 1980. It was first regarded as a breakthrough in medical technology that enabled infertile parents to start a family without opting for adoption. The research explores and probes into surrogacy and the various rights offered to the parties involved. The research intends to particularly highlight and shed light on the rights available to surrogate mothers in commercial surrogacy.

1. INTRODUCTION

Surrogacy, in simple terms, is the practice or process of carrying, nurturing, and giving life to a child for another person or a couple. As per the Warnock Report of 1984, “surrogacy is the practice whereby a woman or surrogate mother carries a child for another person with the intention that the child should be handed over after birth.”²

Being a parent is usually regarded as a proud and blissful part of growing up. Having kids is seen as a blessing as they enable them to carry the family name. So not being able to have a kid is socially regarded as a curse, especially in a country such as India, where infertile parents are shunned from society. The advancement of various technologies of reproduction like In Vitro Fertilization (IVF) as well as Genetic donation have helped sterile couples start their journey on being parents.

There are two types of surrogacy practices followed in the medical world today. The first type is traditional surrogacy, where the insemination of the surrogate takes place via sexual intercourse or through artificial insemination. The egg of the surrogate is fertilized by the intended parent’s or donor’s sperm. Traditional surrogacy is looked down upon by the people of

¹ Nandu Dawn, Symbiosis Law School, Hyderabad

²Warnock DM. London: Command of Her Majesty; 1984. Report of the committee of inquiry into human fertilisation and embryology; p. 42.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

India, and people who practice surrogacy are usually shunned from society. The other type of surrogacy now primarily practiced by infertile couples is gestational surrogacy. This type of surrogacy occurs when the embryo is created using IVF and is implanted in a surrogate, called the gestational surrogate. The surrogate mother will not, on paper, be biologically related to the child in this type of surrogacy. This is the only method of surrogacy that is legally acceptable in India.

Surrogacy can take place both commercially and altruistically. Altruistic surrogacy has no means of profit for the surrogate mother. The intended parents will cover only the insurance and medical expenses during the pregnancy period. Commercial surrogacy refers to the agreement between the surrogate and the intended parents to compensate the surrogate for carrying the fertilized egg and providing the intended parents with a child. This has been widely covered by the media, and numerous controversies have arisen regarding the ethical aspects of commercial surrogacy. The debate of surrogacy is an age-old argument between two sides of the educated population. One side of the argument believes that surrogacy is a brilliant scientific breakthrough that helps childless or infertile couples start a family that would not be otherwise possible. The other side argues that the practice of surrogacy is exploitative, unethical and deals with the sale or trafficking of women and children and should be hence criminalized. The following research paper will deal with the practice of surrogacy in India. India is regarded as being the most desirable destination for foreign couples to obtain a child via surrogacy. The lack of regulations or laws relating to surrogacy has resulted in the exploitation of women and children in recent years.

More on the topic and rights of surrogate mothers in commercial surrogacy will be talked about in the following pages.

2. RESEARCH QUESTIONS

The current research makes an effort to answer the following questions

- What are the problems faced while undergoing surrogacy?
- What are the different bills passed by the government of various countries on Surrogacy?
- What are the rights of the surrogate mother while undergoing commercial surrogacy

3. OBJECTIVES OF THE STUDY

- To make readers understand surrogacy and the problems faced by the parties involved
For general queries or to submit your research for publication, kindly email us at editorial@ijlr.in

<https://www.ijlr.in/>

- To explore the different laws and bills on commercial surrogacy
- To elucidate upon the rights available to the surrogate mother in commercial surrogacy

4. SIGNIFICANCE OF THE STUDY

Surrogacy is regarded as a boon to families that are not able to have children on their own but is seen as exploitative and dangerous for the surrogate due to the exploitative nature of the surrogacy sector in various parts of the world. In India, surrogates have claimed not to have been compensated for their services by intermediaries or middlemen. Specific rules and regulations must be introduced for proper regulation and protection of individuals.

The point of significance of this research is to make people aware of the various laws regarding the issue of surrogacy and the rights³ available to the surrogate mothers undertaking the process of surrogacy. The majority of the general public is not aware of the different laws and bills passed on assisted reproductive technologies and other methods of surrogacy. This research sheds light on the exploitative nature of surrogacy in India and seeks to enable the public and empower themselves with knowledge pertinent to surrogacy and its issues.

5. RESEARCH METHODOLOGY

The study of the title 'Rights of surrogate mothers in a commercial surrogacy' is prominently a doctrinal type of research paper. A doctrinal research involves looking at existing laws and legislation on the topic of research and further searching for information from articles, journals, and books. The doctrinal method of analyzing the subject is best suitable for the current research and has hence been applied. The researcher also holds to not limit the research methodology to a simple analysis of information but to also use secondary and tertiary sources of data to broaden the scope of the present study and enhance the critical analysis of the research paper. Hence, these are the different methodologies used to conduct and carry out the research.

6. SOURCES OF DATA

For this research, both primary sources of data, as well as secondary sources, have been duly referred.

Primary sources like statutes, legal cases, and laws have been referred to:

³Dustin Lance Black and Tom Daley will raise surrogate <https://metro.co.uk/2018/03/27/dustin-lance-black-says-he-and-tom-daley-will-raise-surrogate-child-in-the-uk-despite-real-legal-challenges-7421831/>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

- Surrogacy (Regulation) Bill, 2019
- Surrogacy Bill, 2020
- Assisted Reproductive Technologies Bill, 2010
- Baby Manji Yamada vs. Union of India and
- Jan Balaz v. Anand Municipality

Various secondary sources have also been referred to by going through journals, research papers, articles, and blogs:

- Is there a right to surrogacy, a journal article authored by C. Strahle
- A Comprehensive Analysis on Reproductive Health and Surrogacy in India is a blog written by Radhika Yadhav and Pavan Kasturi
- “Sex Workers at Risk: A Research Summary of Human Rights Abuses Against Sex Workers is a research paper which has been published by Amnesty International

7. LITERATURE REVIEW

Numerous journals, articles, and essays have been referenced and looked upon to write this research paper.

Surrogacy debate⁴ is a journal article that explains the problems faced by women due to the ambiguity of the present laws on surrogacy and assisted reproductive technologies. It also tries to hear both sides of the debate on surrogacy and tries to find a middle ground between the two.

Taming the international commercial surrogacy industry⁵ informs in detail about the case of baby Gammy and the Australian couple who went to Thailand to get a surrogate parent. It explains the need to codify and introduce strict guidelines for couples opting for surrogacy to protect the parties involved in the process.

*Is there a right to surrogacy*⁶? Introduces surrogacy as a contractual agreement between the surrogate parent and the intended parents to make it valid in front of the law. It also mentions the rights available to the parties involved in the surrogacy agreement.

*Surrogacy and the politics of commodification*⁷ shed light upon the injustice women face and how they are commodified as mere products that are exploited by the middlemen and the

⁴Barua, Mrinal. “Surrogacy Debate.” *Economic and Political Weekly* 51, no. 37 (2016): 4–5.

⁵Howard, Sally. “Taming the International Commercial Surrogacy Industry.” *BMJ: British Medical Journal* 349 (2014).

⁶STRAEHLE, CHRISTINE. “Is There a Right to Surrogacy?” *Journal of Applied Philosophy* 33, no. 2 (2016): 146–59.

⁷Scott, Elizabeth S. “SURROGACY AND THE POLITICS OF COMMODIFICATION.” *Law and Contemporary Problems* 72, no. 3 (2009): 109–46.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

government.

The difficulties of enforcing surrogacy regulations⁸ talk about the evolution of international surrogacy from a small and local practice to a giant baby manufacturing industry and the challenges faced to regulate and enforce laws on surrogacy.

*Transnational Surrogacy in India*⁹ talks about surrogacy in India and the issues faced by surrogate mothers in India while birthing a baby for couples outside India. It goes over the legal aspects and laws involved in commercial surrogacy and the application and relevance of visas.

*Mothers for others*¹⁰ is an article that deals with issues of gender, class, and race to analyze the process of surrogacy. It also sheds light upon the various Assisted reproductive technologies available for gestational surrogates to opt from.

*Conclusion: The Future of International Surrogacy*¹¹ talks about the evolution of surrogacy worldwide, the various laws and legislations that have been brought up and amended, and their assumptions about enhancements on such laws in the coming years.

*Rights and Problems of Surrogate Parenting*¹² discusses the various rights available to the surrogate mother during the period of service undergone by the surrogate in exchange for cash by the Intended Parents.

8. LAWS WITH RESPECT TO SURROGACY

The rate at which surrogacy practices have increased over the last decade raises various issues of concern like the lack of regulation or oversight. As of now, there are no international regulations or guidelines on surrogacy applicable worldwide.¹³ Each country has its own independent governing bodies with contrasting laws from one another.

The complex and intrinsic nature of surrogacy involves approaching the subject on a case-by-case basis and making laws accordingly. In this research, we will be dealing with laws that have

⁸Fenton-Glynn, Claire. "THE DIFFICULTY OF ENFORCING SURROGACY REGULATIONS." *The Cambridge Law Journal* 74, no. 1 (2015): 34–37.

⁹Daisy Deomampo. "Transnational Surrogacy in India: Interrogating Power and Women's Agency." *Frontiers: A Journal of Women Studies* 34, no. 3 (2013): 167–88.

¹⁰DILLAWAY, HEATHER E. "MOTHERS FOR OTHERS: A RACE, CLASS, AND GENDER ANALYSIS OF SURROGACY." *International Journal of Sociology of the Family* 34, no. 2 (2008): 301–26.

¹¹WHITTAKER, A. (2019). CONCLUSION: The Future of International Surrogacy. In *International Surrogacy as Disruptive Industry in Southeast Asia* (pp. 180–194). Rutgers University Press.

¹²Hall, Martha. "Rights and the Problem of Surrogate Parenting." *The Philosophical Quarterly (1950-)* 35, no. 141 (1985): 414–24.

¹³Bromfield, Nicole & Rotabi, Karen. (2014). *Global Surrogacy, Exploitation, Human Rights and International Private Law: A Pragmatic Stance and Policy Recommendations*. Global Social Welfare. 1. 123-135.

10.1007/s40609-014-0019-4.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

been passed in India over the years and the amendments made.

8.1 Surrogacy in India

India is one of few countries that allow the practice of surrogacy. Surrogacy had shown success in India way back in 1978 with the birth of the baby Kanupriya in Kolkata. Commercial surrogacy was soon after made legal in 2002 to promote medical tourism.¹⁴The commercial gestational type of surrogacy is the only legal surrogacy operation that is permitted in the country. The traditional practice of surrogacy is still considered taboo in India and does not have legal acceptance.¹⁵The Indian Council of Medical Research had created a list of guidelines to be followed while undertaking surrogacy in the absence of laws but was not binding by law. To regulate this industry, the Assisted Reproductive Technology Bill was drafted by the government in 2010. The Bill was redrafted in 2012 to ban non-citizens whose countries do not recognize surrogacy from being able to meet with an Indian surrogate.¹⁶Another amendment in 2013 prevented couples of the same sex meets with a surrogate in India.

In 2016, The Surrogacy (Regulation) Bill¹⁷was made aware to the parliament. It tried to establish State and National-level Surrogacy Boards. The Bill, due to its large number of controversies, was lapsed in the Rajya Sabha and went over to the standing Parliamentary Committee. In 2017, it was held that the prohibition of commercial surrogacy was unacceptable and that its prohibition was not based on scientific proof.

8.2 The Surrogacy Bill, 2020

The latest Bill incorporated and amended most of the grievances from the earlier bills and was introduced by the Health and Family Welfare Ministry on February 26 in the Lok Sabha. The Minister of Health, Dr. Harsh Vardhan, claimed that the Bill would protect the rights of the children born through surrogacy and also end the exploitation of surrogate mothers.¹⁸ The Bill defines the terms of Altruistic surrogacy, Commercial surrogacy and also lists out when a couple can opt for surrogacy:¹⁹

1. The intending couple or woman must have medical proof for gestational surrogacy.
2. Surrogacy should be altruistic in nature
3. Commercialization of surrogacy or its subsequent procedures is not allowed

¹⁴ Yadav, Radhika & Kasturi, Pavan.A Comprehensive Analysis on Reproductive Health and Surrogacy in India, SCC online,(2021)

¹⁵ Kumari, Shreya. Surrogacy provisions in India, The Times of India (2021)

¹⁶ Verma, Richa. Surrogacy in India Disorganized Sector, Problems Surrogate Face and The Way Forward, The Logical Indian (2016)

¹⁷ Surrogacy (Regulation) Bill, 2016.

¹⁸ Lok Sabha Passes Surrogacy (Regulation) Bill, *The Hindu*, 5-8-2020

¹⁹ Surrogacy(Regulation)Bill,2022, Chapter III(sec 4-10)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

4. It should not be done for producing children for trafficking or other forms of exploitation
5. Any other specification may be notified by the regulations made by the board

Some condemned the new Bill passed due to issues pertaining to the ban of commercial surrogacy, discrimination towards couples of the same sex, and contradicting ideas of equality of relationship. Placing restrictions on certain citizens of the country on surrogacy is violative of the fundamental rights of equality before the law.

8.3 Case laws on surrogacy

*Baby Manji Yamada v. Union of India*²⁰: Manji was a baby girl delivered to an Indian surrogate for Japanese parents. The couple had divorced a month before the birth of the child, and the intended father decided to take the child to Japan. But the child was not allowed entry to Japan due to a lack of laws relating to surrogacy at that time. The Apex Court Of India stated that the child was permitted to leave to Japan with the grandmother. This case gave rise to the need to enact laws on surrogacy.

*Jan Balaz v. Anand Municipality*²¹: The High Court of Gujarat held that the child born out of surrogacy would carry the name of the surrogate mother instead of the intended mother to grant the child an Indian passport and make him a citizen of India. The child had to be given to the German couple in return for the name in the birth certificate in adoption.

These are some cases that have resulted in the Surrogacy ban bill that prohibits foreign couples from approaching surrogates in India.

K.Kailaselvi v. Chennai Port Trust : The Madras High Court upholds the right of women to child care leave for the intended mother. The court states that there should be no discrimination against a woman regarding grants of maternity benefit on the grounds that the baby has been obtained through the process of surrogacy.

9. PROBLEMS FACED DUE TO SURROGACY

The lack of adequate laws and loopholes in the bills passed leads to difficulties for surrogate mothers, the children, and the parents involved in the process. Various issues of human rights may be violated and exploited without oversight from the government. Since there is no international framework for surrogacy, judicial entities and treaties have tried to include surrogacy within the context of international human rights law. It has also been stated that most

²⁰Baby Manji Yamada vs. Union of India and Another (2008) 13 SCC 518

²¹Jan Balaz v. Anand Municipality AIR 2010 Guj 21

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

of the risks involved with surrogacy is not a result of surrogacy as a tool for trade and commerce but is rather the unavoidable consequence of critical social disproportion and weak foundation of the state. Where specific perils follow the available job opportunities available for women, their rights will be enhanced by letting her choose options she feels is most favourable, even if the options are limited.

9.1 Medical Complications

Like normal pregnancies, a surrogate mother faces all the risks involved in carrying a child in her womb and giving birth. Some of these may include vomiting, morning sickness, weight gain, migraines, mood swings, and swelling. Other more severe risks may include diabetes, damage to reproductive organs, or hypertension.²² Also, embedding surrogate mothers with an enormous amount of embryos to increase the chance of conception is dangerous for both the other and the baby. Post Pregnancy treatments are also similar to standard pregnancy treatments for women. Surrogates may experience a range of symptoms like postpartum infections, severe bleeding, discharge from the vagina, loss of hair, stretch marks, or perineal pain. Surrogate mothers are also prone to depression if they have nurtured a strong emotional connection with the baby during the pregnancy period.

With respect to gestational surrogacy, IVF treatments may come with a minor risk of an allergic reaction or needle bruising. The process of transfer of embryo may come at the cost of cramps or slight bleeding due to the procedure. Having twins or triplets is not uncommon in surrogacy; hence medical procedures such as placental abruption and the possibility of a Cesarean section must be kept in mind. Following the instructions given by the doctors assigned and scheduling an appointment when something feels wrong are essential things to keep in mind.

Surrogacy agencies that the surrogate mothers are a part of may require a full medical screening before becoming a surrogate and are assigned the intended parents. The medical information helps evaluate the surrogate mother's well-being and inform the doctor about the surrogate's medical condition and other health-related issues.

9.2 Emotional Well-being of Surrogate

Surrogate mothers are often faced with the challenge of having to raise a baby in their womb for nine months and give them up to the intended parents after the delivery. A common risk faced by the surrogate is depression after and during the process of surrogacy. The proper mental health of the surrogate mother is crucial to ensure a safe space and successful pregnancy.

²² The Emotional and Medical Risks of Surrogacy, Surrogate (2019), <https://surrogate.com/surrogates/pregnancy-and-health/emotional-and-medical-risks-of-surrogacy/>

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

Counseling and therapy after the delivery should be enforced. Having a solid support system of close friends and family who can listen to you and help vent out your emotions is an excellent way to keep your body and mind healthy.²³ Having honest conversations about the process with the intended parents helps the well-being of the parties involved in surrogacy. Educating surrogates on the various ways to establish and create boundaries for their relationship with the baby and the intended parents can help confront their emotions.

9.3 Legal issues

Since surrogacy is an agreement enforceable by law, a breach of contract by either party may lead to complications. Some of the situational examples are listed below:²⁴

- Abortion of child by the surrogate mother without consent from the intended parents
- Lapse in payment for procedures of surrogacy by the intended parents. The surrogate mothers are to be provided with adequate medication and other resources; failing to provide the mother with necessary items would negatively impact the child and the relationship between the surrogate and the intended parents.
- Refusal of abortion by the surrogate after doctor's recommendation. Some surrogates might develop issues of medical concern during the pregnancy period, which results in the abortion of the child. Not abiding by the doctor's advice would most definitely lead to complications to the surrogate's body.
- Breach of a surrogate mother in following behavioural restrictions during the period of pregnancy. Surrogate mothers are required to change their eating habits and avoid drinking, smoking, or any other activity which might affect the health of the child born out of surrogacy.

10. RIGHTS AVAILABLE FOR THE SURROGATE MOTHERS

Surrogate mothers in India have fallen prey to exploitations in the form of abuse, such as the intended parents failing to provide with the money required for the procedures of surrogacy or

²³ Idib.

²⁴Kumar, Aditya, Problems of Commercial Surrogacy in India (June 12, 2020).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

abandoning the baby in case of deformities or abnormalities.²⁵ Most surrogate women come from low-income families and usually have no other option but to accept the process of surrogacy in exchange for money. They are not aware of the rights available to them due to a lack of education and exposure to information. Surrogate mothers risk their health and lives for the procedure of surrogacy, and in case of situations of pregnancy loss, maternal mortality, and other health risks, the contracting party has no obligation or responsibility towards the surrogate.

10.1 Reproductive rights

Women have the sole right to control their bodies and make their own choices regarding reproduction and raising children.²⁶ These rights, though limited in certain jurisdictions, can be interpreted as a part of international law. Complete bans or Unreasonable restrictions on surrogacy may inhibit and undermine the reproductive choice and health of women. International rights like the right to privacy and health have been interpreted by UN committees of Political, Economic, and Social rights to mean the right to private integrity.²⁷

This right protects women against physical assault, forced sterilization, inhuman treatment, and freedom of movement.²⁸ The committees have acknowledged parts of the right to health and privacy to the right to bodily independence and empower women to make an informed choice about their bodies. Human rights treaties around the world have found that sterilization without consent and prohibition of abortion in places where it was legal was still practiced. Surrogate mothers have the right to be informed about the medical treatments and the terms of the contract formed between the intended parents. Intermediaries should be allowed to recruit surrogates only after the informed consent by the woman. Surrogate rights are violated when the mother is forced to live in clinics or hotels and subjected to oppressive rules. Failure to provide sufficient medical care also raises concerns about the rights of the surrogate and health. There is a pressing need for regulation and oversight from the government to confront oppressive or coercive surrogacy to ensure that the reproductive of the surrogates is well protected.

10.2 Non-Discrimination and protection equality

Restrictions on gender discrimination and promoting equality for women are of great

²⁵ Chowdhry, Prem. Surrogate victims of Abuse, Exploitation, The Tribune India (2019)

²⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), E/C.12/2000/4, 2000, para. 8;

²⁷ Committee on Civil and Political Rights, Amanda Jane Mellet v. Ireland, CCPR/C/116/D/2324/2013 (2016)

²⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (Art. 12), E/C.12/2000/4, 2000, para. 8.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

importance to surrogacy. Restrictions on surrogacy directly affect women because only women can be surrogates.²⁹ The Convention of the Eradication of All Forms of Discrimination Against Women (CEDAW) makes it necessary for nations to address gender discrimination with respect to the reproductive choices available. This includes making sure that the laws on the preferences of reproduction are not based on stereotypes of traditional concepts of motherhood. States that have banned or criminalized the practice of surrogacy raise concerns on equality as these bans have a severe discriminatory impact on women.³⁰

Hence, prohibitions on surrogacy will violate provisions of human rights treaties, particularly where policymakers cannot give proof for their reason for such a ban, like the evidence that they believe outweighs women's rights to be free from discrimination. Even if restrictions on surrogacy are not in violation of the anti-discriminatory laws, the legal system should value women's reproductive rights and make sure that regulations on surrogacy are consistent with those values by avoiding restrictions on women's rights.³¹

10.3 Labour rights

Women have the right to choose and work willingly. Commercial surrogacy can be interpreted as labour under international law as it is an agreement between two parties that a service will be performed in return for payment. The services undergone by a surrogate mother over the course of almost a year include becoming pregnant, engaging in numerous tasks while being pregnant, and giving birth. The intended parents, in return for this service, provide compensation and additional benefits and services.

Commercial surrogacy provides economic opportunities that are almost similar to other forms of labour like domestic work or agricultural work. Article 3 and 5 of CEDAW requires the state to make sure that stereotypical assumptions about women and their role in society are eliminated and to ensure economic, social, and political rights for women.³²

Since surrogacy is interpreted to be regarded as work, surrogate mothers are entitled to favourable and just working conditions. These rights are applicable to commercial as well as altruistic surrogates. To ensure that surrogate mothers have a just and favourable place to work and provide service, fair and reasonable contracts should be made to govern the relationship

²⁹ Amanda Mellet v. Ireland (UN Human Rights Committee, 2016)

³⁰ Amnesty International, "Sex Workers at Risk: A Research Summary of Human Rights Abuses Against Sex Workers" (May 2016).

³¹ University of Chicago Law School - Global Human Rights Clinic, "Human Rights Implications of Global Surrogacy" (2019). Global Human Rights Clinic. 10

³² Convention on the Elimination of All Forms of Discrimination against Women, Art (3,5)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

between the intermediaries and intended parents³³. These attempts to protect women have not always been successful. Surrogate mothers in India have described not being paid compensation for their service, sometimes without reason and other times because they were unsuccessful in delivering the child.

10.4 Parental rights

Surrogate mothers are to relinquish their right to be a parent of the child born out of surrogacy. The official birth certificate of the child will not include the surrogate mother's name. The sperm donor or the intended father is the legal father of the child, and the intended mother can adopt. These are signed after the delivery of the baby; hence there have been a few cases where the surrogate mother had changed her mind after giving birth. Usually, the surrogate mother cannot change her mind.

11. CONCLUSION

It is evident from the current trends of increasing population and nuclear family systems that the demand for surrogate mothers and the practice of surrogacy will continue to expand in the years to come. This may result in an increased difficulty in an already large and unregulated industry to ensure the safety and protection of the parties involved in surrogacy. There is an urgent need to approach surrogacy and form an international legislative framework that codifies the practices and makes them enforceable by law. Various rights which are usually compromised in surrogacy practices in India are women's reproductive freedom, privacy, and autonomy of their bodies. The research paper has gone through the laws which have been passed in India. The Surrogacy bills that were passed in India need to be more inclusive of all citizens of the country. Discrimination based on sexuality inhibits the country from progressing. Also, surrogate mothers should have the option to choose for commercial surrogacy, and the outright ban of commercial surrogacy violates her right to reproductive choice. There is not enough data or information available on surrogacy practices that are prevalent. Further research is to be needed for determining whether the surrogacy arrangements are prone to exploitation and abuse of surrogate mothers or children. Policies introduced on Surrogacy should be done based on accurate scientific proof, used under the context of an enormous scope of infertility, reproduction, and paths to parenthood, and should respect advance and safeguard the rights of the parties involved. Regulations and policies should further be introduced after consultation with experts on the field along with the surrogate mother, intended parents, and also the child

³³ 750 I.L.C.S. 47/25

born out of the process of surrogacy.

The rights of surrogate mothers have also been discussed in detail. Any woman choosing to practice surrogacy should do so willingly and with a piece of good knowledge and information about the process. The prerequisite of informed consent enables the surrogate to make an informed choice on her own. The process of surrogacy must be conducted in a manner that best meets the standards of a medical practitioner. Surrogate mothers are to receive adequate care before, during, and after the pregnancy period. The intended parents are to provide financial support for the cost of the procedure and related expenses.

Agreements of Surrogacy should be ruled by contractual commitments, and the terms of the contracts should be clearly expressed by the parties involved. The state should ensure that the terms stated by either party be reasonable and just. Surrogates should be represented by a lawyer to protect and make aware of the contract and their rights. For commercial surrogacy, systems should be kept in place and where the surrogates are provided with adequate support and compensation. This practice must be regulated to prevent potential harm in the form of forced labour or human trafficking.

REFERENCES

- Warnock DM. London: Command of Her Majesty; 1984. Report on the committee of inquiry into human fertilization and embryology; p. 42.
- Barua, Mrinal. "Surrogacy Debate." *Economic and Political Weekly* 51, no. 37 (2016): 4–5.
- Howard, Sally. "Taming the International Commercial Surrogacy Industry." *BMJ: British Medical Journal* 349 (2014).
- STRAEHLE, CHRISTINE. "Is There a Right to Surrogacy?" *Journal of Applied Committed Philosophy* 33, no. 2 (2016): 146–59.
- Scott, Elizabeth S. "SURROGACY AND THE POLITICS OF COMMODIFICATION." *Law and Contemporary Problems* 72, no. 3 (2009): 109–46.
- Fenton-Glynn, Claire. "THE DIFFICULTY OF ENFORCING SURROGACY REGULATIONS." *The Cambridge Law Journal* 74, no. 1 (2015): 34–37.
- Daisy Deomampo. "Transnational Surrogacy in India: Interrogating Power and Women's Agency." *Frontiers: A Journal of Studies of Women* 34, no. 3 (2013): 167–88.
- DILLAWAY, HEATHER E. "MOTHERS FOR OTHERS: A RACE, CLASS, AND GENDER ANALYSIS OF SURROGACY." *International Journal of Sociology on Family* 34, no. 2 (2008): 301–26.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

- WHITTAKER, A. (2019). CONCLUSION: The Future of International Surrogacy. In International Surrogacy as Disruptive Industry in Southeast Asia (pp. 180–194). Rutgers University Press.
- Hall, Martha. “Rights and the Problem of Surrogate Parenting.” *The Philosophical Quarterly* (1950-) 35, no. 141 (1985): 414–24.
- Bromfield, Nicole & Rotabi, Karen. (2014). Global Surrogacy, Exploitation, Human Rights and International Private Law: A Pragmatic Stance and Policy Recommendations. *Global Social Welfare*. 1. 123-135. 10.1007/s40609-014-0019-4.
- Yadav, Radhika & Kasturi, Pavan. A Comprehensive Analysis on Reproductive Health and Surrogacy in India, SCC online, (2021)
- Kumari, Shreya. Surrogacy provisions in India, *The Times of India* (2021)
- Verma, Richa. Surrogacy in India Disorganized Sector, Problems Surrogate Mothers Face and The Way Forward, *The Logical Indian* (2016)
- [Surrogacy \(Regulation\) Bill, 2016](#).
- Lok Sabha Passes Surrogacy (Regulation) Bill, *The Hindu*, 5-8-2020
- Surrogacy (Regulation) Bill, 2022, Chapter III (sec 4-10)
- Baby Manji Yamada vs. Union of India and Another (2008) 13 SCC 518
- Jan Balaz v. Anand Municipality AIR 2010 Guj 21
- The Emotional and Medical Risks of Surrogacy, *Surrogate* (2019), <https://surrogate.com/surrogates/pregnancy-and-health/emotional-and-medical-risks-of-surrogacy/>
- Idib.
- Kumar, Aditya, Problems of Commercial Surrogacy in India (June 12, 2020).
- Chowdhry, Prem. Surrogate victims of Abuse, Exploitation, *The Tribune India* (2019)
- Committee on Economic, Social and Cultural Right: The Right to the Highest Attainable Standard of Health (Art. 12), E/C.12/2000/4, 2000, para. 8;
- Committee on Civil and Political Rights, Amanda Jane Mellet v. Ireland, CCPR/C/116/D/2324/2013 (2016)
- Committee on Economic, Social and Cultural Right, General Comment (Art. 12), E/C.12/2000/4, 2000, para. 8.
- Amanda Mellet v. Ireland (UN Human Rights Committee, 2016)
- Amnesty International, “Sex Workers at Risk: A Research Summary of Human Rights Abuses Against Sex Workers” (May 2016).
- University of Chicago Law School - Global Human Rights Clinic, "Human Rights Implications of Global Surrogacy" (2019). Global Human Rights Clinic. 10
- Convention of the Elimination of All Forms of Discrimination against Women, Art (3,5)
- 750 I.L.C.S. 47/25

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>