

Legalization of Surrogacy in India: A Need for Protecting the Rights of Surrogate

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Abstract: *In this researcher focus on the legalization of surrogacy, rights of surrogate and also protection of surrogate rights. In this researcher also focus on the bills related to surrogacy and its implementation and features. Researcher also tries to cover the need of surrogacy laws to prevent commercial surrogacy.*

Keywords: surrogacy, Intended parents, surrogate

1. Introduction

S (spectacular journey)
 U (unreal to most),
 R (resulting in and),
 R (reminding us),
 O (of the),
 G (greatest gift),
 A (a person),
 C (can ever give or receive),
 Y (yielding in amazing beauty)"¹

Surrogacy is a way in which a women deliver baby for the couples who are unable to conceive their own child. The woman who bears a child is known as surrogate mother or birth mother and on the other side the couple who get child is known as commissioning or intended parent. The commissioning person further have classifications i.e. heterosexual women who do not wish to carry a child or a women who is unable to conceive a child due to her physical problems, after that single women and lesbian couples who do not want to use any artificial insemination to get pregnant and lastly same sex partnered men. In addition to this there is an involvement of other numerous person such as sperm donor, doctors, agents etc. related to the same.²

1.1 Types of Surrogacy

Surrogacy mainly of five types such as Traditional surrogacy, Gestational surrogacy, Altruistic surrogacy,

Independent surrogacy, Commercial surrogacy which is described as follows:

Traditional surrogacy – This type of surrogacy is practiced before modern technology, in this egg of the surrogate is combined with the intended father and the donor. The surrogate becomes the biological mother of the child. In some states, traditional surrogacy is against the state.³

Gestational surrogacy - In this surrogate mother allowed to carry another woman's egg with relative ease and by this way she known as the gestational mother of the child. This is the most common form of surrogacy which also provides legal protection to both surrogate and intended parents.⁴

Altruistic surrogacy – This form of surrogacy involves typically helping of someone such as close friend or relative. In this surrogate mother are ready to deliver a baby without getting any compensation. In this surrogate just helping the person who are unable to have a child. This type of surrogacy is legal in Canada and Australia.⁵

Independent surrogacy – In this surrogate mother independently do work without the support of any agency or experts, she work with the person that already known to her. This form of surrogacy involves greatest risk about legality and the rights of surrogate mother.⁶

Commercial surrogacy – In this type of surrogacy, surrogate get specific amount of compensation for delivering the baby for the couple who are unable to attain their own child. In commercial surrogacy, women are recruited to deliver a child without concerning about the health of a surrogate and also agents are violated their rights. Agents earn more from the intended parents and give very less to

¹ Surrogacy images, available at [² Surrogacy basic information, available at <http://www.healthlawcentral.com/assistedreproduction/surrogacy/>, \(last visited on October 21, 2019\)](https://images.search.yahoo.com/search/images;_ylt=Awr9JhUH T8BdzLQA9FuJzbfF;_ylu=X3oDMTBsZ29xY3ZzBHNIYwNzZWFyY2gEc2xrA2J1dHRvbg--_ylc=X1MDOTYwNjI4NTcEX3IDMgRhY3RuA2NsawRjc3JjcH ZpZANCZG9pQ3pFd0xqTHZSdFp0WFZKOHJ3MklNaIF3TVFB QUFBQ2w2R0ZvBGZyA21jYWZlZQRmcjIDc2EtZ3AEZ3ByaW QDUkF1bXpOSk9Tc0NhRVNRRW9WM1Z3QQRuX3N1Z2cDM wRvcmlnaW4DaW1hZ2VzLnNlYXJjaC55YWhvby5jb20EcG9zA zAEcHFzdHIDBHBxc3RybAMEcXN0cmwDMTgEcXVlcnkDU1 VSUk9HQUNZJTIwcXVvdGVzBHRfc3RtcAMxNTcyODg0Mjc0 ?p=SURROGACY+quotes&fr=mcafee&fr2=sb-top-images.search&ei=UTF-8&n=60&x=wrt,(last visited on October 21, 2019)</p>
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³ Traditional surrogacy, available at <https://www.conceiveabilities.com/about/blog/the-different-types-of-surrogacy> (last visited on October 22nd, 2019)

⁴ Gestational surrogacy, available at <https://www.conceiveabilities.com/about/blog/the-different-types-of-surrogacy> (last visited on October 22nd, 2019)

⁵ Altruistic surrogacy, available at <https://www.conceiveabilities.com/about/blog/the-different-types-of-surrogacy> (last visited on October 22nd, 2019)

⁶ Independent surrogacy, available at <https://www.conceiveabilities.com/about/blog/the-different-types-of-surrogacy> (last visited on October 22nd, 2019)

the surrogate and treat her as slave. The agents use the whole in a commercial way which effects the surrogates.⁷

2. Historical Background of Surrogacy

The concept of surrogacy is practiced since from Biblical times and continues to medieval times as well as in modern era also.

Biblical Times: The very first surrogacy is found in the book named "The Book of Genesis" in the story of SARAH and ABRAHAM. Sarah and Abraham were a married couple, but they were unable to conceive a child. Sarah went to her servant HAGER to be the mother of Abraham child. From this the concept of traditional surrogacy start, in which surrogate uses her egg to carry a child for intended parents.

1884: In 1884, the first successful artificial insemination of a woman was completed. This was done in a very ethically questionable way and thus this gave directions to the future insemination used in the surrogacy process.

1975: In 1975, the first ethically completed IVF embryo transfer was successful.

1976: In 1976, the first legal surrogacy agreement in the history of surrogacy was brokered by lawyer Noel Keane. This was a traditional surrogacy, and the surrogate did not receive any compensation for the pregnancy. The lawyer used this experience to establish the Infertility Center, which would arrange hundreds of surrogate pregnancies a year and play a key role in the history of surrogacy.

1978: In 1978, the first baby conceived through IVF transfer was born.

1980: In 1980, the first compensated surrogacy agreement was finalized between a traditional surrogate and the intended parents. Then Elizabeth Kane who is a pseudonym received \$10,000 to carry a baby for a married couple. Although she had already completed her family and placed a child for adoption, Kane was unprepared for the emotions of surrogacy and the challenges she faced after giving birth to the baby. She eventually regretted her choice to become a surrogate and wrote about her experiences in a book called "Birth Mother".

1984-1986: In 1984, the foremost celebrated case which involve the traditional surrogacy i.e. "The Baby M Case". In which Bill and Betsy Stern contracted Mary Beth Whitehead to be their surrogate and concurring to pay her \$10,000. Whitehead's eggs were utilized in the artificial insemination process for making her the biological mother of the child. When the baby was born and it was time for Whitehead to sign over her parental rights, she denied and took custody of baby Melissa Stern (Baby M) which after word starting a long custody battle in 1986. The results of the custody case played a key role in the development of some laws regarding the surrogacy. The New Jersey Supreme Court ruled that the

surrogacy agreement between Whitehead and the Sterns was illegal and, therefore, restored Whitehead's parental rights. Custody was granted to Bill Stern, with Whitehead receiving visitation rights. This case marked a huge turning point in the history of surrogacy and not surprisingly, many surrogacy professionals began to move toward the use of gestational surrogacy to avoid these legal entanglements.

2004-2008: After that in the period between 2004-2008 various children were born via surrogacy. So the history of surrogacy clearly shows the changing trend of surrogacy with time and also some certain rights of intended parents and surrogate which comes out of that. Today various advancing techniques and resources are available to make it easier for parents to complete their family and also the history of surrogacy is just the beginning and with its ever-changing nature it is expected more will be added further.⁸

2.1 The Surrogacy Regulation Bill, 2016

On 21st November, 2016, the surrogacy regulation bill comes into existence which involves following highlights as follows:

Salient features of the Bill

- Surrogacy may be prepared in which expecting guardians get child from the surrogate mother.
- The intended couple must be the Indian citizen and must be married from last five year and unable to get own child.
- The surrogate mother is married and a close relative and also had his own child
- No payment other than reasonable medical expenses can be made to the surrogate mother.
- The surrogate child will be deemed to be the biological child of the intending couple.
- The Appropriate government is appointed by the Central and the state government to grant eligibility certificates to the intending couple and the surrogate mother. These authorities will also regulate surrogacy clinics.
- Practicing surrogacy for a fee, advertizing it or exploiting the surrogate mother will be punishable with the imprisonment for the term 10 years and fine up to Rs. 10 lakh.

Analysis of the Bill:

- The Bill licenses surrogacy as it were for couples who cannot conceive a child. This strategy isn't permitted in case of any other restorative conditions which may anticipate a lady from giving birth to a child.
- The Bill states eligibility conditions that got to be satisfied by the intended couple in arrange to commission surrogacy.
- The surrogate mother and the plans couple require qualification certificates from the fitting specialist.
- The Bill does not indicate a time constrain inside which such certificates will be allowed. It moreover does not indicate a request handle in case the application is rejected.

⁷ Commercial surrogacy, available at <https://www.americansurrogacy.com/surrogacy/commercial-surrogacy> (last visited on October 22nd, 2019)

⁸ History of surrogacy, available at <https://surrogate.com/about-surrogacy/surrogacy-101/history-of-surrogacy/> (last visited on October 24th, 2019)

- The surrogate mother must be a 'close relative' of the intended couple. The Bill does not characterize the term 'close relative'. Assist, the surrogate mother (near relative) may give her possess egg for the pregnancy. This may lead negative wellbeing results for the surrogate baby.
- The Bill permits surrogacy only for couples who cannot conceive a child. This procedure is not allowed in case of any other medical conditions which could prevent a woman from giving birth to a child.
- The Bill states eligibility conditions that need to be fulfilled by the intending couple in order to commission surrogacy.
- The surrogate mother and the intending couple need eligibility certificates from the appropriate authority.
- The Bill does not specify a time limit within which such certificates will be granted. It also does not specify an appeal process in case the application is rejected.
- The surrogate mother must be a 'close relative' of the intending couple. The Bill does not define the term 'close relative'. Further, the surrogate mother (close relative) may donate her own egg for the pregnancy. This may lead to negative health consequences for the surrogate baby.

Purposes for which surrogacy is permitted

- 1) The bill prohibits commercial surrogacy and permits altruistic surrogacy. Which does no longer involve any monetary repayment to the surrogate mother aside from the medical expenses and coverage for the duration of the being pregnant.
- 2) Commercial surrogacy includes surrogacy or its associated techniques undertaken for aneconomic benefit which exceeding primary scientific expenses and coverage insurance.
- 3) The bill lets in surrogacy whilst it's far:
 - a) For proceeding couples who be afflicted by confirmed infertility
 - b) Altruistic
 - c) Not for industrial functions
 - d) No longer for generating children for sale, prostitution or other styles of exploitation and for another condition or disorder exact thru policies.

Eligibility criteria for the intending couple and the surrogate mother:

- 1) The intending couple need to have a 'certificates of essentiality' and a 'certificates of eligibility' issued via an appropriate authority. The surrogate mom too gives a 'certificates of eligibility'.
- 2) A certificate of essentiality can be issued to the proceeding couple upon fulfillment of the subsequent conditions:
 - a) A certificate of proven infertility of both of them.
 - b) Parentage of surrogate child handed through a magistrate's courtroom.
 - c) Insurance coverage for the surrogate mother must be given.
- 3) The certificates of eligibility to the proceeding couple is issued upon the fulfillment of the following situations:
 - a) The couple being Indian residents and married for as a minimum 5 years.
 - b) The couple is between 23 to 50 years for woman (wife) and 26 to 55 years for men (husband).

- c) They do no longer have any surviving baby (biological, adopted or surrogate), besides if the child is mentally or bodily challenged or suffers from a lifestyle threatening disorder and such other situations that can be distinct via policies.

2.2 The Surrogacy Regulation Bill, 2019

The Surrogacy (Regulation) Bill, 2019 was introduced by the Minister of Health and Family Welfare, Dr. Harsh Vardhan in Lok Sabha on July 15, 2019. The Bill defines surrogacy as a practice where a woman gives birth to a child for an intending couple with the intention to hand over the child after the birth to the intending couple.

- a) **Regulation of surrogacy:** Identically as bill, 2016 this bill also prohibit commercial surrogacy however permit altruistic surrogacy this means that no financial reimbursement given to the surrogate mother apart from medical expenses and insurance during pregnancy.

Purposes for which surrogacy is permitted: Surrogacy is permitted when intending couples suffer from demonstrated infertility. Secondly, Altruistic surrogacy is there. Thirdly, not for commercial purposes. Fourthly, not for generating kids on the market, prostitution or other different types of exploitation and for any condition or precise via regulations.

Eligibility criteria for intending couple

The proceeding couple should have a 'certificate of essentiality' and a 'certificate of eligibility' issued by the appropriate authority. A certificate of essentiality could be issued upon fulfillment of the following situations:

- 1) A certificate of confirmed infertility of one or both contributors of the intending couple from a District Medical Board.
- 2) An order of parentage and custody of the surrogate infant handed by the Magistrate's courtroom.
- 3) Insurance coverage for a period of 16 months covering postpartum delivery complications for the surrogate.
- 4) The certificate of eligibility to the intending couple is issued upon fulfillment of the subsequent situation: firstly, the couple being Indian resident and married for at least five years (ii) between 23 to 50 years old (wife) and 26 to 55 years old (husband) (iii) they do not encompass a baby who's mentally or bodily challenged or suffers from existence threatening sickness or fatal illness and other situations that can be particularly by way of law. any surviving child (biological, adopted or surrogate); this would not include a child who is mentally or physically challenged or suffers from life threatening disorder or fatal illness and other conditions that may be specified by regulation.

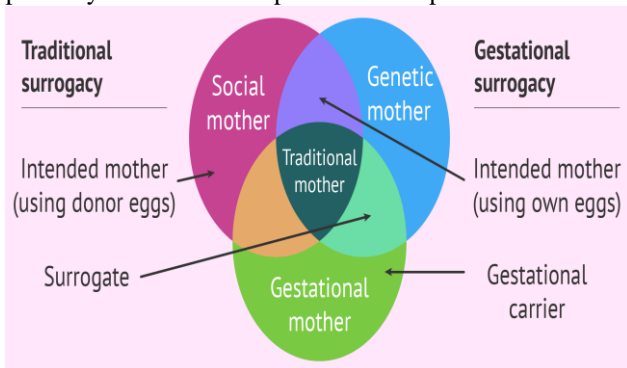
Eligibility criteria for surrogate mother: To obtain a certificate of eligibility from the appropriate authority, the surrogate mother has to be:

- 1) A close relative of the intending couple.
- 2) A married woman having a child of her own.
- 3) Age must be between 25 to 35 years old.
- 4) A surrogate only once in her lifetime.

5) The surrogate must possess a certificate of medical and psychological fitness for surrogacy and the surrogate mother cannot provide her own gametes for surrogacy.

• **Appropriate authority:** The central and state governments shall appoint one or more appropriate authorities within 90 days of the Bill becoming an Act. The functions of the appropriate authority include; granting, suspending or cancelling registration of surrogacy clinics, enforcing standards for surrogacy clinics, investigating and taking action against breach of the provisions of the Bill, recommending modifications to the rules and regulations.

• **Offences and penalties:** The offences under the Bill include: (i) undertaking or advertising commercial surrogacy; (ii) exploiting the surrogate mother; (iii) abandoning, exploiting or disowning a surrogate child; (iv) selling or importing human embryo or gametes for surrogacy. The penalty for such offences is imprisonment up to 10 years and a fine up to 10 lakh rupees.⁹



Legal aspects of surrogacy in the world



	India	USA	Ukraine	Russia
Commercial surrogacy is legal?	✓	✓✗	✓	✓
Who can be Intended Parents?				
Married couples	✓	✓	✓	✓
Same-sex couples	✗	✓✗	✗	✓
Single parents	✓	✓✗	✓✗	✓
Intended Parents recognized as legal parents?	✓	✓	✓	✓
Surrogate Baby gets citizenship of Intended Parents?	✗	✓	✓	✓

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3. Subject of Research

⁹ Surrogacy Regulation Bill 2019, India, available at <https://www.prsindia.org/billtrack/surrogacy-regulation-bill-2019> (last visited on October 26th, 2019)

¹⁰ Surrogacy Images, available at <https://www.prsindia.org/billtrack/surrogacy-regulation-bill-2019> (Last visited on October 29th, 2019)

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The subject of research in the dissertation is aimed at the highlighting the position and rights of surrogate mother and also analyzing the Bills regarding surrogacy. The Researcher also going to have look over the uprising of commercial surrogacy due to lack of enactment of Surrogacy Regulation Bill, 2019.

4. Area of Research

Present research work comes under some context to Indian Contract Act, 1972 as well as Women Protection Laws, Constitutional law, Children Protection laws.

4.1 Research Topic

“Legalization of Surrogacy in India- A Need for protecting the rights of surrogate”

4.2 Research Objectives and Research Questions

To understand the issue of Surrogacy in India.

What are the significance of Surrogacy Regulation Bill, 2019 which has been introduced by the Government?

To understand the problems and process (how to identify the mother) followed for surrogacy.

What are the problems faced by surrogate mothers?

To examine the adequacy of the Surrogacy Regulation Bill, 2019

What are the loopholes behind the non-enactment of the bill?

To appraise the need for protecting the rights of surrogate mother.

What kinds of rights of surrogate mother get violated?

Whether lack of legislation gives rise to commercial surrogacy?

5. Research Methodology

The Researcher has used the method of Doctrinal Legal Research. As apprehended in the legal research domain the Doctrinal legal research, is research about what the prevalent state of legal principle, legal doctrine or legal rule is. A Legal scholar doing the Doctrinal legal research takes Bills introduced in the Loksabab as primary point and center of his study. The Scholar study the Bills regarding the subject, look over the debates regarding the subject, judicial opinions, and textbooks which clears the concept. Thereafter, she read all the material in a complete manner and make an analysis of the material and conclude the whole material and write up in his study.

The Researcher has identified the Rights of surrogate mother and the reasons which leads to exploitation of the surrogates. The researcher also identify the problems faced by the intended parents and their family as well as surrogate.

The Researcher also make look over the loopholes regarding the non-enactment of the Surrogacy Bills and the significance of the same bills and also analysis make look

over that reasons which are responsible to rise commercial surrogacy in India.

6. Scope of Study

The Study focus over the flaws regarding the non-enactment of the Surrogacy Regulation Bill, 2019. The Researcher aimed at highlighting the position and rights of surrogate mother in India. It also focus on analyzing the bills regarding surrogacy. The researcher focused on the uprising of commercial surrogacy due to lack of enactment of Surrogacy Regulation Bill, 2019. This study also focus over the challenges faced by the surrogate mother after delivering of child and also acts done by the intended parents. The study moreover look over the monetary compensation and insurance benefits received by surrogate mother for delivering a child.

7. Literature Review

A) Articles

1. Mukherjee, "Legal and Ethical issues of commercial surrogacy: An overview", available at, https://www.academia.edu/1955503/LEGAL_AND_ETHICAL_ISSUES_OF_COMMERCIAL_SURROGACY_IN_INDIA_AN_OVERVIEW January 15th, 2011: In this, it is concluded that right to reproduce is a fundamental and a human right as well. To overcome both biological and social infertility surrogacy is the best way for the same. Surrogacy helps to provide child to those who are unable to conceive themselves. In this it is also concluded that legalization of gestational surrogacy protected the rights of surrogate mother as well as the intended parents who need the child.

2. Anu, Pawan kumar, "Surrogacy and women rights to health in India: Issues and Perspectives", available at, https://www.academia.edu/login?post_login_redirect_url=https%3A%2F%2Fwww.academia.edu/Surrogacy_and_Women_s_Right_to_Health_in_India_Issues_and_Perspective%3Femail_work_card%3Dview-paper, October 29th, 2019: In this, it is concluded that intended parents receives a child which is delivered by a surrogate which is known as surrogacy. This involves women whose rights get violated by the way of surrogacy such as after delivering child she is unable to maintain herself. Moreover increase of surrogacy in some manner converted into commercial surrogacy in which women are hired to deliver a child and they get exploited by the agents. Due to lack of specific law enforcement other various rights of surrogate mother get violated and no check over their exploitation. Agents gave them less amount to deliver a child and get more from the intended parents. Agents use surrogates as machine for delivering a child without having check over their health issues.

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3. Seketu v.shah, Issues related to surrogacy, available at, https://www.academia.edu/login?post_login_redirect_url=https%3A%2F%2Fwww.academia.edu/surrogacy.pdf%3Femail_work_card%3Dview-paper, October 29th, 2019: In this meaning and types of surrogacy is discussed. As, surrogacy is the act of delivering a child for intended parents. In this, various issues also discussed such as socio-physiological issues, legal issues, religious issues, health issues etc. Socio-

physiological issues i.e. A surrogate mother have to give child immediately after the birth of the child and the intended parents accepts that child which lead to some soft corner in the heart of the surrogate mother. Secondly, it is difficult for a husband to understand that he get a child from other women except his own wife. Thirdly, surrogate motherhood rise conflicts in her own family and it also leads to difficult for her own husband and children. Legal issues i.e. surrogacy contracts are legally enforceable. Secondly, surrogate need permission of her husband to become a surrogate. Then the surrogate must have her own child. The surrogate deliver child for those who are legally married and are not able to conceive their own child. Health issues i.e. there are various health issues that are faced by a surrogate like weight gain, dizziness, medication, vomiting, delivering of child etc. All this very difficult for the surrogate mother to face. Religious issues i.e. every religion had its own perspective regarding the surrogacy the BIBLE represents as the children are gifts not a rights. The Muslim religion consider all kind of surrogacy as HARAM and that all are against the Muslim community.

4. Jovannie R, The controversial role of surrogate mother, available at, https://www.academia.edu/login?post_login_redirect_url=https%3A%2F%2Fwww.academia.edu/Thesis_New_Format%3Femail_work_card%3Dview-paper, October 31st, 2019: In this, it is concluded that nowadays infertility rate is increasing day by day which may leads to separation of couples or divorce. To overcome from this situation some people advice to adopt a child for themselves but some wants their own child then they go for surrogacy to get their own child from surrogate. They provide facilities to the surrogate only till the delivery of their child. In all this, somewhere the rights of surrogate mother gets violated whether physically, mentally or psychologically. The role of surrogate mother become controversial as she kept child in her womb for nine months and she get emotionally attach with the child it is difficult for her to give child to intended parents after the delivery. Although, surrogacy is not accepted by everyone some are against it and for some surrogacy is a bliss but meanwhile there is no law enforceability regarding this which exploits the surrogate mother. So this concept is consider as controversial.

5. R.S Pornima, Surrogacy: Wombs for Rent , available at, https://www.academia.edu/login?post_login_redirect_url=https%3A%2F%2Fwww.academia.edu/SURROGACY_THE_CONS%3Femail_work_card%3Dview-paper, November 1st, 2019: In this, it is concluded that nature provide a bliss to every women to enjoy motherhood but somehow due to some physical issues some women are not able to become mother of their own child then they search for other alternative regarding this they go for either IVF, embryo-transfer and some go for surrogacy which is the concept running these days to having child of own through surrogate. Surrogacy consider as womb for rent which is legal only when a close relative deliver child for intended parent which is known as gestational surrogacy. But nowadays surrogacy also become commercial, in which surrogates are hired to deliver a baby. Agents and agencies are involved in this which is not legal. Surrogates are considering as machines for delivering a child. That's why surrogacy is consider as

womb for rent. Very few money is given to the surrogates for delivering a child and agents receive large amount of money from the intended parents.

6. Deepmala Mishra, Surrogacy in India; Legality, available at,

https://www.academia.edu/12529984/Surrogacy_in_India_Legality?email_work_card=view-paper, November 2nd, 2019: In this, it is concluded that surrogacy become trending now days in India due to rise in infertility rate and also in India, gestational surrogacy is legal and involves less money as compare to other countries. As per the surrogacy regulation bill, 2019 to give legality to the surrogacy the intended parents and surrogates has to follow some given provisions by the Bill i.e. surrogate mother is married and having her own children and she need permission of her husband to become the surrogate mother, then the intended parents are also legality married and not able to conceive their own child due to prove physical issues, the surrogate mother after delivery gives child to the intended parents, the child is consider as the biological child of the intended parents, only gestational surrogacy is practiced to get a child there should not any commercialization of the same. The surrogate also get insurance and fulfillment of her basic needs and also her rights not get violated.

7. Pooja yadav, Law and Policy on surrogacy: A Comparative study of India and other countries, available at https://www.academia.edu/37114858/Law_and_Policy_on_Surrogacy_A_Comparative_Study_of_India_And_Other_Countries?email_work_card=view-paper, November 4th, 2019

In this, it is concluded that the use of surrogates are increasing day by day. The majority of countries worldwide not yet establish any legislation to regulate surrogacy. But from last two decades there is an increase in regulation regarding surrogacy. Countries like, Germany and Italy prohibit all form of surrogacy. In UK, no contract or surrogacy agreement is legally binding. In US, compensated surrogacy arrangements are illegal. In Australia, arrangements regarding surrogacy is a criminal offence and any agreement regarding surrogacy become void. In Canada and New Zealand, from 2004 commercial surrogacy is illegal but Altruistic surrogacy is allowed. In Israel, commercial surrogacy is illegal. As per above each country has its own regulation regarding surrogacy.

8. Anureet lotay, commodifying bodies: An overview of the bioethical implications of transnational commercial surrogacy, available at,

https://www.academia.edu/21434139/Commodifying_Bodies_An_Overview_of_the_Bioethical_Implications_of_Transnational_Commercial_Surrogacy?email_work_card=view-paper, November 6th 2019: In this, it is concluded that commercial surrogacy is a form of surrogacy which come into existence in which surrogate are hired to deliver a child for the intended parents. This concept involves exploitation of women. Transnational commercial surrogacy violates the rights of surrogate and leads to lower down the physical and mental health of the surrogate mother. Only middleman and the agents get monetary benefit out from surrogacy. The agents and middleman get money from the intended parents and gives less to surrogate mother. Arising of some legal issues, socio-psychological issues, religious issue etc. effects

the rights of surrogate mother and one more trending issue i.e. health issues like pain, vomiting, weight gain, dizziness etc. which all are faced by the surrogate. Here, middleman and agents are considered as the commodifying bodies.

B) Book Review

- 1) Gita Aravamudan, Baby maker: The story of Indian surrogacy (2014): In this book, author reviewed that families are no longer formed in an traditionally way some go for adoption as well but nowadays surrogacy is a one of the concept to having a own child to the couple who are unable to conceive their own child. This aspect moves towards the market for countries like India, which is not having any specific regulation regarding it. Then health issues of surrogate and egg donor are also exploited due to commercialization of surrogacy. The surrogates are not taken care properly and the multiple pregnancies causes various health problems to those surrogates either mentally or physically. In this book the author witnesses many ways in which humans of different temperaments, cultural orientation and social standing handle the matter in very different ways.
- 2) James Phillip, Surrogacy- A family's journey (2018): In this book, the author talks about the surrogacy which is experienced by his own family. He defines surrogacy in various aspects like socially, emotionally etc. According to him, surrogacy basically focuses on the emotional aspects which faced by the intended parents such as hopes, disappointments, anxieties etc. there is less chances to be practical. The author shares his family experience through this book that surrogacy is a complex and emotions involved till the time of delivery of the child. In this book it is reviewed that the couples who are unable to have their own child due to medical complications, surrogacy is a bliss for them. They are having their own biological child by way of surrogacy if someone does not want child by way of adoption. As per book, surrogacy is a Bliss for the intended parents.
- 3) Zara Griswold, Surrogacy was the way: Twenty intended mothers tell their stories (2006): In this book, the author tell about the surrogacy. The author said that the surrogacy was the way: twenty intended mothers tell their stories, in which he explains the twenty true stories of women having child via surrogacy. Surrogacy is a possibility by which intended women having her own child. The intended couple must know about the pros and cons of the surrogacy. Surrogacy is a bliss which gives a satisfaction to the intended couple that they too enjoy parenthood by getting their biological child through surrogacy. In this, various intended mothers share their experience of enjoying motherhood. Surrogacy become a possibility for the couple who are having a dream to enjoy parenthood.

C) Cases

Case Analysis: Baby Manji Yamada vs. Union of India and Another (2008)13 SCC 518, available at, <https://www.lawctopus.com/academike/surrogacy-whose-baby-is-it/>, November 7th, 2019:

Facts of the case:- The Petition was filed under Article 32 of the Indian constitution regarding the custody of the baby named Manji Yamada. Grandmother of the child Emiko Yamada filed petition. This case was the first case regarding the concept of surrogacy. This case is directed for the formation of Assisted Reproduction Bill, 2010.

This case is also important because this case concludes surrogacy is legal in Indian context. Actual facts of the case are i.e. Baby Manji was born on 25th July, 2008 and the intended parents are from Japan. The egg was donated by the mother, Dr. Ikufumi Yamada and was fertilized by the sperm of her father Dr. Yuki Yamada. After this the egg is implanting in the Indian surrogate mother. The biological parents get separated due to some marital problem. The mother come back to Japan and after some time the visa of father also get expired and he also come back to Japan. The child is under the care of her paternal grandmother. Baby get the birth certificate issued by the name of her biological father. According to the existing laws it should had been certified to the mother to adopt the baby because due to Gujarat riots baby was shifted to Rajasthan for the treatment of infection. The petition was filed in the Rajasthan high court which stated the illegality of the surrogacy and stressed on the need of the law on it. This was challenged by the grandmother for the sake of the baby.

Judgment: The Hon'ble Supreme court held that there was no ground of filing petition in the High court as no interest of public interest litigation was found. The Court set aside the judgement of the High court and gave order to issue passport to the baby and extension of visa for the grandmother. The Supreme Court further in the judgment discuss about the "commercial surrogacy" which is explained in a way that a woman is hired to deliver a baby for the intended couple who are unable to have their own child. This is practiced more in India due to high medical implications and the low monetary involvement. In this way, surrogates known as "Rent-a-Womb", "Baby Factories" etc.

Substantial Question of Law: The substantial question of law in this is whether the surrogacy should be treated legal in India as there is no specific law regarding this.

Analysis: The same facts were also discussed in the case "Jan Balaz vs. Anan Municipality and others" where the question of law was about the nationality of the twins which were genetically related with the father, Jan Balaz. The most important fact in the Baby Manji Case are that the court not only presumed the surrogacy as legal but also that it was a pro-contract. The contract between the couples and the commissioning parents were held to be valid though it was against the legalization of the country.