



LEGAL ISSUES RELATING TO SURROGACY IN INDIA: AN ANALYSIS

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ABSTRACT

Being able to participate in creation is indeed a great pleasure for every woman. But unfortunately, not all the woman can become a mother because of various physical deficiency and due to this she is not able to enjoy the motherhood. But there is various way to enjoy the motherhood and one such way is Surrogacy. Since independence, India has progressed in various fields of science and technology and one such development is Surrogacy, where the couple who are not able to become parents naturally, can rent the womb of another woman through IVF and can enjoy parenthood. The present article focuses on the concept of Surrogacy, its issues, legal status in various countries including India, etc.

Key Words: Surrogacy, IVF, Commercial Surrogacy, Constitution, Article21

Introduction

In Latin ‘Surrogacy’ means a substitute i.e. a person appointed to act in the place of another.

How does it feel to be a life-giver? Well, only a mother would be able to answer that. But what if a woman could not be a mother? Is not there a way to feel the motherhood? There is indeed one such way and that is SURROGACY.

As per Black’s Law Dictionary²- surrogacy means the process of carrying and delivering a child for another person.

The Supreme Court of India³ defined Surrogacy as – “a method of reproduction, whereby a woman agrees to become pregnant for the purpose of gestating and giving birth to a child she will not raise but hand over to a contracting party”.

Surrogacy can be defined when other women carry the child and give birth to him when the couples want a child who are not blessed to produce him themselves. Surrogacy is also appropriate for the person who has an impossible condition or there is a very much danger situation for mother to get pregnant.

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² Jyoti Bharake, *Surrogacy-A Reality Eclipsed by Ethical, Social, Legal Issues-Indian Perspectives*, 2IJLJ 80 (2011)

³ *Baby Manji Yamada v. Union of India* AIR 2009 SC 84

Types of Surrogacy

There are various types of surrogacies-

- Traditional/Partial Surrogacy ⁴: - There is genetic relation of embryo with surrogate and it is done with her own ovum. Commissioning father can donate the sperm and becomes the genetic father of the child. In this the sperm can also be taken from some third male person in the case of two female commissioning couples or the single women also, can commission the child.
- Gestational/Full Surrogacy ⁵: - In this type, surrogates acts as a carrier of embryo which is genetically not related to her. The pregnancy is obtained by the IVF and implementation of fertilised embryo is done in the surrogate's uterus.
- Commercial Surrogacy: - In this type of surrogacy, the surrogate enjoys compensation in monetary terms for her womb given on rent. It is called as 'baby farming' or 'out sourced pregnancy' and it is legal in India.
- Altruistic Surrogacy ⁶: - In this type of surrogacy, no financial benefits are given to surrogate. There are only medical expenses given in monetary terms as compensation by commissioning parents.

Present Condition

At present, there are many beliefs regarding the topic surrogacy that it should receive the legal status or it should be banned. Many countries have legalized it and many till date prohibit it.

In India, surrogacy is been allowed since 2002 of the types Altruistic and Commercial. But the thing is that it has not got any legal status in the country. So, it is urgent need of the hour to get the babies as the expenses are very less when compared to the other countries, to prevent the exploitation and right.

Historical Background

Marriage as an institution is the social order through which a married couple wish to beget a child. But for an infertile couple, this desire remains unfulfilled. Over a couple of centuries, this desire of having a child by an infertile couple was being satisfied by adopting a child. The law relating to adoption is universal in western countries. In India, The Hindu Adoption and Maintenance Act, 1956 provides some relief in this regard but it is applicable to Hindus only.⁷

In our society infertility has historically been seen as a problem which merits treatment. Surrogate motherhood provides some couples with their only hope raising a child genetically related to at least one of them.⁸

⁴ Surrogacy Parenting Act (Excerpt)- Act 199 of 1988

⁵ <http://www.people.com/people/archive/article/0,,20096199,00.html> last visited on 28th May 2018

⁶ "Reproductive Law". Lisa Feldstrin Law Office. Retrieved May 28th July 2023

⁷ Dr. Nandita Adikari, *Law and Medicine* 164 (2012)

⁸ Anita Stuhmcke, "For Love or Money: The Legal Regulation of Surrogate Motherhood" *surrogate motherhood: Law and Legislations* (1995)

Surrogacy was known and practiced in ancient times. In the Mahabharata, Gandhari, wife of Dhritarashtra, conceived but the pregnancy went on for nearly two years; after which she delivered a mass. These cells were put in a nutrient medium and were grown in vitro till full form. Of these, 100 developed into male children and one as a female child.⁹

However, the world's second and India's first IVF baby Kanupriya was born in Kolkata on October 3, 1978. Since then, the field of assisted reproductive technology has developed rapidly.

In India, commercial surrogacy was introduced in 2002 but still is unregulated as India does not have any legislation to control surrogacy.

Issues relating to Surrogacy

Surrogacy involves multifactorial and several issues which must be kept in mind by any legal system or law while formulating the regulations. Those factors range across emotional, natural, ethical, medical, financial and sociological aspect.

In our country, there exists a peculiar situation where surrogacy is not being regulated efficaciously because the legal status of surrogacy transaction is unclear and therefore, surrogacy is neither legal nor expressly prohibited by law. Some of the issues relating to surrogacy are -

- **Poor remuneration:** - The woman, who is carrying a baby, generally get very less remuneration and large share is taken by ART clinics.¹⁰
- **Gender selection:** - Surrogacy is generally involves gender selection which itself illegal in India. If it is a girl child then in many cases surrogate mother either left with baby or get poor remuneration as compared to previously decided.¹¹
- **Legal loopholes:** - At present there is no law to regulate the surrogacy and related issues in India. The surrogacy is governed by the guidelines of Indian Council of Medical Research and by judgements of high courts and Supreme Court. As no law is in place, surrogate mothers cannot claim their rights from courts or other authority and suffer due to this.¹²
- **Women health:** - In India women health got little importance as ART clinics generally ignores regular medical check-up, no proper food, no special hostels for pregnancy time.¹³
- **Risk to baby health:** - It involves many risks to baby health such as genetic disorders, low weight, etc. Further in case of defected or disabled baby, baby has been left with surrogate mother or in an orphanage and an innocent baby has to suffer for whole life.

⁹ Pratibha Ganesh Chavan, "Psychological and Legal Aspects of Surrogate Motherhood" AIR2008 Jour103

¹⁰ P.Saxena, "Surrogacy" *Ethical and Legal Issues*" Indian Journal of Community Medicine 212(2012)

¹¹ Dr. Meeta Mohin, "Scanning For Death: A Medico-Legal Study of the Practice of Sex-Selection in India" *Cri LJ* 276(2012)

¹² A.Aberg and F.Mitelman Surrogacy, Mumbai Indian Surrogates, Rent-a-Womb, Outsourcing Surrogacy in India, Surrogacy bills in India.(2015). Available: <https://surrogacymumbai.wordpress.com/surrogacy-bill-india> last seen on May 28th 2018

¹³ Surrogacy in Canada online articles, Risks to Surrogate Mothers.(2001-2016) Available: <https://surrogacy.ca/resources/articles/53-risks-to-surrogate-mothers.html> last seen on May 28th July 2023

- **Child trafficking:** - The legal status of surrogacy in India helps in growing child trafficking industry.

Position of Surrogacy in other Countries

The legal issues surrounding surrogacy are complex, diverse and unsettled. In most of the countries throughout the world, the woman giving birth to a child is considered as the child's legal mother. However, there are few countries where the intended parents are recognized as the legal parents from the birth by the virtue of the fact that the surrogates have contracted to give the birth of the child of the intended parents. Positions of surrogacy in different countries are as follows-

Australia – In Australia the surrogate mother is considered by the law to be the legal mother of the child and agreement giving custody to others is void and unenforceable in the courts of law. Commercial surrogacy is an act of crime in Australia. However, the Altruistic surrogacy remains legal.¹⁴

Canada – Like Australia, commercial surrogacy is also prohibited in Canada under the Assisted Human Reproduction Act 2004 and altruistic surrogacy remains legal.¹⁵

France – Since 1994, all forms of surrogacy agreements whether commercial or altruistic are prohibited and illegal.¹⁶

Israel – Israel is the first country in the world to legalise surrogacy. It implemented a form of state-controlled surrogacy in which each and every surrogacy agreement must be directly approved by the state.¹⁷

United Kingdom – Commercial surrogacy arrangements are illegal in the United Kingdom under the Surrogacy Arrangements Act 1985¹⁸. Since, the surrogacy agreements are not legally enforceable so a surrogate mother maintains the legal right of determination for the surrogate child, unless a parental order or adoption order is made by the court.¹⁹

United States – Surrogacy and its related issues fall under the state jurisdiction and it varies from state to state. Some states in U.S. have written law while other depends on precedent for dealing surrogacy issues. Some have legalised only altruistic surrogacy while other has permitted even commercial surrogacy and facilitate straightforward ways for the intended parents to be recognised as the child's legal parent. Some surrogacy friendly states in U.S. are Illinois²⁰, California²¹, Maryland,²² etc.

¹⁴ 'Assisted Reproductive Treatment Act 2008'

¹⁵ Sec. 6(1), 12(1)c, 12(2) and 12(3) of the Assisted Human Reproductive Act, 2004.

¹⁶ French Civil Code, 1804

¹⁷ Teman, Elly, *'Birthing a Mother: The Surrogate Body and the Pregnant Self'* University of California Press, Berkeley, 2010

¹⁸ Brahams, D., *'The hasty British ban on commercial surrogacy'*, 17 *Hastings Centre Report* (1987), pp.16-19, at p.10.

¹⁹ *Ibid*, at p.11

²⁰ Gitlin, Joseph H., *'Illinois Becomes Surrogacy Friendly'*.

See, <http://www.aaml.org/sites/default/files/Illinois%20Becomes%20Surrogacy%20Friendly.pdf>, last accessed on 15th August, 2023

Constitutional Perspective in Surrogacy transaction

Surrogacy is a complex relationship involving the transfer of custody of a child born out of an artificial reproductive technique, as against the order of nature or the conventional mode of reproduction, making it difficult for the parties to validity completes the transaction.

Under the Indian Constitution, a surrogacy transaction can be recognised by interpreting certain Constitutional provisions. One of the vital interpretations is with respect to Article 21 which is wider than mere 'animal existence'²³, and includes all aspects of life which make it worth living.²⁴

In India 'the right to have reproductive choices' has been declared as a part of Article 21 of the Constitution²⁵.

The Supreme Court in the case of *R. Rajgopal v. State of Tamil Nadu*²⁶ held that the right to life includes 'right to privacy'. A citizen has a right to safeguard not only his own privacy but also his family, marriage, procreation, motherhood, child bearing and education among other matters.

Since surrogacy is not specifically recognised by law²⁷, it becomes difficult for the parties to enter into a legal transaction of surrogacy or contract of surrogacy. This is because surrogacy involves 'human being' as an object or subject matter of transaction and such a contract may be against public policy and therefore become void²⁸. It is in this situation that the state, as a part of its positive obligation under Article 21, must make provisions or must recognise the mechanisms like surrogacy, so that parties who are unable to procreate child of their own, can legitimately exercise their right to 'reproductive choices'.²⁹

It is a matter of right of those women who are striving to meet their livelihood concerns and an obligation on the state to recognise or provide a legal validity to surrogacy so that surrogates can legally opt for it to meet their financial and economic concerns. The state has an obligation to ensure the livelihood of its citizens, by creating or opening new avenues which may provide them with an opportunity to feed themselves³⁰. The expression 'right to life' under Article 21 included 'right to livelihood'³¹ and a 'right to access resources of livelihood'³² as fundamental rights.

²¹ Lawrence, Dale Elizabeth 'Surrogacy in California: Genetic and Gestational Rights', Golden Gate University Law Review, Vol.21, No.3, 2010, pp.525-557.

²² See, <http://www.inciid.org/printpage.php?cat=thirdparty&id=782>, last accessed on 15th August, 2023

²³ *P. Rathinam v. Union of India* (1994)3SCC394

²⁴ *Ibid*

²⁵ *B.K. Parthasarathi v. Government of Andhra Pradesh*, AIR2000 AP156

²⁶ *R.Rajgopal v. State of Tamil Nadu*, (1994)6SCC632

²⁷ *Jan Balaz v. Anand Municipalit*, AIR2010 Guj21 at p.7

²⁸ Indian Contract Act, 1872, Section23.

²⁹ *B.K. Parthasarathi*, supra note12

³⁰ *Olga Tellis v. Bombay Municipal Corporation*, AIR1986SC180

³¹ *Ibid*

³² *State of H.P. v. Umed Ram*, AIR 1986 SC847

Therefore, the state is under an obligation to make suitable arrangements or to recognise those techniques that can provide an opportunity to infertile couples and those who are otherwise unable to have their own genetically or biologically related child.

Legislative developments

The Indian Government has taken certain steps to address their issues relating to surrogacy and to regulate surrogacy arrangements from time to time. But unfortunately, till today there is no act which governs surrogacy. Delhi Artificial Insemination (Human) Act 1995 is the only statutory Act prevailing in India. Looking into the rising number of cases the Indian Government initiated certain measures to prevent its misuse and some of these preventive measures are as follows –

ICMR GUIDELINES

The Government of India had taken certain steps including the introduction and implementation of National guidelines for Accreditation, Supervision, and Regulation of ART clinics in 2005, and guidelines had been issued by the Indian Council of Medical Research working under the Ministry of Health and Family Welfare. Following are the significant features of ICMR guidelines³³ –

- For any ART process the approval of the spouse is mandatory.
- Sex determination at any point of time is prohibited.
- A friend or a relative of either the husband or wife is not permitted to offer his sperms.
- The committee allows semen to be taken only from the semen bank and not from any individual and the semen bank must be an individual organisation.
- Surrogacy through Assisted Conception must be opted for those patients for whom it is medically or physically not possible to carry the baby for full term.
- A baby born by surrogacy process is the legitimate child of the couple.
- It is the need of an hour that infertility should also be treated like any other disease.

THE ASSISTED REPRODUCTIVE TECHNOLOGY (ART) REGULATION BILL, 2008

The Draft (ART) Bill, 2008³⁴ was followed, and drawn from the functional and ethical National guidelines for Assisted Reproductive Technologies Bill and Rules 2008, which was to be proposed in the Parliament. The draft bill contained 50 clauses which were divided into nine chapters.

The bill acknowledges surrogacy agreements and their legal enforceability so that the Principles of the Indian Contract Act, 1872 and other laws shall be applicable to these kinds of agreements. The bill binds Commissioning parents to bear all medical expenses, including insurance of the surrogate mother while she

³³ ICMR guidelines on ethical and legal aspects of ART-2005, Code of Practice, Ethical consideration and legal issues (chapter-3) available at http://www.icmr.nic.in/art/Chapter_3.pdf last visited on 16th August,2023

³⁴ Ministry of Health and Family Welfare, Government of India, Indian Council of Medical Research. The Assisted Reproductive Technology (Regulation) Bill & Rules- [Draft]. New Delhi: MOH&FW, ICMR; 2008

is carrying the child in her womb. It also stated that the surrogate mother may “receive monetary compensation from the couple or individual, as the case may be”, but “shall relinquish all parental rights over the child’ once it is handed over to the commissioning parents³⁵ According to it the woman shall not be less than 21 years and not more than 45 years of age. She should be medically fit and cannot act as a surrogate mother more than three times.

228th LAW COMMISSION REPORT, 2009

On 5th August,2009 the Law Commission of India submitted the 228th Law commission Report titled “Need for Legislation to regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of parties to a Surrogacy” to the Union Ministry of Law and Justice, Ministry of Law and Justice, Government of India. The report expressed the view of the Law Commission on the Indian Council for Medical Research Guidelines2005 on Surrogacy, the draft Assisted Reproductive Technology (Regulation) Bill and Rules 2008 and the Seminar on “Surrogacy – Bane or Boon”. The report had also made recommendations to be kept in mind while legislating on surrogacy. Following are some key recommendations³⁶ made by Law Commission in 228th report –

- Surrogacy arrangements should continue to be governed by contract amongst parties, but should not be for commercial purposes.
- Surrogacy arrangements should provide for financial support for the surrogate child in the event of death, divorce or unwillingness of the commissioning couple.
- Surrogacy contract should take care of Life Insurance Cover for the surrogate mother.
- One of the intended parents must be donor a donor in surrogacy arrangements.
- Legislation should recognise a surrogate child as the legitimate child of the commissioning parents.
- The birth certificate of the surrogate child should contain the name of the commissioning parents only.
- Right of privacy of the donor as well as the surrogate mother should be protected.
- Sex-selective surrogacy should be prohibited.
- Cases of abortions should be governed by the Medical Termination of pregnancy Act, 1971.

THE ASSISTED REPRODUCTIVE TECHNOLOGY (ART) REGULATION BILL, 2010

³⁵ Rao, Dilip “New Bill to Regulate Surrogacy”, June 28,2008, Law and other things, <http://lawandotherthings.blogspot.in/2008/06/new-bill-to-regulate-surrogacy.html> Last visited on 16th August, 2023

³⁶ 228th Report of the Law Commission of India, 2009

Looking into the growing cases of surrogacy the Ministry of Health and Family welfare, Government of India drafted the 2008 ART revised bill “The Assisted Reproductive Technologies (regulation) Bill,2010”³⁷.

Following are few changes made by the Government of India in this revised bill –

- The bill proposes that the surrogate should be of 21 to 35 years of age and she should not have had more than five successful live births in her life including her own children.
- The woman should be medically examined and tested for sexually transmitted and communicable diseases which might be hazardous for the baby.
- The bill envisaged the clause about surrogate mother and stated that anyone can act as surrogate in India- known or unknown, related or unrelated. In case relative acting as surrogate, she should belong to the same generation as the commissioning mother.
- It states that the surrogate mother will have to enter into a legally enforceable surrogate agreement.
- It states that foreigners or NRI coming to India to rent a womb will have to submit documents confirming that their country residence recognizes surrogacy as legal and it will give citizenship to the child born through surrogacy agreement from as Indian mother.
- The foreigners are also required to appoint a legal guardian who will be legally responsible for taking care of surrogate till the child is delivered to the commissioning parents. In case the child is not accepted by the couple, it will be the responsibility of the local guardian to take care of the child.

THE SURROGACY (TECHNOLOGY) BILL, 2016

The proposed draft surrogacy regulation Bill, 2016, passed by the health ministry, was cleared by the Union Cabinet on August 24, 2016 and is set to be introduced in the Parliament soon. Within a span of one week of releasing the draft, it received severe backlash, being cited as discriminating and draconian.

When India legalized commercial surrogacy in 2002, it slowly gave rise to a booming industry of foreign surrogacy requirements and infertility tourism, such so much that commercial surrogacy was banned in 2015. The question of foreign surrogacy became especially relevant after Baby Manji case. The booming surrogacy industry, the easy abandonment of children, and the exploitation of women who were forced to become surrogates many times in order to sustain their families, led to the necessity of this bill.

Important features of this bill are³⁸ –

- Surrogacy will not be allowed for –
 1. Homosexual couples
 2. Single parents
 3. Couples in live-in relationships
 4. Foreigners

³⁷ Surrogacy Laws in India, available at <http://www.mediaindiatourism.com/surrogacy-in-india/surrogacy-laws-in-india.html>
Last Visited on 16th August, 2023

³⁸ Assisted Reproductive Technology Bill,2016

5. Couples with children

- Couples must be married at least for five years.
- Either one of the couples must have proven infertility.
- Only Indian citizens, NRIs are also not included.
- Age of couple: 23 to 50 for females and 26 to 55 for males.
- Women can be surrogates only once and a married couple can only have one surrogate child.
- The couple should employ an “altruistic relative”, i.e., the surrogate mother should be a relative who is sympathetic to the situation.
- Egg donation is banned.

THE SURROGACY (REGULATION) BILL, 2019

The Surrogacy (Regulation) Bill, 2019 was introduced by the Minister of Health and Family Welfare, Dr. Harsh Vardhan in Lok Sabha on July 15, 2019.

The Bill prohibits commercial surrogacy, but allows altruistic surrogacy. There is no monetary compensation to the surrogate mother other than the medical expenses and insurance coverage during the pregnancy in altruistic surrogacy. Whereas in commercial surrogacy procedures undertaken for a monetary benefit or reward exceeding the basic medical expenses and insurance coverage.

THE SURROGACY (REGULATIONS) Act, 2021

Finally, after years of struggle, the Parliament of India introduced the Act, which came into force on 25th January 2022. As per this Act, surrogacy is permitted only for couple who suffer proven infertility or disease, i.e., altruistic surrogacy. Commercial surrogacy is prohibited under this Act. The Act also in order to have a child via surrogacy, a couple should procure an eligible certificate, in which they have to ensure they have been married at least for 5 years, the couple must not have any living child be it biological, adopted or surrogated.

Case Laws

Commercial surrogacy has been legal in India since 2002. From past many years, surrogacy was been used in India in the form of Assisted Reproduction method but it did not have any solid legal battle. It has been seen in recent times that the demand of commercial surrogacy arrangement in India has increased many folds as foreign nationals are visiting the country in huge numbers to get their baby from the same method. Currently, there is dearth of surrogacy laws in India. And therefore, in case of disputes the Courts have used their own discretion and set new precedent. Some of the landmark cases relating to surrogacy in India are –

Baby Manji Yamada v. UOI and Another³⁹

The petition was filed under Article 32 of the Indian Constitution. This was regarding the custody of child named Manji Yamada. The petition was filed by the grandmother of the child Emiko Yamada. Union of India through Home Ministry, State of Rajasthan through P Principal Secretary, Director General of Police, Government of Rajasthan and Superintendent of police, Jaipur were made the opposite parties. This case is very relevant because it brought the light on the issues of surrogacy and it can be said that this case directed for the formation of Assisted Reproductive Technologies Bill, 2010. This case is also important because it was decided on the facts which were presumed that the surrogacy is legal in Indian context. At that time, there was guidelines of the presumption of the legality of surrogacy of the Indian Council of Medical research, 2006 which found no place in judgement of the Supreme Court in this case.⁴⁰

Baby Manji was born on 25th July, 2008 where the commissioning parents were from Japan. Soon after the implementation of egg in the Indian surrogate mother, the biological parents developed some marital problems and got separated. The mother return to Japan and after some time the father also returned because of the expiration of the visa. The baby was under care of her parental grandmother. She was issued a birth certificate in the name of her biological father. According to the existing laws it should had been certified to the mother to adopt the baby. The petition was filed in Rajasthan High Court which stated the illegality of the surrogacy and stressed on the need of the law on it. This was challenged by the grandmother for the sake of the baby.

The Hon'ble Supreme Court held that there was no ground of filing petition in High Court as there was no ground of Public Interest Litigation was found. The court set aside the judgement of the High Court and order was made to issue passport for the baby and visa extension for the grandmother.⁴¹

The SC judgement also included in its Para 9 that “Commercial Surrogacy” is a form of surrogacy in which a gestational carrier is paid to carry a child to maturity in her womb and usually restored to by well off infertile couples who can afford the cost involved or people who save and borrow in order to complete their dream of being parents. This medical procedure is legal in several countries including India where due to excellent medical infrastructure, high international demand and ready availability of poor surrogates it is reaching industry proportions.

In this case, the decision went against the Baby Manji but it was appealed in the Hon'ble SC for the justice.

Jan Balaz v. Anand Municipality⁴²

In this landmark judgement, the Gujarat HC has held the surrogate mother as the “Natural Mother” and her nationality has to be considered alone to decide the citizenship of new-born babies irrespective of the nationality of the father.

³⁸ *Baby Manji Yamada v. Union of India & Another.*(2008)13 SCC518

³⁹ *Ibid*

⁴¹ *Ibid*

⁴² *Jan Balaz v. Anand Municipality and others.* LPA 2151/2009, High Court of Gujarat

B.K. Parthasarathi v. Government of Andhra Pradesh ⁴³

In this case the AP high court upheld that “ The Right of Reproduction” of an individual as a fact of his “ Right to Privacy” and agreed with the decision of the US Supreme Court in Jack T.Skinner v. State of Oklahoma, which characterized the “Right to Reproduction as one of the basic Civil Rights of Man”.

While a surrogate pregnancy may be the last hope of parenthood for a childless couple, it does not mean that they should go in blind and not consider some of the benefits and demerits of the procedures. Every parent has certain expectations for their child and the manner of the childbirth is most certainly an important consideration in this regard. Following are the some of the pros and cons of the surrogacy –

Pros of Surrogacy: -

1. Childless couples may have no other options at parenthood than that of a surrogacy pregnancy. The fact that they do still have an option, when all other ones may have failed, often brings joy and relief to the expecting parents.
2. Surrogacy is one of the only options for the same-sex couples who wish to have a child.
3. In the case of an infertile father or mother, surrogacy pregnancies can still prove the couple with a child of their own.
4. It possesses the genes of the intending parents so there is genetic relation between the commissioning parents and the surrogate child.
5. Women have the positive experiences by helping the peoples to have their own child.
6. In commercial surrogacy the poor women are greatly helped by getting money to meet their need.

Cons of Surrogacy: -

1. Surrogacy may be treated like the prostitution.
2. There can be exploitation of women regarding the surrogacy for money.
3. Women can be treated as labour which provides the facilities for the birth of the child.
4. If both the commissioning parents and the surrogate mother refuses to keep the child, then there will be the violation the rights of the child.

LEGAL ARGUMENTS IN FAVOUR AND AGAINST SURROGACY**Arguments in favour of surrogacy: -**

1. While there is no international charter recognising Right to Children, it is basic human desire and everyone should have the choice to have children of their own genetic material.

The surrogate is fully aware of what she is contracting to do and only as a result of consent does she choose to accept the offer made to her. It can be assuming that she knows the consequences of her

⁴³ AIR2000 A.P.156

act and goes ahead with her decision. As it is her consent, there is no concealment of information and she makes a well-informed decision.⁴⁴

2. Everyone has a basic right to decide the number, spacing and timing of their children and have means to do so. Surrogacy is one such method available to those who seek to have children of their genetic composition.
3. Commercial surrogacy helps the poor, single or minority women as it provides the money for their womb taken on rent by the commissioning parents for their child. The money which is provided to the surrogate mother can be used for the education of their real children, for the home making etc which will help them a lot to up bring their status in the society.⁴⁵
4. One more argument which supports the surrogacy is that it makes the couples who are of same sex, they can have their child by this method and can complete their family and there can also be the existence of the biological relationship between the child and the intending parents.

Arguments opposing Surrogacy: -

1. Surrogacy is seen as way of earning money. It is practically classified as an industry. Human body has limitations. Reproduction is a highly energy-consuming process and it takes a lot out of a woman. The practice of bearing children repetitively makes a woman susceptible to miscarriage. The body needs time to recover and the need of money may make woman to overlook that and this may lead complications in delivering the baby.
2. The opponent of surrogacy practice believes that that this practice is similar to the prostitution where the women are hired and given the monetary compensation for the work they do for others, sacrificing themselves.
3. It has been observed that the doctors and nurses do not help those people who are generally not suffering from any kind of disease and in most cases, they refuse to help those who are same-sex couples or single want to have their own child.⁴⁶
4. The women also can be coerced by their family the money to them these types of practices which violates the personal freedom and liberty of the women.

CONCLUSION

Though there are several legal hurdles attached with the surrogacy transaction and very complex area of law to be dealt with, it's a good opportunity for the couples to fulfil desire through legitimate ways, and public policy is in favour of providing recognition to surrogacy by removing hurdles.

In keeping with the tradition of justice for all, the civil society and the legislations should form a legislation that is enacted with a focus on preventing the exploitation and ambiguity in the practice of surrogacy.

⁴⁴ The American Congress of Obstetricians and gynaecologists.(2008). Surrogate Motherhood. Major Arguments for and Against Surrogacy Arrangements. Available:<http://www.acog.org/Resources-And-Publications/Committee-opinions/Committee-on-Ethics/Surrogate-Motherhood> last seen on 16th August 2023

⁴⁵ Supra Note 30

⁴⁶ Supra Note 70

The laws must be made in such a way that the ultimate beneficiaries of the procedure must be the child, the surrogate mother and the intended parents and not any middleman.

