

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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“LEGALITY OF SURROGACY IN INDIA: A RIGHTS-BASED ANALYSIS OF WOMEN AND CHILDREN”

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ABSTRACT

Surrogacy has become an essential means of reproduction for people that cannot conceive in the natural manner. In India, following the legalization of surrogacy in 2002, the activity attracted increasing attention from society and eventually evolved into one of the rapidly developing branches of assisted reproduction. Nevertheless, due to the lack of regulation of the activity by law for several years, surrogacy has developed rapidly, giving rise to concerns over possible cases of exploitation, unethical behavior, and insufficient protection of interests of the mothers providing their womb for hire and children born via surrogacy. Lower prices for medical treatments in India made it attractive for the foreigners to go to India for surrogacy.

The commercialization of surrogacy gave rise to several concerns in terms of the ethics and legality of the process and its social aspect, involving such spheres as women dignity, reproductive rights, welfare of the child, and the activity of the mediators. As a measure to address these problems, the Government adopted the Surrogacy (Regulation) Act, 2021. The document aims at regulation of the activity and prohibition of the commercial use of surrogacy.

In this study, the legality surrounding the issue of surrogacy in India will be explored by giving particular emphasis to the issues surrounding the rights of women and children. It will determine the adequacy of the existing laws as far as safeguarding interests is concerned, without compromising on the issue of ethicality or balancing both aspects at the same time. The conclusion drawn from this study is that while existing laws pertaining to the issue in question are a significant step towards regulation of surrogacy, issues of safety and well-being of surrogate mothers cannot be ignored.

Keywords: Surrogacy, Rights of Women, Rights of Children, Altruistic Surrogacy, Assisted Reproductive Technology (ART), IVF Clinics.

CHAPTER – 1 INTRODUCTION

1.1 *Research Background*

Parenthood is seen as one of the significant achievements in life for many individuals and couples. Nevertheless, infertility is becoming a widespread problem that deprives many people of their opportunity to conceive without any assistance. Medical development within the field of reproductive science has facilitated the creation of options that allow individuals and couples to become parents regardless of their reproductive status. Among those developments, surrogacy deserves special mention.

Surrogacy can be defined as an agreement between a woman who becomes pregnant with a baby to hand over her child to a certain individual or couple intending to become the legal parents of that child after giving birth. The word “surrogacy” comes from the Latin language word *surrogatus* and means substitute or replacement of one person by another.¹ Surrogacy usually takes place via Assisted Reproductive Technologies (ART), in particular, In Vitro Fertilization (IVF). The fertilization procedure is done outside the body, followed by the embryo transfer into the uterus of the surrogate mother.²

As per the global statistics, the rate of infertility among couples aged for reproduction ranges between 10 to 15 percent and has become a significant issue not just medically but socially as well.³ In most cases, the stress and trauma related to infertility compel couples to go through alternate ways of reproduction that include the method of surrogacy.

Surrogacy is primarily carried out in two methods. The first one is traditional surrogacy, whereby the surrogate uses her own egg for pregnancy and is thus genetically related to the baby. The other form of surrogacy that is more common nowadays is gestational surrogacy whereby the embryo formed from the gametes of the couple or donor is transferred into the body of the surrogate, making her not genetically related to the baby.⁴

Commercial and altruistic surrogacies are some of the classifications of surrogacy. In the case of commercial surrogacy, apart from medical costs, there is financial remuneration.

¹ Law Commission of India, Report No. 228 (2009).

² Assisted Reproductive Technology framework.

³ WHO estimates on infertility.

⁴ Anil Malhotra & Ranjit Malhotra, Surrogacy in India (2016).

Conversely, in altruistic surrogacy, financial rewards are allowed only to cover medical expenses.⁵

In India, the legality of surrogacy was established in 2002, after which there was a rapid growth of surrogacy because of the comparatively low cost of procedures and increasing demand for surrogates among domestic and foreign individuals seeking surrogates. While this provided an opening for couples who were not fertile, it led to numerous problems, such as women being exploited, commodification of reproductive processes, and legal protection of surrogate mothers.⁶

Due to the absence of any legal framework, India gained notoriety as a place for reproductive tourism. In order to address this issue, the Indian Parliament enacted the Surrogacy (Regulation) Act, 2021, wherein only altruistic surrogacy was allowed, whereas commercial surrogacy was banned.⁷

This study examines the effectiveness of the current legal system in ensuring the protection of the rights of both women and children.

1.2 Problem Statement

India had been without any law addressing surrogacy arrangements for many years. Lack of regulation led to ambiguity of the issue along with cases of exploitation of surrogate mothers, intended parents, intermediaries, and fertility clinics.

The issues of parentage, citizenship, payment, bodily autonomy, reproduction rights, and child welfare were not resolved. While the passing of the Surrogacy (Regulation) Act, 2021 provided regulation of the issue, it is still under debate as to whether the current system offers enough protection to women and children alike.

This paper aims to critically analyze the situation.

1.3 Review of Literature

The existing body of literature reflects a significant academic interest in the issues related to the regulation of surrogacy in India.

In their study, **Anu, Kumar and Sharma (2013)** focused on women's reproductive rights and pointed out that there was a need for adequate legal provisions in surrogacy arrangements.⁸

In their critical examination of commercial surrogacy, Das and Maut (2014) drew attention to

⁵ Surrogacy (Regulation) Act, 2021

⁶ Parliamentary Committee Report (2017).

⁷ Surrogacy (Regulation) Act, 2021.

⁸ Anu et al., (2013) IJPH.

the ethical implications of commoditizing women and children.⁹

Malhotra and Malhotra (2016) presented a comparative examination of the existing laws on surrogacy and the legislative developments in India.¹⁰

Sahi (2020) analyzed the development of surrogacy laws in India and the human rights implications of commercial surrogacy.¹¹

Jaswal and Kaur (2021) critically assessed the benefits and limitations of the Surrogacy (Regulation) Act, 2021.¹²

Despite the presence of a considerable amount of literature on the legal regulation of surrogacy, very little attention has been paid to ensuring a balance between women's and children's rights under the present system

1.4 Research Gap

Current research either concentrates on the issue of commercialization of surrogacy or the development of legislation. Little attention is paid to assessing the effectiveness of the Surrogacy (Regulation) Act, 2021 from the angle of women's rights as well as children's rights. This research seeks to address this gap through a rights-based analysis.

1.5 Research Objectives

- To trace the development of laws concerning surrogacy in India.
- To consider the rights of women within the surrogacy framework.
- To consider legal protection for children born via surrogacy.
- To consider judicial decisions involving disputes arising from surrogacy.
- To assess the effectiveness of the Surrogacy (Regulation) Act, 2021.

1.6 Hypothesis

The Surrogacy (Regulation) Act, 2021 improved regulation and minimized exploitative activities but there are some weaknesses in terms of compensation, autonomy of surrogate mothers, and children's rights.

1.7 Research Questions

- The proposed research will endeavor to provide answers to the following questions:

⁹ S.S. Das & Priyanka Maut (2014).

¹⁰ Malhotra & Malhotra (2016).

¹¹ Akriti Shahi (2020).

¹² Jaswal & Kaur (2021).

- Are the current laws pertaining to surrogacy adequate to ensure that women's rights are adequately protected?
- Are the rights and interests of children born out of surrogacy adequately protected by Indian laws?
- Has the banning of commercial surrogacy through the Surrogacy (Regulation) Act, 2021 succeeded in curbing exploitation?
- Does the current legal framework achieve an equilibrium between reproductive freedom and ethics?

1.8 Research Methodology

The present research utilizes a descriptive and analytical approach to research. This research is essentially doctrinal in character and is premised on the analysis of:

- Constitutional Provisions;
- Statutes on surrogacy and reproductive rights;
- Judicial Rulings;
- Law Commission of India Reports;
- International conventions;
- Books, articles and journal publications.

1.9 Scope of the Study

This study is limited to investigating the legal position of surrogacy in India with special reference to the Surrogacy (Regulation) Act, 2021 along with other laws regulating assisted reproductive technology.

The study will include:

- Right of surrogate mother;
- Right of intending parents;
- Right of children born via surrogacy;
- Judicial pronouncements; and
- International comparisons.

1.10 Structure of the Study

This research thesis is structured as follows:

Chapter 1: Introduction

Chapter 2: History and Legal Background of Surrogacy in India

Chapter 3: Rights of Women in Surrogacy Relationship

Chapter 4: Right of Child Born via Surrogacy

Chapter 5: Conclusion

CHAPTER – 2

SURROGACY EVOLUTION AND ITS REGULATORY FRAMEWORK IN INDIA

2.1 Evolution of Surrogacy in India

Development of technologies related to reproduction changed the perception of family and parenthood. The country became a part of the surrogacy world scene since the adoption of commercial surrogacy practice in 2002.

In the beginning, surrogacy was perceived as a chance for childless couples and medical progress. But soon, the expansion of commercial aspects of surrogacy started occurring at a high pace.

As the cost of surrogacy treatment and availability of fertility centres were relatively low in India, this country turned into a favourable location for surrogacy procedures.¹³ Consequently, several issues appeared, **such as:**

- Exploitation of poor women;
- Informed consent absence;
- Lack of control over fertility clinics;
- Citizenship issue;
- Infant abandonment;
- Unclear legal regulations.
- Such issues gave way to legislative actions.

2.2 Development of Surrogacy Legislation

(A) National Guidelines for ART Clinics (2005)

ICMR laid down national guidelines for the regulation and monitoring of ART clinics. The guidelines sought to:

- regulate fertility clinics;
- keep records;
- determine duties of participants.

¹³ Parliamentary Standing Committee Report (2017).

However, the guidelines did not have any statutory backing.

(B) Law Commission Report No. 228 (2009)

The Law Commission understood the necessity of legislation. Some of the important recommendations were:¹⁴

- Identification of intended parents;
- Protection of the surrogate mothers;
- Insurance policy;
- Restriction of surrogacy for commercial purposes;
- Protection of child welfare.

These became an important stepping stone for future legislation.

(C) Draft Surrogacy Bills (2016 – 2020)

There was some legislation proposed for regulating surrogacy. They all had certain common aspects, such as:

- prohibition of commercial surrogacy;
- allowance of altruistic surrogacy;
- protection of surrogate mother;
- prevention of exploitation.

This eventually led to enactment of the current law.

2.3 The Surrogacy (Regulation) Act, 2021

The Surrogacy (Regulation) Act, 2021 was enacted to regulate surrogacy and ban the commercialization of surrogacy.

Surrogacy under the act refers to an arrangement where a woman conceives and delivers the offspring on behalf of another person or a couple desiring offspring.¹⁵

Provisions Under the Act

1. Commercial Surrogacy Prohibited

Commercial surrogacy is not allowed.

There should be no money transfer other than:

- payment for medical services provided;
- medical insurance;
- other prescribed expenses.

¹⁴ Law Commission of India Report No. 228 (2009).

¹⁵ Section 2, Surrogacy (Regulation) Act, 2021

Such a provision aims to discourage any form of exploitation.

2. Approval of Altruistic Surrogacy

Only altruistic surrogacy will be accepted.

The surrogate woman must not be paid anything apart from legally acceptable reimbursement.

3. Conditions for Intending Couple/Woman

Intending couple/women are required to satisfy certain conditions, which include:

- medically necessary reasons;
- requirements regarding age;
- approval of certain documents.

4. Protection of Surrogate Mother

Under this act, the surrogate woman is entitled to:

- medical insurance;
- medical treatment; and
- informed consent.

However, there exist questions about proper compensation.

5. Legal Rights of Offspring Born Through Surrogacy

A child born out of surrogacy is regarded as a child born biologically and possesses all the same legal rights.¹⁶

2.4 The Assisted Reproductive Technology (Regulation) Act, 2021

The ART Act is an extension of the Surrogacy Act. Its purposes include:

- registration of clinics;
- monitoring of reproductive technology;
- control over donor gametes; and
- ethical considerations.

The Act ensures that reproductive activities be conducted responsibly.

2.5 The Constitutional Approach Surrogacy raises issues in a constitutional context.

Important Articles in this regard include:

Article 14

Equality before the law.

¹⁶ Section 8, Surrogacy (Regulation) Act, 2021

Article 15(3)

Special provisions for women and children.

Article 21

Protection of life and personal liberty.

Article 39(f)

Protection of childhood and development.

It is important to balance reproductive rights with Indian constitutional principles.

CHAPTER – 3

RIGHTS OF WOMEN IN THE PROCESS OF SURROGACY

3.1 Introduction

Woman forms the pivotal role of any surrogacy contract as the whole process revolves around her physically, mentally, and psychologically. Although surrogacy has created avenues for infertile individuals and couples to conceive, yet at the same time, it has created several issues of concern such as the autonomy of the body, dignity, exploitation, consent, and rights of women.

Prior to the enactment of legislation, surrogacy had brought about situations wherein economically poorer women were entering into the contract owing to economic reasons without being in free will. Commercial surrogacy was controlled by the fertility centers or intermediaries. The contemporary law seeks to provide a solution to this issue through provisions included in the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021.

3.2 Reproductive Rights: Human Rights

Reproductive rights constitute an integral aspect of human dignity and individual freedom. All women have the right to exercise choices related to procreation and parenthood without any unreasonable infringement upon such choices.

There are many international treaties that recognise the concept of reproductive autonomy. Some of these include:

UDHR 1948: Protection of family and human dignity.

ICCPR 1966: Protection of family rights.

ICESCR 1966: Protection of motherhood and healthcare.

CEDAW 1979: Protection of women from all forms of discrimination.

Similarly, Indian constitutional law recognises the right to reproductive choice as part of personal freedom.

3.3 Constitutional Safeguards Available to Women

Article 14 - Equality Before Law

All women have the right to receive equal protection under the law.

The regulation of surrogacy cannot be arbitrary when it comes to different classes of women.

Article 15(3): Protective Discrimination

It is within the constitutional powers of the State to legislate for women's welfare.

The regulation of surrogacy gains legal sanctity from this provision of the constitution.

Article 21: Right to Life and Personal Liberty

The Supreme Court has held that Article 21 covers the following aspects: dignity,

Privacy,

Bodily integrity,

Reproductive autonomy.

3.4 Judicial Acknowledgement of Reproductive Autonomy

***Suchitra Srivastava v Chandigarh Administration*¹⁷**

Reproductive freedom is acknowledged as a key facet of personal liberty by the Supreme Court.

It is noted that reproductive decisions are related to a woman's physical and personal integrity.

This case was instrumental in establishing reproductive rights constitutionally in India.

***K.S. Puttaswamy v Union of India*¹⁸**

The Supreme Court recognised privacy as a fundamental right.

This ruling further clarified that reproductive decisions are an integral part of personal freedom.

***B.K. Parthasarathi v Government of Andhra Pradesh*¹⁹**

In this case, reproductive rights were recognized as a component of personal and familial liberty.

3.5 Rights of the Surrogate Mother under Surrogacy (Regulation) Act, 2021

The Act tries to provide certain safeguards against exploitation. These include:

(A) Informed Consent

¹⁷ Suchitra Srivastava v Chandigarh Administration, (2009) 9 SCC 1.

¹⁸ K.S. Puttaswamy v Union of India, (2017) 10 SCC 1.

¹⁹ B.K. Parthasarathi v Government of Andhra Pradesh, AIR 2000 AP 156.

Informed consent is mandatory for a woman to become a surrogate mother. It should be voluntary and medically based.

(B) Medical and Insurance Coverage

Insurance coverage during the entire period of pregnancy is the right of the surrogate mother.²⁰

It should cover:

- medical services;
- complications;
- costs of treatment.

(C) No Commercialization

Surrogacy for commercial purposes is not allowed.

The reason is that it might lead to using reproductive capacity as a commodity.

(D) Medical Monitoring

Only registered agencies are allowed to perform the surrogacy process.

3.6 Challenges Encountered by Women despite Legal Protection

While the new law offered various forms of protection, there were still several issues left unresolved.

(i) Financial Cost

A number of academics suggest that the lack of payment is not recognizing the economic impact experienced by the surrogate mother.

Some of these include:

- work interruption;
- medical problems; and
- emotional strain.

(ii) Psychological Consequences

As pregnancy entails emotional involvement, giving up all control as soon as she gives birth may cause her emotional distress.

(iii) Reproductive Freedom

Some critics argue that strict conditions for eligibility can unduly restrict their reproductive freedom.

(iv) Asymmetrical Bargaining Position

²⁰ Section 2(q), Surrogacy (Regulation) Act, 2021.

3.7 Ethical Concerns About Surrogacy

Ethical concerns about surrogacy typically center around two competing frameworks.

Protective Framework

According to this framework: commercialization exploits women; constraints respect dignity.

Autonomy Framework

According to this framework: decisions must be independent; remuneration is not automatically exploitation. A balance needs to be achieved.

3.8 Analysis of Law

The Surrogacy (Regulation) Act, 2021 can be seen as a major legislation.

Nevertheless, total prohibition of payment would unintentionally put pressure on women who play an essential role.

A framework based on the concept of rights will safeguard:

- dignity;
- consent;
- support;
- health protection; and
- certainty.

Protection is not enough; the law should empower women to make decisions.

CHAPTER – 4

RIGHTS OF CHILDREN BORN AS A RESULT OF SURROGACY

4.1 Introduction

Children born through surrogacy enjoy the same legal, constitutional, and fundamental human rights as any other child conceived naturally. Nevertheless, the act of surrogacy gives rise to various legal and ethical issues pertaining to parentage, identity, nationality, custody, citizenship, inheritance, and prevention of exploitation.

In the past, prior to formulating legislation in India to address these concerns, children born as a result of surrogacy were uncertain about their legal status. Issues such as who will become the legal parent of the child, whether the child will be granted citizenship by birth, and the consequences when the intended parents do not accept the child became common place. These issues have been addressed by the proposed Surrogacy (Regulation) Act, 2021.

4.2 Child Rights under the International Human Rights Regime

It is acknowledged under international law that all children are entitled to equal protection regardless of their conditions of birth.

(A) The Universal Declaration of Human Rights (UDHR) 1948

Article 25(2) provides that “motherhood and childhood are entitled to special care and assistance and that children born out of wedlock shall be accorded the same social protection as that accorded to children born within marriage”.²¹

(B) International Covenant on Civil and Political Rights (ICCPR) 1966

Article 24 acknowledges:

registration at birth; citizenship;

legal safeguards provided by both family and the State.²²

(C) The Convention on the Rights of the Child (CRC) 1989

These rights include:

right to life; identity; citizenship; parental care;

non-exploitation.²³

These rights also apply to children conceived via surrogacy arrangements.

4.3 Constitutional Protection of Children in India

Article 14 – Equality Before Law

Equal treatment before law for every child

Article 15(3)

Provides for special protective laws for children

Article 21

Ensures dignity and protection of life

Article 39(f)

Directs State to take steps for wholesome development of children

4.4 Legal Recognition of Surrogacy Child under Indian Law

Surrogacy (Regulation) Act, 2021 recognises children born through surrogacy. Section 8 of the Act

A child born through surrogacy will be considered as the biological child of the intending

²¹ Article 25(2), Universal Declaration of Human Rights, 1948.

²² Article 24, International Covenant on Civil and Political Rights, 1966.

²³ Articles 6, 7 & 9, Convention on the Rights of the Child, 1989.

couple/intending woman and will have the same rights as any other normally born child.²⁴ Such rights shall include:

right of inheritance; right to maintenance;

legal recognition of parentage; rights to family protection.

Such provision will eliminate any doubt regarding the child's parentage.

4.5 Right to Identity and Nationality

Right to Identity is among the foremost rights of a child. Children born through surrogacy deserve:

birth certificates;

legal establishment of parentage; nationality;

access to family files/records.

UNICEF has highlighted the importance of maintaining a record of identity to ensure that the child knows its biological parentage.

Maintenance of proper documentation safeguards children against trafficking and other legal complications.

4.6 Judicial Protection of Surrogacy Children

*Baby Manji Yamada v Union of India*²⁵

This was among India's earliest cases on surrogacy.

Facts:

A child was born as a result of surrogacy in India to Japanese intended parents. There was a dispute concerning custody and traveling abroad.

Judgement:

The Supreme Court realized that legal protection was required for children born as a result of surrogacy.

Significance:

The case highlighted the need for proper legislation.

*Jan Balaz v Union of India*²⁶

Facts:

Issues surrounding citizenship and legal parentage were raised concerning children born as a

²⁴ Section 8, Surrogacy (Regulation) Act, 2021

²⁵ *Baby Manji Yamada v Union of India*, (2008) 13 SCC 518.

²⁶ *Jan Balaz v Union of India*, AIR 2010 Guj 21

result of surrogacy.

Decision:

The Court considered legal parentage and citizenship.

Significance:

This case revealed that there were no appropriate laws then.

4.7 Main Difficulties Associated with Children Born Through Surrogacy Arrangements

While the current law makes progress, many problems still exist.

(A) Issues Surrounding Identity

Children born through surrogacy may ask for identity later on.

(B) Issues Surrounding Custody

There may be disagreements when the intended parents fail to take care of the children.

(C) Cases of Rejection because of Disabilities

Global incidences indicate that children born with disabilities have been deserted. This is an act that contravenes child rights.

(D) Emotional and Psychological Issues

4.8 Critical Evaluation

The Surrogacy (Regulation) Act, 2021 identifies the child as the primary stakeholder in the surrogacy process.

There is a need for better measures in relation to:

- registration of birth;
- preservation of identity;
- accountability of parents;
- clarification of citizenship.

The best interest of the child should always be the priority of every surrogacy arrangement.

4.9 Conclusion of the Study

The findings from the study indicate that:

- Surrogacy arrangements in India were responsible for the exploitation of vulnerable women.
- The Surrogacy (Regulation) Act, 2021 is a landmark piece of legislation in the area.
- The rights of surrogate mothers are improved while issues relating to payment still persist.

- Children conceived through surrogacy arrangements are better recognized and protected now.

CHAPTER 5

CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS

5.1 *Conclusion*

The advent of surrogacy has been one of the most significant innovations in reproductive medicine and family formation. It has served as a beacon of hope for those who are unable to conceive naturally due to their infertility, medical issues, or other reproductive disabilities.

However, the rising trend of surrogacy has brought about various concerns on account of legality, social issues, ethics, and violation of human rights.

India was considered among the top countries where people used to avail surrogacy services due to its low costs of medical facilities and treatments. But the lack of legislation in this regard resulted in the rapid proliferation of the surrogacy business, leading to women from economically poor strata becoming surrogates under unfair conditions.

The passing of the Surrogacy (Regulation) Act, 2021 and the Assisted Reproductive Technology (Regulation) Act, 2021 has been considered as a significant move from an unregulated commercial process to a rights-based regulation. The legislation aims at ending the exploitation by outlawing commercial surrogacy and allowing only altruistic surrogacy.

From the research, it is clear that the current legislation has brought about increased legal recognition and protection of surrogate mothers and children born through the process. The child is recognized legally as the child of the intending parent and is accorded equal legal rights. The women taking part in the process of surrogacy have been granted some procedural protections, consent rights, and insurance coverage.

Despite all the positive changes brought about by the current legislation, there still remain some issues that may bring about debates on their appropriateness. Some of those issues include restrictive criteria, non-compensation of the mother surrogate, limited reproductive autonomy, and practical issues.

From the research findings, it can be concluded that legislation should consider prohibition as well as protection, equality, dignity, and reproductive justice of the women involved.

5.2 *Recommendations and Suggestions*

The following recommendations are made based on the results obtained from this study:

1. Adoption of Regulated Compensation System

Total ban on compensation can prove to be harsh for surrogate mothers. India may not allow unrestricted business but instead adopt the regulated system that would safeguard women from being exploited.

2. Enhance the Consent Process The consent process may involve independent counseling, legal consultation, and psychological assessment.

3. Health Insurance Protection

Health insurance cover should include post-delivery complications too.

4. Provide a Child Identity Protection System

It may prove possible to develop an organized system to secure:

Birth certificates; Parentage data; Identification papers.

This system must be run in keeping with principles of privacy.

5. Enhance Oversight of ART Clinics

Regulatory measures and stiff penalties need to be enforced to stop malpractices in ART clinics.

6. Create Standard Guidelines on Parentage and Custody

Standard guidelines may be developed on such issues as:

Custody disputes;

Disabilities;

Parental rejection.

Welfare of the child will always be paramount.

7. Promote Public Education

Education campaigns should serve to end any social taboos on infertility and surrogacy.

5.3 Final Note

It is not appropriate to consider surrogacy merely as a business deal or a charitable deed because it is a very personal issue that concerns dignity, health, building a family, and fundamental human rights.

The progressive law needs to protect the interest of women and children while taking into consideration reproductive autonomy and proper medical conduct.

REFERENCES / BIBLIOGRAPHY

Books

- Anil Malhotra & Ranjit Malhotra, "Surrogacy in India - A Law in the Making Revisited", Universal Law Publishing Lexis Nexis, 2016.

- Akriti Shahi, “Surrogacy and Legal Framework in India”, Notion Press Media Pvt Ltd., 2020.
- Priyanka Kumari, “Surrogacy Laws - A Critical Analysis”, Blue Rose Publishers, 2020.

Journal Articles

- Anu, Pawan Kumar, Deep Inder and Nandini Sharma, ‘Surrogacy and Women's Right to Health in India’ (2013) 57(2) IJPH.
- S.S Das and Priyanka Maut, ‘Commercialization of Surrogacy in India: A Critical Analysis’ (2014).
- R.S Sharma, ‘Social, Ethical, Medical and Legal Aspects of Surrogacy: An Indian Scenario’ (2014) IJMR.
- Kamaljit Kaur, ‘Critical Analysis of the Right to Reproductive Health of a Surrogate Mother’ (2015).
- Seema Yadav, ‘Silent Voices: A Critical Analysis of Surrogacy’s Legal Journey in India’ (2019).
- Yogita Dogra and Hitesh Chawla, ‘Surrogacy Milieu in India: A Legislative Vacuum’ (2021).
- Paramjit S Jaswal and Jasdeep Kaur, ‘Surrogate Motherhood in India’ (2021).
- Neha Purohit, ‘Analysing the New Surrogacy Norms in India’ (2021).

Reports

- Law Commission of India, Report No. 228 (2009).
- Parliamentary Standing Committee Report (2017).
- National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India (2005).

Cases

- Baby Manji Yamada v Union of India, (2008) 13 SCC 518.
- Jan Balaz v Union of India, AIR 2010 Guj 21.
- Suchitra Srivastava v Chandigarh Administration, (2009) 9 SCC 1.
- K.S. Puttaswamy v Union of India, (2017) 10 SCC 1.
- B.K. Parthasarathi v Government of Andhra Pradesh, AIR 2000 AP 156.
- Devika Biswas v Union of India, (2016) 10 SCC 726.

Statutes

- Constitution of India, 1950.
- Surrogacy (Regulation) Act, 2021.
- Assisted Reproductive Technology (Regulation) Act, 2021.
- Surrogacy (Regulation) Rules, 2022.
- Indian Contract Act, 1872.

