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INDIA'S NEW SURROGACY LAWS **AND POSSIBLE ISSUES**

Authored by - Dr Divya Maheshwari

ABSTRACT

Because there are women who, for various physiological reasons, are unable to bear children of their own, surrogacy has the potential to become a more acceptable form in the contemporary pattern of family construction for more infertile and involuntarily childless individuals as a result of developments in medical knowledge, legislative reform, and shifts in social practices. Due to the availability of low-cost prospective surrogates and the absence of a complete piece of law, surrogacy has gained popularity in India despite the fact that it comes with a number of complications and unknown societal effects. Human rights violations and surrogacy-related crimes, according to researchers, have increased since India allowed surrogacy to operate unchecked for financial gain. As a result, issues of trustworthiness, legality, and ethics surrounding these clauses remain unsettled and contentious. This study aims to inform readers on the law surrounding surrogacy, analyze the most pressing problems with the current surrogacy laws in India in the light of court comments, and provide some approaches to resolving this pressing issue that has afflicted the Indian legal system for decades. This study also intends to compare and contrast the surrogacy policies and attitudes of few other countries.

KEYWORDS: Surrogate mother, Commercialization of surrogacy, Human rights, Legal issues, Surrogacy contracts, violation of rights, Surrogacy laws

1.INTRODUCTION

1.1 Background

Nature has given upon women the exquisite ability to generate a life, and every woman values her time as a mother. The ability to have children is a fundamental human right. The urge to start a family is a universal one for married couples. Having children is one of the greatest joys of life. However, many people in this world are unable to start a family for a variety of reasons. Approximately 10-15% of couples worldwide experience infertility each year, according to a report by the World Health

Organization.¹

The science of infertility therapy has made great strides in the 20th century. Some kinds of infertility that were once thought to be incurable now have straightforward treatments. In the past, adopting a child was the only choice for childless couples. Now, because to developments in medicine and, more specifically, in the realm of artificial human reproductive technologies (ART), such people have more possibilities than ever before for having biological offspring. Artificial reproductive technology (ART) includes a wide range of reproductive medical procedures. Surrogacy, among the available options, has gained popularity.²

1.2 Concept of Surrogacy

Surrogacy has evolved as a cutting-edge scientific method of reproduction that can help couples who are struggling with infertility for a variety of reasons, including those related to their own biology or the social environment. One woman aiding another woman is an admirable goal, and this is the fundamental notion behind surrogacy, so it's no surprise that this practice has garnered a lot of support and praise. Infertile couples see surrogate parenthood as a godsend since it offers them revolutionary hope for having a kid.

The Latin term *surrogatus*, which means "a substitute", "a person designated to perform in the place of another," and "surrogate" all have the same root.³ A surrogacy agreement is a legal contract between a woman (the surrogate) and prospective parents (the "intended parents").⁴ The American law report[1] provides the following definition of "surrogacy" a contractual undertaking whereby the natural or surrogate mother, for a fee, agrees to conceive a child through artificial insemination with the sperm of the natural father, to bear and deliver the child to the natural father, and to terminate all of her parental rights subsequent to the child's birth"⁵

There are three main categories of surrogacy. **Complete surrogacy, gestational surrogacy, and genetic surrogacy** are the three types of surrogacy that can be performed. A woman's egg is fertilized by the sperm of the male partner in a genetic or partial surrogacy arrangement by artificial insemination or, less commonly, natural intercourse (commissioning father). Here, the commissioning

¹ WHO -2020 Infertility report <https://www.who.int/news-room/fact-sheets/detail/infertility>

² Brezina PR, Zhao Y. The ethical, legal, and social issues impacted by modern assisted reproductive technologies. *Obstet Gynecol Int.* 2012;2012:686253. doi: 10.1155/2012/686253. Epub 2012 Jan 4. PMID: 22272208; PMCID: PMC3261493.

³ Law Commission Report 228Th Report "Need for legislation to regulate assisted reproductive technology clinics as well as rights and obligations of parties to a surrogacy"

⁴ Saxena P, Mishra A, Malik S. Surrogacy: ethical and legal issues. *Indian J Community Med.* 2012 Oct;37(4):211-3. doi: 10.4103/0970-0218.103466. PMID: 23293432; PMCID: PMC3531011.

⁵ American Law Reports, Validity and Construction of Surrogate Parenting Agreement, 77 ALR 470 (1989).

mother acts as the social and legal mother while the surrogate mother is the child's genetic mother. Partial Surrogacy or Traditional Surrogacy is terms used to describe this method of carrying a child. In a whole surrogacy arrangement, a surrogate's egg is fertilized by either a donor's or the commissioning father's sperm. Gestatory/Gestational Surrogacy involves obtaining an egg and sperm from the commissioning couple (or an anonymous donor) and implanting the resulting embryo into a surrogate or carrying mother. The surrogate mother in this case will not share any DNA with the child. Full Surrogacy is another name for this procedure.⁶

Additionally there are two distinct forms of surrogacy, distinguished by the amount of money exchanged- **Commercial surrogacy** and **altruistic surrogacy**. In Altruistic Surrogacy, the surrogate mother does not get monetary remuneration; rather, the commissioning parent may cover the surrogate mother's expenses and costs associated with carrying an embryo to term. Most cases of this kind of surrogacy occur between members of the same family or close circle of acquaintances. The usual justification for not requiring monetary remuneration in this form of surrogacy is that the surrogate's desire to carry the child is motivated by love, not by financial gain. While in commercial surrogacy, the surrogate receives payment in addition to covering the costs of carrying the child. Essentially, the surrogate receives compensation for carrying the child.⁷

1.3 Surrogacy in India – Legal Aspect

The number of surrogacy cases in India has skyrocketed in recent years. This booming reproductive tourism sector in India is the result of a combination of factors, including the desire to have a child of one's own flesh, blood, and DNA, advancements in technology, and the ability to spend money, as well as the entrepreneurial spirit of the Indian people. As reported by the National ART (artificial reproductive methods) Registry of India (NARI), the number of instances increased by about 300 percent, from around 50 in 2004 to 158 in 2005. Seventy-five of these occurrences have been traced back to the state of Gujarat alone; the remaining cases have been recorded from other large cities in India, including Chennai (16), Hyderabad (15), and other places.⁸ Many ladies from the United States, Russia, and Great Britain have already signed up with clinics like Anand's Akankshya Clinic and Bhopal's Test Tube Baby Centre to undergo the surgery.⁹ Surrogacy arrangements of India

⁶ Patel NH, Jadeja YD, Bhadarka HK, Patel MN, Patel NH, Sodagar NR. Insight into Different Aspects of Surrogacy Practices. *J Hum Reprod Sci.* 2018 Jul-Sep;11(3):212-218. doi: 10.4103/jhrs.JHRS_138_17. PMID: 30568349; PMCID: PMC6262674.

⁷ [The Surrogacy \(Regulation\) Bill, 2019](#)

⁸ Available at <http://sunnarin.wordpress.com/accessed on 01/11/2022> at 04:15pm

⁹ Dr. Ranjana Kumari, Surrogate Motherhood - Ethical or Commercial, Centre for Social Research ,pg 9

have been called "baby booming business," "womb on hire," "baby company," and "parenthood by proxy" by their detractors¹⁰. When compared to other nations, India's cheap living costs and the fact that the complete surrogacy process may be paid for with relatively little sums of money explain why the country has seen a recent surge in the number of babies born via the operation. Surrogacy services are currently available in over three hundred fifty clinics around the world, contributing to a market size of over \$500 million each year.¹¹

It is a blessing for society that constitutional watchdogs have included surrogacy in the purview of the law in order to aid the people. In 2006, the ICMR produced the "Statement of Specific Principles for Assisted Reproductive Technologies" after accepting the principles given by the Biomedical Research on Human Participants on Assisted Reproductive Technology.¹² Commercial surrogacy was made legal in India in 2002 with the hope of cashing in on the country's rapidly expanding surrogacy market. The Assisted Reproductive Technology Bill, 2008 was written by the Indian Council of Medical Research to legalize and regulate a variety of reproductive technologies, including commercial surrogacy.¹³

National Guidelines for Accreditation, Supervision, and Regulation of ART Clinics in India were released in 2005 by the Indian Council of Medical Research (ICMR). The landmark case **Baby Manji vs. Union of India**¹⁴ established the necessity for legal provisions of surrogacy and paved the way for their implementation in India. The 228th report from the Law Commission, published in 2009, called for the establishment of laws to ensure the proper use of ART and the legalization of surrogacy. Against this context, the Assisted Reproductive Techniques (Regulation) Bill of 2014 was passed as a piece of welfare legislation to safeguard the well-being and legal rights of surrogate mothers and their offspring.¹⁵ Following the 2016 and 2019 Surrogacy (Regulation) Bills, an emergency Surrogacy (Regulation) Bill 2020 was enacted to address concerns like as sex selection and surrogate exploitation. It was written with the intention of prohibiting the practice of commercial surrogacy in India while yet permitting altruistic surrogacy for Indian couples.

Two new rules regulating assisted reproduction and surrogacy in India went into effect in January 2021, after years of work by the Center for Reproductive Rights and others. Multiple rights

¹⁰Yashomati Ghosh, "Surrogacy and Law: An Affirmative Approach to Deal with the Ethical and Legal Dilemma", Vol. II.Issue 1, 2011 Journal of Law Teachers of India (83 to 92) at 84

¹¹ Surrogate mothers: Outsourcing pregnancy in India' article by Joseph Gothia, 26th June 2008, link: http://india.merineews.com/cat_Full.jsp?articleID=136421

¹² Normann Witzleb and Anurag Chawla, (2016) Surrogacy in India: Strong Demand, Weak Laws

¹³ Sharma RS. Social, ethical, medical & legal aspects of surrogacy: an Indian scenario. Indian J Med Res. 2014 Nov;140 Suppl(Suppl 1):S13-6. PMID: 25673533; PMCID: PMC4345743.

¹⁴ Baby Manji Yamda v. Union of India and another AIR 2009 SC 84 (2008) 13 SCC 518.

¹⁵ Assisted Reproductive Techniques (Regulation) Bill of 2014

for children conceived through ART are enumerated in the Surrogacy Act and the Assisted Reproductive Technology Act ("ART Act"), as well as provisions for regulating ART clinics and ART banks, preventing misuse, and ensuring the safe and ethical practice of ART services, among other things.

1.4 Problem statement and Rationale

There is no question that the Indian judicial system has attempted to regulate state policy regarding reproductive rights and commercial surrogacy through a number of statutes and recent acts, but the broader picture shows that there are still problems with the way these policies are being put into practice. The new Bill's groundbreaking measures aim to outlaw commercial surrogacy nationwide while allowing altruistic surrogacy in an effort to reduce the exploitation of low-income women. Unfortunately, the legitimacy of surrogacy legislation is called into doubt due to an unfair gap between them and fundamental rights. According to precedent set in cases like *K.S. Puttaswamy v. Union of India*¹⁶ and *Suchita Srivastava v. Chandigarh Admn.*¹⁷, the state has no business deciding how a couple chooses to start a family or raise their children. As the cases *Navtej Singh Johar v. Union of India*¹⁸ and *National Legal Services Authority v. Union of India*¹⁹ show, the bill also challenges the state's fundamental commitment to guarantee the absence of bias and discrimination in the provision of reproductive health services, including surrogacy.

To learn more about the causes of the confusing challenges and concerns with India's surrogacy regulations and how they could be remedied, more study is needed. This paper perhaps covers the Indian regulations of surrogacy and associated challenges by examining a variety of issues, challenges decisions, and studies regarding surrogacy laws.

2. METHODOLOGY

2.1 Objective and scope of the study

The study's objective is to ascertain the concerns surrounding India's surrogacy policy and provisions and the requirement of reforming it. The scope of the study includes determining various laws and parameters Governing Indian surrogacy norms, as well as the challenges and issues

¹⁶ Writ Petition (Civil) No 494 of 2012; (2017) 10 SCC 1; AIR 2017 SC 4161

¹⁷ (2009) 14 SCR 989, (2009) 9 SCC 1

¹⁸ AIR 2018 SC 4321; W. P. (Crl.) No. 76 of 2016; D. No. 14961/2016

¹⁹ (2014) 5 SCC 438

confronting the current surrogacy provisions and the need for addressing the same. The landmark cases related to the Surrogacy in India as well as are also analyzed. Additionally, the surrogacy regimes of other countries are analyzed, including the countries like USA, Russia, and Mexico

2.2 Research questions

1. What are the different parameters of surrogacy laws in the Indian?
2. What are the different issues and shortcomings related to Indian surrogacy legislations?
3. How existing issues in surrogacy laws could be addressed?
4. Learnings from different countries with good surrogacy laws

2.3 Hypothesis

It is theorized that the current legal rules of surrogacy in India have a number of obstacles and problems that need to be addressed in order to bring an organized, well-balanced surrogacy policy in India.

2.4 Data collection

For the study, qualitative research was conducted utilizing secondary data, which included many case laws, research papers, books on law written by notable experts in the area, and journal articles and websites of different governmental and non-governmental agencies and organizations.

3. ANALYSIS AND DISCUSSION

3.1 PARAMETERS OF INDIAN SURROGACY LAWS

India Commercial surrogacy is illegal and punishable under current surrogacy law, but altruistic surrogacy is permitted so long as just the costs of medical care and insurance are covered. In addition, the law covers the criteria for the surrogate (close relative, 25–35 years old, married, own child) and the intended parents (married couple or divorced/widowed women subject to certain Medical and age restrictions) as well as the conditions under which surrogacy is permissible, and a regulatory framework for governing surrogacy clinics.²⁰

²⁰ The Surrogacy (Regulation) Bill, 2019

3.2 ISSUES ASSOCIATED WITH THE INDIAN SURROGACY REGULATION

While the Acts finally regulated the industry, they also brought a wide-ranging ethical and social repercussions as well as number of concerns to the legal domain-including rights, scientific advances, cross-border surrogacies, obligations as well as ethical dilemmas.

3.2.1 *Flagrant Discrimination:*

Surrogacy laws are discriminatory, unfair, and irrational, violating Articles 14 and 15(1) of the Declaration of Human Rights. Forcing infertile heterosexual married couples or single widowed or divorced women to use altruistic surrogacy while denying the same right to LGBTQ + people, live-in couples, older couples, and single parents is illogical and discriminatory.

Despite the Supreme Court's rulings that adult consensual sexual activity is no longer a crime (in the landmark case of *Navtej Singh Johar v. UOI*²¹) and that living in a live-in relationship is not illegal per se in the country (in the case of *Madan Mohan Singh v. Rajni Kant*²²), the practice continues to be illegal in many places. The Supreme Court's decisions have not been incorporated into these statutes, and they have presented conflicting views on the subject of relationship equality across the country.

3.2.2 *Dismiss the importance of individual agency when discussing reproductive fairness:*

In the case of *Devika Biswas v. Union of India*²³, the Supreme Court of India interpreted the right to privacy and the ability to make reproductive decisions as part of the 'liberty' guaranteed by Article 21. The Indian surrogacy regulations, which are focused on a needs-based approach rather than a rights-based, one, do not provide women with the independence that they should have. Right to privacy, dignity, and bodily integrity as inalienable fundamental right was reaffirmed in the context of the privacy judgement cases *K.S. Puttaswamy v. Union of India*²⁴ and *Suchita Srivastava v. Chandigarh Admn*²⁵; however, surrogacy laws are inimical to this conception and therefore violate Article 21. At first glance, the Bill's stringent requirements for surrogates and intended parents demonstrate a state-sanctioned ideal family, which restricts reproductive rights and is now a criminal offense in itself.

²¹ AIR 2018 SC 4321; W. P. (Crl.) No. 76 of 2016; D. No. 14961/2016

²² AIR 2010 SC 2933

²³ (2016) 10 SCC 726

²⁴ Supra note 16

²⁵ Supra note 17

3.2.3 An Unfair, misguided Approach to Surrogates

Simply labeling altruistic surrogacy as "social and moral deed of the highest degree" that "sets an example of being a model woman in society" is unfair, in the eyes of surrogates.

The surrogate's right to a livelihood (protected by Article 21) may be violated by surrogacy regulations, since she may miss out on income while her life is placed on pause for the duration of the pregnancy. Furthermore, by outlawing commercial surrogacy, legislators are neglecting the reality that some women would choose to operate as a surrogate under their own agency due to the financial rewards, rather than work in a field with few opportunities for advancement. It's estimated that over 100,000 women fall into this category; many of them are the sole providers in their households. Surrogates' autonomy is further compromised and their oppression is amplified when altruistic surrogacy is coerced by family members.

3.2.4 Ignorant of women's freedom of choice

It also doesn't take into account situations when women might not wish to have children for professional reasons. Think of a female athlete, whose prime earning years also happen to be her childrearing years. A woman in this situation would have to decide between pausing her profession and caring for her children, both of which require her whole attention. It begs the question, "Should a woman have to make this compromise", because this hardly seems fair.

3.2.5 Diminishes opportunity for intended parents

Denial of a legitimate source of income to surrogates have in turn severely limited the number of women willing to go through surrogacy, and indirectly denied intending parents the opportunity to avail of it.

3.2.6 Killing of surrogacy process

Completely outlawing commercial surrogacy and punishing medical professionals who break the law with a maximum of five years in prison and fine may look wonderful on paper, but they are effectively putting an end to the surrogacy industry. Surrogate births have decreased over the years, according to the most recent statistics, perhaps due to ambiguity regarding the legality clause. All medical professionals agree that surrogate parenthood is a risky option for childless couples.

3.2.7 Issues of Conflicting interest

The competing agendas of surrogacy's many players are at the heart of the dispute around the practice. On the one hand, it is the responsibility of the state to safeguard the surrogate's rights and the

welfare of the unborn child. The right to parenting and the freedom of women to control their own bodies are countered by the right to abortion. India's surrogacy regulations have a hard time juggling all of these competing priorities.

3.2.8 Unauthorized entry

The proposed regulation is not only unfeasible from a legal standpoint but also completely at odds with the realities of life in India today. Judiciary has withered away the supply in the face of demand by canceling the monetary part rather than regulating the market, limiting access to surrogacy on fallible and exclusionary grounds, creating a new parallel market, and forcing people to resort to illegal options, as evidenced by the proliferation of unlicensed clinics and middlemen willing to break the law in order to profit from surrogacy. So these law seems retrogressive, impregnated with overtones of international patriarchal mindset, and propelling a growing illegal market for wombs.

3.2.9 ATR services- costly affair

The new legislation made it more difficult for persons with lower means to access ART services because of the expensive registration costs and onerous regulatory procedures. Smaller clinics were similarly hindered by the regulations.

3.2.10. Violation of freedom of trade

There is a violation of Article 19 and, more particularly, Article 19(1)(g), which protects the "freedom of trade and profession" in India, by the surrogacy statute that is now in effect. Both surrogate moms and the several surrogacy clinics in the nation rely heavily on income from the surrogacy sector. The interests of many parties involved in the commercial surrogacy sector would be jeopardized by a complete prohibition on the practice, making it impossible to defend as a reasonable limitation.

3.2.11 Narrow Provisions

One concludes that the State interest in regulating and certifying clinics for delivering "safe and ethical" ART treatments and surrogacy operations has not been narrowly circumscribed under the ART and SR Acts when applying the compelling State interest criterion to the provisions of the Acts. Additionally, it does not establish any criteria for medical practice and fails to regulate the intermediaries that play a crucial role in the surrogacy arrangement process, including surrogacy agencies, tourism operators, and surrogacy home operators.

3.2.12 Inconsistencies in the SR Act itself

Although a married Indian man and woman over the age of 21 are included in the definition of a "intending couple" in Sections 2(1)(h) and 2(1)(r), an eligibility certificate must be issued to the couple only if the male member of the couple is between the ages of 26 and 55, and the female member is between the ages of 23 and 50, per Section 4(iii)(c) as a compliance provision. No surrogacy services may be obtained without this certification. Since different sections of the laws set different minimum age for eligibility, it would be impossible to administer the law in a consistent manner.

3.2.13. Vague norms under the act

First, it's not apparent where the necessity for varying and seemingly arbitrary age limits comes from. Second, the Acts' regulatory goals have nothing to do with the extent to which they interfere with people's lives, regardless of factors like age, marital status, or sexual orientation and identity. Third, the Act's ambiguity about the conditions or diseases under which it is authorized continues and is subject to the view of the National Assisted Reproductive Technology and Surrogacy Board.

3.2.14 Constitutional invalidity of law

The Indian Supreme Court's "Golden Triangle" standard for rational categorization of legislation is not met by the Surrogacy Bill. Case law in *State of West Bengal v. Anwar Ali*²⁶ essentially codified this standard. The purpose of this conjunctive reading test of non-arbitrariness, rationality, and intelligible differentia is to protect people's constitutional rights against governmental overreach. Considering that the purpose of the Bill is to regulate the practice of surrogacy, prevent the possible exploitation of surrogates, and protect the rights of the child born through surrogacy, the exclusion of non-conforming gender identities, same-sex or cohabiting couples, and singles from its scope appears to have no logical nexus with these goals.

3.2.15 International agreement violations

India is in flagrant breach of its duties under a number of international treaties due to its discrimination against specific groups and its failure to protect the right to "human life, health," and dignity. The law breaches the "right to form a family" guaranteed by Article 16 of the Universal Declaration of Human Rights by interfering with the reproductive rights of individuals.

²⁶ (1952) SCR 284

3.3 NEED FOR REFORMATION

The current version of the Surrogacy Laws aims to do two things: (1) clean up India's formerly uncontrolled surrogacy business by putting hundreds of ART and surrogacy clinics inside the scope of the law, and (2) reduce the exploitation of surrogates and children born via surrogacy. Although the lawmakers' goals were honorable, their measures were not. While the 2021 legislation do include several of the Center's and its partners' suggestions, advocates and activists have pointed to exceptions and gaps that call for further work to be done in the area of lobbying and policymaking. Surrogacy should be seen as a right, not a need, and this recognition is urgently required. When discussing reproductive health, a rights-based perspective requires the State to play a pivotal role in advancing reproductive rights and freedoms. Those who are within their rights under the law and in terms of human dignity should not be disadvantaged by state involvement if they choose to use a surrogate. It's crucial to establish rules for the surrogacy industry that benefit everyone involved. The carefree attitude of the surrogacy sector, the lack of regulation that permits human rights breaches, citizenship concerns, health policy, and a host of other problems, must be addressed.

3.4 LEARNING FROM OTHER COUNTRIES ON SURROGACY LEGISLATURE

In the current time, [eastern European countries](#) like [Georgia](#), [Ukraine](#), and [Russia](#) are the most desirable destinations for surrogacy where [International surrogacy cost](#) is much lower with adequate legal protection for the commissioning parents. Here Compensated or commercial surrogacy is only allowed for heterosexual couples, including foreigners. However, Legal rights of Intended Parents are well protected. In [Ukraine](#), the intended parents become the legal parents of their surrogacy baby right from its conception. Besides, their names are put on the baby's birth certificate.

In [USA](#), [Mexico](#) and [Colombia](#), not only married heterosexual couples but LGBT couples and single persons can become parents thanks to their surrogacy programs. Surrogacy process is legally controlled and it is ensured that the mothers are cared and supported throughout from start to finish. Besides, the woman who agrees to be a surrogate has certain obligations as part of the process that the agency will follow up and facilitate. This includes staying healthy, attending all of her appointments, taking the right medication, eating well, and staying safe during pregnancy. They also have a legal obligation to release all claims to the baby, giving the intended parents peace of mind that the baby will be theirs without any last-minute changes.

Country newly added in list of structured surrogacy laws is [Israel](#) who Lifted Surrogacy Restrictions in Landmark Decision for LGBTQ People. Their surrogacy law requires those seeking to

arrange surrogacy in Israel to obtain permission from the Health Ministry's surrogacy committee. As an initial step, the panel examines the applicant's eligibility for surrogacy based on the surrogacy law. The second stage involves approval of the surrogacy agreement between the prospective parents and the surrogate mother who is to carry the pregnancy.

4 RECOMMENDATIONS

A. A rights-based approach to implementation

Protecting the rights of surrogates, children born via surrogacy, and ART donors requires a shift in the current legal and policy paradigm, which may be achieved by frequent dialogue with relevant parties. Surrogacy services should be available without regard to a person's marital or sexual orientation or one's gender identity, and this should be the focus of any advocacy work in this area. The Supreme Court's ruling in NALSA and international agreements call for modification of these laws. All parties are on equal footing before the law, rather than being restricted by a medico-technical regulatory mechanism that prioritizes prohibition. When weighing security against other considerations, such as the freedom and confidentiality of individuals involved, the State must strike a fair and reasonable balance, being careful not to overstep its bounds in a free and open society.

B. Standard Surrogacy Contracts

Consistent with other contracts and the principles of the India Contract Act of 1872, surrogacy agreements should be fair to both parties. It must cater to cover losses in terms of health, wages, sufferings, and mortality, any expenditure incurred in relation to the pregnancy, including maternity clothing, additional nutrient supplements to sustain the pregnancy, dietary expenditure for surrogate mother. There should be a fair balance between the surrogate mother's responsibilities and the safeguarding of her rights, and the terms and circumstances should be made crystal clear. All surrogacy practices should standardize the surrogate mother's role in respect to the commissioned parents and the kid. It's possible that a contract might include provisions like-

- Continuing medical care for surrogate moms for up to three months following delivery.
- If a surrogate ends up carrying twins, she should be compensated at least twice as much, or 75% of the original fee, whichever is greater.
- The commissioning parents must accept the kid regardless of any anomalies, and should face harsher penalties if they refuse to do so.
- The couples would still be the legal parents of the surrogate's kid even if they were to divorce while the infant was still in the surrogate's womb.

C. Regularization of commercial surrogacy

Surrogacy should not be banned completely, but rather adequate rules should be explored for the protection of the vulnerable parties involved in the arrangement. Every country looking to legalize commercial surrogacy should look to Israel's approach, which strikes a good compromise between the requirements of society and those of private people. It's important to keep in mind that even though commercial surrogacy is illegal, it continues to grow through underground channels. As a result, it's in everyone's best interest to adopt a standardized legal agreement of commercial surrogacy in line with the feminist movement, complete with additional checks and balances, transparency, and registration of surrogacy contracts to guarantee that surrogate mothers are fairly compensated and that no middlemen profit from the arrangement.

D. Legalization of traditional surrogacy

2021 act only permits for gestational surrogacy. Traditional method where woman can provides her gametes as a surrogate is prohibited under Section 4(iii) (b) (III). However latter method is a less costly affair and bliss to LGBTQ couples and reproductively challenged women.

E. Proposal for nationalization of surrogacy centers

The exploitation of women may be reduced if surrogacy facilities were moved from private to government management and surrogates were required to register with the government. Additionally, a check should be administered to these ladies to make sure that they are registering with their own agency and not bowing to family pressure. In addition, the government should determine and regulate the surrogate's salary, which must be fair and commensurate with the work she does. In addition, the prospective parents' backgrounds should be checked.

F. Concretizing Regulations

In order to effectively regulate surrogacy in India, a more solid framework is required. Stricter regulations are needed to protect both the surrogate mother and the kid. The government should implement a number of programs and benefits for intended parents who choose to use surrogates.

G. Sensitizing Audiences

There needs to be more education and clarification of the relevant law in this area.

5 CONCLUSION

Although India is undergoing a revolutionary period in which citizens' thinking is shifting away from patriarchal norms and toward a more feministic ethos, the current surrogacy legislation is a straightforward example of transphobia, authoritarian compliance of societal beliefs, and bias against non-heterosexual relationships, serving as a black spot on India's progressive growth of the principle of equality. As India is a significant center for these activities, it is important to recognize that the new laws are a positive development; yet, there are still some grey areas that need to be clarified. Laws need to be dynamically monitored to make sure they adapt to new technologies, moral standards, and social norms. Surrogacy legislation in India would be unable to safeguard the surrogate's bodily autonomy and the intended parents' rights to parenting until such changes are made and surrogacy is legally recognized as a reproductive right (s).

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