



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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# **SURROGACY: A JUDICIAL TREND** **ANALYSIS IN INDIAN CONTEXT**

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## **ABSTRACT**

Within the historically and ethically charged landscape of surrogacy in India, this research explores the evolution from ancient acceptance to contemporary legal debates. Examining the boom and bust of commercial surrogacy and the subsequent shift to altruistic arrangements under the 2021 Act, we delve into key court cases that shaped legal clarity and evolving regulations. Through this lens, we highlight the ongoing challenges of balancing the desire to build families with the need for stringent safeguards against exploitation. Ultimately, our analysis underscores the importance of continued legal refinement and social sensitivity to ensure responsible and ethical surrogacy practices for all stakeholders involved.

## **INTRODUCTION**

The Latin term “surrogacy” derived from “surrogare” reflects the act of substituting oneself for another. This practice finds its roots in situations where pregnancy presented medical risks or physical limitations for the intended parents. Ancient Babylonian society exemplifies this, where barren women consented to their husbands fathering children with another woman, highlighting the historical presence of this practice.

Modern commercial surrogacy, however, is a complex tapestry woven from advancements in Assisted Reproductive Technologies (ART), evolving social norms, and intricate legal frameworks. ART techniques like artificial insemination have minimized the need for direct physical contact, mitigating some ethical concerns. India's rapid ascent as a global surrogacy hub in the last two decades saw a surge in fertility clinics offering ART services, leading to a concomitant rise in ethical and legal dilemmas.

Two distinct types of surrogacy exist: traditional and gestational. Traditional surrogacy involves insemination of the surrogate with the intended father's sperm, creating a biological link between mother and child. This raises intricate legal questions surrounding parentage and child rights. Gestational surrogacy, facilitated by ART, utilizes an embryo created from the intended couple's gametes and implants it in the surrogate's womb, severing the genetic bond between mother and child. This distinction forms the cornerstone of legal regulations and their evolution.

The booming surrogacy industry in India witnessed instances of unethical practices like commercialization, selective breeding, and even child abandonment. To address these concerns, the Indian government implemented various regulations, including the Indian Council of Medical Research guidelines and the Surrogacy (Regulation) Act, 2016. These regulations aim to strike a delicate balance between enabling responsible surrogacy and curbing exploitative practices.

Despite its legalization in 2002, concerns surrounding the potential for exploitation in commercial surrogacy led to a temporary ban in 2015. This was replaced by the 2016 Act, which permits only altruistic surrogacy with close relatives of the intended parents. This legislative shift underscores the ongoing legal debate surrounding the ethical, social, and legal complexities of commercial surrogacy, a factor contributing to its ban in several countries.

This analysis delves into the case studies and regulatory timeline of surrogacy in India, offering valuable insights into the intricate legal considerations surrounding this practice. It serves as a reminder that the legal landscape of surrogacy continues to evolve alongside advancements in ART and shifting societal attitudes. As we navigate this complex web of life creation, further legal refinements may be crucial to safeguard the rights of all stakeholders involved, including the surrogate, the intended parents, and the child, while acknowledging the potential for social and ethical implications. Only through a nuanced and sensitive approach can we ensure that surrogacy serves as a tool for creating families, not a platform for exploitation or commodification.

## ANALYSIS OF CASES ON SURROGACY IN INDIA

### BABY MANJI YAMADA VS. UNION OF INDIA 2008<sup>1</sup>

#### ISSUE:

1. Does the petitioner have a locus standi in the Supreme Court of India
2. The issue in this present case that do the biological parents have the right over the custody of the child born through surrogacy.

#### RULE:

1. Article 32 of the Constitution of India<sup>2</sup> states about the writ jurisdiction of the Hon'ble Supreme Court of India. The writ petition was filed by the biological grandmother of the child, before the Supreme Court of India, the writ petition was filed before the Hon'ble Rajasthan High Court by an NGO and it was entertained by the Hon'ble high court as a "Public Interest litigation".

#### FACTS:

A baby girl M born out of surrogacy was born on 25-7-2008, before the birth of the child an agreement was entered between the Indian Mother and a Japanese couple for the purpose of surrogacy, before the birth of the child the Japanese couple got into some matrimonial discords thereafter and after the birth of the child all the necessary medical care and breast feeding was done by a woman, further a writ of habeas corpus styled as a "Public Interest Litigation" was filled in Hon'ble High Court by a NGO (SATYA) regarding the custody of the baby girl following which the Hon'ble high court passed orders regarding the same, the same was challenged by the biological grandmother of the child at the hon'ble supreme court of India. The petitioner in this court argued that it cannot come under the ambit of public interest as there is no ambit of "public interest" in this case and the petition which was filled before the hon'ble court was not in good faith.

#### JUDGEMENT:

The hon'ble supreme court of India disposed of the petition stating that commission for protection of child rights and children's court have been established in order to look into the matters of child rights and speedy justice, further the court stated that extending of visa and issuance of passport

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<sup>1</sup> Baby Manji Yamada v. Union of India, (2008) 13 SCC 518

<sup>2</sup> India Const. art. 32.

are upon the discretion of the central government. The court in this judgement also called upon the central government to come up with stringent laws regarding surrogacy in India, the court in its judgement also stated about various forms of surrogacy and its impact on the society.

The court in this case observed that there is a requirement of stringent laws regarding surrogacy, the court also stated about different forms of surrogacy: -

#### 1. Traditional Surrogacy

This method is also known as straight method of surrogacy in this method the surrogate mother is pregnant with his or her own biological child but this child was conceived with the intention of giving the custody of child to someone else and raised by someone else. The child born out of this is either conceived using frozen or fresh sperm through artificial insemination which is performed at fertility clinics.

#### 2. Gestational Surrogacy

This method is also known as host method in this method the surrogate mother becomes pregnant with the transfer of embryo of which she is not the biological mother and she carries the fetus throughout pregnancy. In this method of surrogacy, the surrogate mother acts as a gestational carrier.

#### 3. Altruistic Surrogacy

In this type of surrogacy, the surrogate mother receives no financial reward for her pregnancy or for carrying the child in her womb although all the medical expenses related to pregnancy and other maternity expenses are paid by the intended couple itself.

#### 4. Commercial Surrogacy

In this type of surrogacy, the surrogate mother which is the gestational carrier is paid to carry child in its womb until the maturity of the fetus, this process of surrogacy is usually used by couples who are well but are infertile or are facing some problems related to pregnancy in order to complete their dream of having children, this type of surrogacy is legally allowed in various countries which have high medical care facilities in their country. This type of surrogacy is also known through various offensive terms such as “baby farms”, “womb on rent” etc.

The court in this judgement also observed that the concept of surrogacy is a giving rise to several social problems in the society therefore it is very important and urgent for the central government to come up with proper laws regarding surrogacy in order to give it a legal support.

### **ANALYSIS:**

The Supreme Court of India in this case has cleared the concept of surrogacy. This was the very first case in history of Indian Judiciary to address the case of surrogacy. It has provided a clear explanation on the meaning, scope, origin and types of surrogacies. This led to a very vast exposure to the platform of surrogacy which gave different interpretation for the same.

The present case threw a light on need for a proper legislation with respect to surrogacy. The court faced a huge challenge while deciding this case as there were no precedents available for surrogacy nor any provisions were there regarding the same. The nature of the judgement of present case is very short and hurried. Due to absence of any law and precedent the court hurriedly passed the judgement and hence failed to address many issues. The issues regarding foreign parents, welfare of surrogate child and mother, legal recognition of children, rights and liabilities of both the parties in surrogacy, results of commercial surrogacy etc were remained unnoticed in this case.

The court did not set this case as an important precedent rather just gave a concept clarity with respect to methods of surrogacy. It also failed to answer the question of the “locus standi” of the Respondent No. 3 to file the writ petition and any bona fides being involved or not. The court missed this opportunity to discuss surrogacy contract legality in India in detail just a mere assumption was made by the bench that contract of surrogacy is legal in terms which later resulted in numerous cases of commercial surrogacy. No such guidelines, requirements and disqualifications were laid down for entering into the surrogacy contact.

The bench enlightened the success in the field of surrogacy and said, “This medical procedure is legal in several countries including in India where due to excellent medical infrastructure, high international demand and ready availability of poor surrogates it is reaching industry proportions”. But the bench ignored the words ‘poor surrogates’ and ‘reaching industry proportions’ and instead of throwing its concern upon the working of unregulated and illegal surrogacy industries in the country the court used the provisions of “Commission for Protection

of Child Rights Act 2005” to provide relief to the parties.

As a result, this case led to a new concept of “womb for rent” which means commercial surrogacy as a new method of earning among poor. Even though this method had economic benefit to the surrogate mother and to country as well but the disadvantage side of commercial surrogacy was heavier and resulted in human trafficking and debates on ethical and legal aspects in the society.

### **JAN BALAZ VS. ANAND MUNICIPALITY, 2009<sup>3</sup>**

#### **ISSUE**

1. Can children born out of surrogate mothers be granted Indian citizenship.

#### **RULE**

2. “Section 3 of the Indian Citizenship Act” states that any born in India irrespective of the “nationality” of their parents would be considered a citizen of India and can be granted Indian citizenship.

#### **FACTS**

A German national came into a contract with a surrogate mother who was an Indian National in order to fulfil their dream of having children of having a child through surrogacy, The petitioner, in this case, agreed to provide the sperm, and with the help of an anonymous Indian woman who agreed to provide the egg entered a surrogacy agreement with the surrogate mother and implanted the embryo in the womb of the mother with the help of assisted reproductive technology (IVF) after the children were born their biological father applied for Indian citizenship in order to get the passports of both the children however the passports were granted but the father got a notice to surrender the passports of both the children as the children were born through surrogacy and surrogate mother would not be considered the real mother of the children and therefore citizenship could not be granted, however in this case the intending mother or the surrogate mother was not the biological mother of the child, however it was revealed that the woman who provided the eggs was also an Indian citizen.

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<sup>3</sup> Jan Balaz v. Anand Municipality, 2009 SCC OnLine Guj 10446

## CONCLUSION

The court in this case was of the opinion that since “Section 3” of the “Citizenship Act” uses the term “every person born” the children have a right to citizenship of India and the court following the same ordered the return pf passports.

### **K. KALAISELVI VS. CHENNAI PORT TRUST 2013<sup>4</sup>**

#### **ISSUES:**

Whether the petitioner, who had a child through altruistic surrogacy, is entitled to maternity leave and medical benefits under the “Madras Port Trust (Leave) Regulations, 1987”.

#### **RULE:**

The relevant rule is “Rule 3-A” of the “Madras Port Trust (Leave) Regulations, 1987”, which provides that a female employee who adopts a child below one year of age is entitled to maternity leave for a period of 180 days from the date of adoption. The rule also states that such leave shall not be debited against the leave account and that the employee shall be paid full pay during such period of leave. The rule further states that such leave may be combined with any other kind of leave.

#### **FACTS:**

The petitioner, K. Kalaiselvi, was an “Assistant Superintendent” in the “Traffic Department” of the Chennai Port Trust for 24 years. She was married and had one son (Shyam Sundar) aged 20 years. Her son died in a road accident on January 31, 2009. She underwent a hysterectomy in 2008 due to medical complications. In 2011, she and her husband decided to have a child through surrogacy and entered into an agreement with a surrogate mother, who agreed to carry their child for free. The female child was born on February 8, 2011.

Kalaiselvi applied for maternity leave from her employer, but her application was denied. The employer argued that she was not entitled to maternity leave because she had not given birth to the child herself. They also contended that surrogacy is not recognized or regulated by any law in India, and that there is no legal relationship between the petitioner and the child. The respondent also cites various judgments of the Supreme Court and High Courts, which have held

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<sup>4</sup> “K. Kalaiselvi v. Chennai Port Trust, 2013 SCC OnLine Mad 811”

that maternity leave is meant for women who undergo physical and mental stress during pregnancy and childbirth.

She challenged the decision of the employer in court. She argues that she should be treated as a mother and be granted with maternity leave under “Rule 3-A”, since she had a child through surrogacy, which is a form of assisted reproductive technology.

The Madras High Court ruled in favor of Kalaiselvi. The court held that the purpose of maternity leave is to allow the mother to bond with her child. The court found that she was the legal mother of the child, regardless of the fact that she had not given birth to the child herself. The court also noted that the employer had granted maternity leave to adoptive mothers, and that there was no reason to distinguish between adoptive mothers and commissioning mothers.

In reaching its decision, the court relied on the following international instruments:

- “The Universal Declaration of Human Rights”, which guarantees the right to equality of all human beings.
- “The Convention on the Elimination of All Forms of Discrimination against Women”, which prohibits discrimination against women on the basis of their marital status or family status.
- “The Convention on the Rights of the Child”, which recognizes the right of every child to be cared for by his or her parents.

## **CONCLUSION:**

“Maternity leave is not meant for the only health of the mother it is primarily for the mother to bond with the child”

The court decides in favour of the petitioner, holding that she is entitled to maternity leave under “Rule 3-A”. The court interprets “Rule 3-A” in a broad and liberal manner, taking into account the purpose and spirit of the rule, which is to ensure proper bonding between the child and the parents. The court also considers the international instruments cited by the petitioner as a guide for interpreting domestic law, and observes that they recognize the right of every child to have a family and the right of every woman to have a child. Also, the denial of maternity leave to a woman who has a child through surrogacy is discriminatory and violates her fundamental right

to equality. The court rejects the respondent's arguments as narrow and technical, and notes that surrogacy is not illegal or immoral in India. The court also grants medical benefits to the petitioner, as per "Rule 3-B of the Madras Port Trust (Leave) Regulations, 1987". The court also held that the purpose of maternity leave is to allow the mother to bond with her child, and this purpose is not defeated by the fact that the child is born through surrogacy and should be entitled to the same benefits as women who give birth to their own children as it is recognized that surrogacy is a legitimate way for women to have children.

The decision of the Madras High Court in this has been followed by other courts in India. It has helped to establish the right of commissioning mothers to avail of maternity leave from their employers and it has helped to pave the way for greater acceptance of surrogacy in the country and also been protected from exploitation.

**P.GEETHA VS THE KERALA LIVESTOCK DEVELOPMENT 2015<sup>5</sup>** (*maternity benefits at workplace*)

**ISSUE:**

1. Whether a biological mother who has obtained a child through surrogacy is entitled to maternity leave under the "Maternity Benefits Act, 1961", she herself being the genetic or biological mother?
2. Whether, in the face of a particular legislative field having been occupied by an extant domestic enactment, the International Law conventions and treaty obligations can be enforced through Municipal Courts?

**RULE:** The "Maternity Benefits Act, 1961" provides for a minimum of "12 weeks" of paid maternity leave to a woman employed for at least "80 days" in the "12 months" preceding the expected date of delivery in an establishment for which the Act applies. The Act does not specifically mention or define the term "maternity".

**FACTS:** The petitioner, P. Geetha, is a government employee of "Kerala Livestock Development Board" who conceived a child through surrogacy. She applied for maternity leave, but her application was rejected by the Board (respondent) on the ground that she did not undergo the gestational period.

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<sup>5</sup> P. Geetha v. Kerala Livestock Development Board Ltd., 2015 SCC OnLine Ker 71

**ANALYSIS:** The court held that the term "maternity" in the "Maternity Benefits Act, 1961" should be interpreted to mean the period of pregnancy and childbirth. The court reasoned that the Act is intended to protect the health and safety of women during and after childbirth, and this protection would not be available along with the maternity benefits to a woman who does not undergo the gestational period.

The court also noted that the "Maternity Benefits Act" is a welfare legislation and should be interpreted in a way that benefits women. However, the court found that there is no evidence to suggest that denying maternity leave to biological mothers of surrogate children would harm their health or well-being.

**CONCLUSION:** The court held that the petitioner was not entitled to maternity leave under the "Maternity Benefits Act, 1961".

The court reasoned that the Act is meant to protect the health and safety of women who go through the physical and emotional challenges of pregnancy and childbirth. Since the biological mother of a surrogate child does not undergo these challenges, she is not entitled to the same benefits.

The court's decision in this case has been criticized by some who argue that it discriminates against women who choose to have children through surrogacy. They argue that the biological mother of a surrogate child should be entitled to the same maternity benefits as any other woman who gives birth. However, the court's decision was based on the interpretation of the Maternity Benefits Act, 1961, and it is unlikely to be changed in the near future. The issue of whether biological mothers of surrogate children are entitled to maternity leave is a complex one that is likely to continue to be debated in the courts.

**Here are some additional thoughts on the case:**

- The court's decision raises the question of whether a woman who has a child through surrogacy is a "mother" in the eyes of the law. The court did not address this question directly, but its decision seems to suggest that a woman who does not undergo the gestational period is not a "mother" for the purposes of the Maternity Benefits Act, 1961.
- The court's decision may have a chilling effect on the use of surrogacy in India. If women who have children through surrogacy are not entitled to maternity leave, they may be less likely to choose this option.

- The court's decision is likely to be challenged in the future. It is possible that a higher court will overturn the decision and find that women who have children through surrogacy are entitled to maternity leave.

## JUDICIAL TREND ANALYSIS

This analysis shows an evolution of surrogacy laws and precedents over the decade, the current situation of surrogacy in Indian and whether judiciary has acted in a fruitful manner or not. The trend analysis of all cases is drawn upon with a view to create a chain of events from 2002 to 2021. The development of surrogacy laws in India was only possible due to the following cases and reports-

1. **“BABY MANJI YAMADA VS. UNION OF INDIA 2008”**<sup>6</sup> (*1<sup>st</sup> surrogacy verdict in India*)-

In India the very first case dealing with the question of surrogacy. The court in this case has given the meaning, object, scope and types of surrogacies. But it failed to address various issues which were considered very important at that time. Due to no provisions and precedent with respect to surrogacy the bench faced challenge in giving judgement and hence it resulted in a hurried and short judgement. It highlighted a need to bring surrogacy laws into the country. The issues of surrogacy contract, illegal surrogacy industries, foreign parents, protection of surrogate mother and children were remained unnoticed and ignorance of the bench to certain points which gave rise to legality of commercial surrogacy led to human trafficking in the country.

2. **“JAN BALAZ VS. ANAND MUNICIPALITY 2009”**<sup>7</sup> (*Need for regulating surrogacy laws*)-

The court in this case observed that there is a question of the rights of two innocent babies and the court did not have any kind statutory law or any precedent regarding the same. This case also seemed to be in support of commercial surrogacy but this case led to a true concern for bringing surrogacy laws into the country. It contributed to the development of guidelines and regulations governing surrogacy in In. The two-judge bench looked at

<sup>6</sup> “Baby Manji Yamada v. Union of India, (2008) 13 SCC 518”

<sup>7</sup> “Jan Balaz v. Anand Municipality, 2009 SCC OnLine Guj 10446”

the welfare of children in spite of lack of provisions of surrogacy. They held that no surrogate child should suffer because of absence of any surrogate provision and hence a framework is needed to be bought for surrogacy. This case emphasized importance of protection of surrogate mother and child and establishing proper surrogacy clinics. The insufficiency of surrogacy contract in this case provided a need for set of guidelines for the same, the issue of citizenship and identity matter became a huge concern of the judiciary.

3. **“K. KALAISELVI V. CHENNAI PORT TRUST 2013”**<sup>8</sup> (*surrogate mother and child rights*)

This case dealt with whether a surrogate mother is entitled for maternity leave or not. The bench in this case took in consideration the motherhood concept and also emerged the need of legal clarity on maternity leave and benefits for women opting for surrogacy. As the changing time, more and more women are getting employed in different sectors around the world and a clear cut straight forward provision for the surrogate mother’s safety, health concerns, employment benefits, rights and duties were much needed. This judgement had enlightened the exact same need and has emphasized the importance of such laws.

4. **P. GEETHA VS THE KERALA LIVESTOCK DEVELOPMENT 2015**<sup>9</sup> (*maternity benefits at workplace*)

The main question in this case was whether surrogate and biological mother should be treated equally. As per the case **“K. Kalaiselvi v. Chennai Port Trust”** the judges have already stated the need for maternity laws with respect to surrogate employed mothers. Similar decision has been given in the present case. Reference of article 21 has been taken in support of same. Two consecutive cases of this issue have supported the idea of Surrogacy Regulation Bill.

This analysis highlights the various case scenarios in India and the timeline of various regulations brought by the government of India to regulate surrogacy services. From no surrogacy laws to boon in market due to commercial surrogacy and at last ban on commercial surrogacy. It’s been

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<sup>8</sup> “K. Kalaiselvi v. Chennai Port Trust, 2013 SCC OnLine Mad 811”

<sup>9</sup> “P. Geetha v. Kerala Livestock Development Board Ltd., 2015 SCC OnLine Ker 71”

a hectic journey for the judiciary and legislative.

Surrogacy first came into effect in the year 1980 and in India it got legalized in the year 2002. But as the year progressed it was noticed with some flaws and misuses of the legalization of commercial surrogacy. With the passing years and after observing the flaws Indian Council of Medical Research came up with regulations to prevent exploitation of surrogacy in 2005. Initially there were no precedents and provision of surrogacy due to which the case of “Baby Manji Yamada v. Union of India”<sup>10</sup> seemed to be a failure. After which the urge to bring surrogacy laws ignited. So, the “228<sup>th</sup> Law Commission Report” brought need for Legislation to Regulate ART Clinics as well as Rights & Obligations of Parties to Surrogacy year 2009.

It was claimed that women who rent their wombs do so because of poverty, which makes it difficult for them to afford basic requirements and drives them to engage in surrogacy. This recommendation was made in favour of legalising ethical surrogacy while banning commercial surrogacy. Then came the case of Jan Balaz v. Anand Municipality<sup>11</sup> which urgently highlighted the need to bring the surrogacy laws. The case of “K. Kalaiselvi v. Chennai Port Trust”<sup>12</sup> and “P.Geetha v. The Kerela Livestock Development”<sup>13</sup> guided the legislation to frame rules of surrogacy keeping in mind the safety of surrogate mother and children, and treatment of surrogate mother at workplace. There was a clear violation of Art. 14<sup>14</sup>, Art. 19<sup>15</sup> and Art. 21<sup>16</sup> of Constitution of India. All this led to the birth of Surrogacy bill of 2016. The Bill authorised the creation of surrogacy boards at both the national and state levels.

Additionally, only Indian heterosexual couples who have been lawfully wed for five years are eligible for surrogacy, with the prerequisite of having their proved fertility confirmed by a reputable medical professional. Also prohibited from hiring a surrogate are foreigners, live-in partners, unmarried couples, overseas Indians, single parents, live-in partners, and gay couples. Then at last the act came in force on 2021 and only charitable surrogacy is permitted under the Act, which forbids commercial surrogacy. An instance of altruistic surrogacy is one in which the

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<sup>10</sup> “Baby Manji Yamada v. Union of India, (2008) 13 SCC 518”

<sup>11</sup> “Jan Balaz v. Anand Municipality, 2009 SCC OnLine Guj 10446”

<sup>12</sup> “K. Kalaiselvi v. Chennai Port Trust, 2013 SCC OnLine Mad 811”

<sup>13</sup> “P. Geetha v. Kerala Livestock Development Board Ltd., 2015 SCC OnLine Ker 71”

<sup>14</sup> “India Const. art. 14.”

<sup>15</sup> “India Const. art. 19.”

<sup>16</sup> “India Const. art. 21.”

surrogate mother is not paid in exchange for her services.

A number of requirements for surrogacy arrangements are also outlined in the Act. This evolution of surrogacy laws was only possible because of the active role of judiciary. the ban on commercial surrogacy was a real need of the country at that time, not only it helped in demolishing the illegal surrogacy mechanism but also stopped the human trafficking in India. The interpretation given by judges in “Jan Balaz and P.Geetha” case which threw a light on the sense of motherhood and child sufferance shows that how judiciary not only urge to make surrogacy laws but also kept in mind the importance of human feelings.

With the current enactment of “Surrogacy Act, 2021”, more stricter laws have been imposed and the Act allows only altruistic surrogacy, which means that the surrogate mother cannot receive any compensation apart from the medical expenses incurred during pregnancy including insurance coverage. Only women acting in good faith can be accepted as a surrogate mother, along with it many more restrictions are also implied on surrogacy.

With much stricter laws now human trafficking is less likely to occur. No women will be forced to act as a surrogate mother without her will just for the sake of money. Illegal and unregulated surrogacy clinics are also demolished with the enactment of this act. The involvement of foreign parents, risk of leaving behind the surrogate mother in between etc are covered well within the act.

Now currently the surrogacy has become much safer option for child birth for those parents who are not able to give birth naturally. Many celebrities are now a days relying on this mechanism which shows how well judiciary has functioned over the decade to make surrogacy a trusted and safe option in the society. Reliability has increased in this field. But still there are many loopholes present which are yet to be covered and looked after by the judiciary. the ethical and moral debates in the society is still as active as it was in past.

Only married couples are allowed to go for surrogacy and nor any member of LGBTQ community neither the couples who are in live in relation are allowed for the same. This creates a classification in the society and is violative of article 14,19 and 21. The same class of people are allowed to adopt child in India but are not allowed for surrogacy. Also the provision that close

relative are not allowed to become surrogate mother is not clear itself, the provision does not exactly defines who all comes under the category of close relative. Besides these there are still many more loopholes in surrogacy law and practices in our country.

## **CONCLUSION**

In conclusion, the answer to the issue that whether judiciary has acted in a fruitful manner with respect to surrogacy is to be answered in a positive way. Looking at all the analysis of different landmark judgements and reports, we can say that yes judiciary has acted actively and positively in bringing surrogacy laws. The birth of surrogacy regulation act was only possible because of different interpretations, recommendations, criticisms and ideas of different judges. This act has not only banned commercial surrogacy but has also made the laws more stricter and surrogacy safer. Yes, there are certain areas which still needs focus of judiciary and we believe that in coming future they all will be dealt accordingly. The evolution of surrogacy and current situation is no doubt a clear example of how an active judiciary works.

