
LEGAL REGULATION OF SURROGACY IN INDIA

Riya Mourya, UnitedWorld School of Law, Karnavati University

ABSTRACT

The society that we live in gives utmost importance to the institution of family. Even though times and eras change, only women have the capacity for reproduction today. In the past two decades, India has become a surrogacy hub and travel destination for couples from other nations. The number of fertility clinics providing artificial insemination, IVF, and surrogacy services to Indian and overseas couples has rapidly expanded. The numerous case studies in India and the timeline of the various legislation introduced by the Indian government to control surrogacy services are highlighted in this essay. With the most recent The Surrogacy (Regulation) Act of 2021, several rules and regulation bills from the past have been discussed. There has also been discussion of issues, and recommendations to be observed, that the most recent Indian regulation does not address.

Keywords: surrogacy; commercial surrogacy; altruistic surrogacy; assisted reproductive technology; surrogate mother

INTRODUCTION

Robert Browning once said “Motherhood: All love begins and ends there”, the right to reproduction is the ultimate right of an individual. The agony of not being able to procreate is an unbearable pain which no individual wants to live through. Even though times and eras change, only women have the capacity for reproduction today. In India, parenthood is considered a blessing and infertility a curse and call as “banjh”. During the past decades the science has progressed leaps and bounds in respect to assisted reproductive technology¹. Today there are various ways through which an infertile couple can enjoy the gift of procreation such as, IVF, intra- uterine insemination, in vitro maturation, vitrification.² Among the options available to such couples, surrogacy is the best known, achieved through in vitro fertilization, as it allows a genetic link between parents and child and also has a high success rate.

Surrogacy is an arrangement in which a person or a couple agrees to have a child through the womb of another woman. Such a woman undergoes pregnancy for intended parents, who then become the legal parents of the new-born child. Surrogacy can be categorized on the basis of embryos and on the basis of monetary compensation.³

The Latin word "surrogatus," which means "a substitute," is the source of the English word "surrogate," which refers to an individual chosen to carry out another's duties. Consequently, a surrogate mother is a woman who bears a child for another woman using either her own ovum or the implantation of a fertilized egg from a different woman in her womb.

As per Cambridge Dictionary “the action of a woman having a baby for another woman who is unable to do so herself,”⁴

India is a hub for commercial surrogacy because the plight of women forced them to do such actions. In India, women are willing to be surrogate mothers who are easily available at very nominal prices. This may be one of the reasons why foreigners choose India as their surrogate

¹ Neeta Lal, ‘India’s Hidden Infertility Struggles’, *The Diplomat*, (May 30, 2018) (Available online at: <https://thediplomat.com/2018/05/indias-hidden-infertility-struggles/>).

² Professor Stuart Campbell, ‘5 Treatments in Assisted Reproductive Technology’, *Create Fertility*, (Available online at: <https://www.createfertility.co.uk/blog/5-treatments-in-assisted-reproductive-technology>).

³ Shefali Kolhe & Anuj Kumar Gupta, ‘A Cluster of Issues And Complexities Of Rights Under The Constitution Of India’, *NLIU Law Review*, (2019), (Available online at: <https://nliulawreview.nliu.ac.in/wp-content/uploads/2022/01/Volume-IX-Issue-II-154-180.pdf>).

⁴ Cambridge Dictionary, Cambridge University Press & Assessment 2023, (Available online at: <https://dictionary.cambridge.org/dictionary/english/surrogacy>)

mother. India recognized commercial surrogacy, legalizing it in 2002. Commercial surrogacy has had a very bad effect on women's health. This has directly affected the reproductive health of women and ultimately leads to the exploitation of women. Poverty was the main reason why women rented out their wombs. Later, the Indian Council of Medical Research (ICMR) in 2005 issued certain guidelines to define, guide and regulate ART (surrogacy) clinics in India, but these were not followed.

Then in 2008 *Baby Manji Yamda V. UOI*⁵, the baby was born through surrogacy and handed over to a Japanese couple, but could not leave India because its citizenship was not yet recognized. The SC granted the baby a travel certificate, confirming the legality of commercial surrogacy in India, and the Japanese government granted her a one-year visa on humanitarian grounds. At the same time, the Art Bill 2008 was drafted but not passed to parliament. In response to this problem, the Law Commission of India in its 228th Report proposed to abolish commercial surrogacy and continue altruistic surrogacy by developing appropriate legislation. Finally, the ART Bill of 2010 came, providing a national framework to prevent the misuse and safe use of ART technologies. But this bill also had certain loopholes that did not include the important implications of surrogacy.

LEGAL PROVISIONS RELATING TO SURROGACY IN INDIA

In 2005, the Indian Council of Medical Research acknowledged surrogacy, recognizing it as a method of aid for those who are unable to conceive naturally. Infertility is one of the most common medical issues, and in recent years, there has been a significant increase in surrogacy that has drawn notice and raised several human rights concerns across the globe. These guidelines were drafted to regulate the conduct of the Assisted Reproductive Technology clinics that provide surrogacy treatments in India. This guideline provided instructions on how assisted reproductive technology (ART) procedures or treatments should be used by fertility clinics. Despite the fact that this was done before the ART Bill, these guidelines are only advisory and not enforceable.

Several amendments and additions were made and later in 2014, a bill called the Assisted Reproductive Technology Bill, 2014 was passed. This bill is to ensure that the regulatory measures will protect the health and the rights of surrogate women and of children born through

⁵ Baby Manji Yamada vs. UOI and Another (2008) 13 SCC 518

surrogacy and for strict implementation.⁶ The main limitations of the bill were that it lacked the provisions for safeguarding the rights of the women going through IVF techniques who are recruited as surrogates. Further it also ignores the role played by the third- party agents who play pivotal role in arranging surrogates.⁷

Meanwhile, In the Lok Sabha, Health and Family Welfare Minister JP Nadda introduced the Surrogacy Bill, 2016, which proposes to ban commercial surrogacy in India. It was drafted to regulate surrogacy in India as it laid down all the requirements of parties competent to enter into a surrogacy contract and the conditions and formalities to be fulfilled for surrogacy to take place in India. The surrogacy regulation law of 2016's key feature is that it focuses on banning commercial surrogacy and granting permission to support altruistic surrogacy. The legislation also safeguards the infant and the surrogate mother from all forms of exploitation. Except for the necessary critical medical expenses and any allowance coverage during the gestation, there is no financial compensation provided to the surrogate mother in altruistic surrogacy.

Subsequently, Dr. Harsh Vardhan (Union Minister for Health and Family Welfare) introduced the Surrogacy Bill, 2019 in the Lower House. The bill defines surrogacy as a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth. It seeks to prohibit commercial surrogacy which includes trading human embryos and gametes and buying and selling of the services of a surrogate by a monetary reward except insurance but allows altruistic surrogacy which involves no monetary incentives or rewards to the surrogate mother other than the medical expenses incurred and insurance coverage.⁸

Further a new bill which has incorporated the recommendations of the Rajya Sabha Select committee has been approved by the Union Cabinet i.e. Surrogacy (Regulation) Bill, 2020. The Surrogacy (Regulation) Bill pertains to surrogacy, a method of treating infertility in which a woman serves as the surrogate mother on behalf of a man. The Bill defines surrogacy as a

⁶ National Commission for women, Assisted Reproductive Technologies (Regulation) Bill 2014 (Available at: [http://ncw.nic.in/basic-page/assisted-reproductive-technologies-regulation-bill-2014#:~:text=ASSISTED%20REPRODUCTIVE%20TECHNOLOGIES%20\(REGULATION\)%20BILL%202014,-](http://ncw.nic.in/basic-page/assisted-reproductive-technologies-regulation-bill-2014#:~:text=ASSISTED%20REPRODUCTIVE%20TECHNOLOGIES%20(REGULATION)%20BILL%202014,-%E0%A4%B9%E0%A4%BF%E0%A4%A8%E0%A5%8D%E0%A4%A6%E0%A5%80&text=To%20ensure%20that%20the%20regulatory,surrogacy%20and%20for%20strict%20implementation)

[%E0%A4%B9%E0%A4%BF%E0%A4%A8%E0%A5%8D%E0%A4%A6%E0%A5%80&text=To%20ensure%20that%20the%20regulatory,surrogacy%20and%20for%20strict%20implementation](http://ncw.nic.in/basic-page/assisted-reproductive-technologies-regulation-bill-2014#:~:text=ASSISTED%20REPRODUCTIVE%20TECHNOLOGIES%20(REGULATION)%20BILL%202014,-%E0%A4%B9%E0%A4%BF%E0%A4%A8%E0%A5%8D%E0%A4%A6%E0%A5%80&text=To%20ensure%20that%20the%20regulatory,surrogacy%20and%20for%20strict%20implementation))

⁷ Ibid.

⁸ Astha Srivastava, The Surrogacy (Regulation), 2019 Bill of India: A Critique, *BridgeWater State University Journal of International women's Studies*, (Feb, 2021), (Also available at: <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=2364&context=jiws>).

practice in which a woman bears a child for another person with the aim of later giving the child to the intended parents. Only altruistic surrogacy is now allowed under the Surrogacy (Regulation) Bill 2020, which completely outlaws commercial surrogacy.

In *B.K. Parthasarathi case*⁹, it was decided that the right to decide about reproduction is essentially a personal choice, and the state's intrusion into such a decision-making process has to be stringently scrutinized. Thus, the requirement of acquiring certificates of fertility to earn a right to surrogacy is a gross violation of their right to privacy. Further, in *Consumer Education and Research Centre and Ors. v. UOI*¹⁰, the SC stated that the expression 'life' assured in Article 21 of the Constitution has a much broader meaning and includes the right to livelihood; hence that statutory ban on commercial surrogacy in this regard is yet another example of the new Bill failing the test of constitutional scrutiny and remaining in violation of the rights of the very individuals it vows to protect.

Later, the Bill was approved by both chambers of Parliament during the winter session of 2021. The President gave his signature to it, and it became effective in January 2022 i.e., The Surrogacy Act, 2021.

CURRENT LAWS IN INDIA

With the increase in the number of IVF clinics in India, these have made a place for reproductive tourism to grow. People supporting commercial surrogacy see this as a commodity that can be traded. However, the reality is a bit different. Nonetheless; the highly disputed topic in India should be the surrogacy industry's laissez-faire attitude, as well as the legal vacuum that allows for human rights violations, citizenship difficulties, health policies, and many other issues.

The needs, as well as rights of the woman, should be the core discussion in this modern era when it comes to surrogacy. Some activists see full commercial potential in surrogacy. They see the ability of women to bear children as a tool to empower them in a society where they are exploited. When men get paid for being sperm donors, why can't women be?

⁹ *B.K. Parthasarathi v. Government of A.P.*, 2000 (1) ALD 199;

¹⁰ *Consumer Education and Research Centre and Ors. v. UOI*; (1995) 3 SCC 42;

There were some associated concerns with certain surrogacy laws. Firstly, With respect to the excessive regulations regarding surrogacy laws, while there was widespread acclaim and some vociferous support from infertility specialists even at the bill stage, there was some concern about the regulations being too onerous. For instance, it prohibits homosexual couples, single men, or women from becoming surrogates. Even as the Health Minister introduced the Bill in the House, representatives from these organizations began to surface. Secondly, excessive regulation and outright prohibition of surrogacy could fuel the development of the underground industry, which would then exploit poor and underprivileged surrogate mothers.

The Netflix film *Mimi*, with Kriti Sanon playing the main role, depicts the dangers of surrogacy in India in a realistic manner. The plot revolves around the effects of a US-based intended pair changing their minds about using a commercial surrogate in India to deliver the child they had chosen. That does not, however, mean that women in India should be forbidden from voluntarily choosing to act as commercial surrogate mothers. Instead of superseding her right to life and her personal choice of profession, there should be rules to safeguard her interests.

THE SURROGACY (REGULATION) ACT, 2021

This Act explains surrogacy as a practice in which if a couple is incapable of producing a child of their own due to infertility or any disease, they are eligible for surrogacy process with certain guidelines. It is permitted only for altruistic purposes or for couples who suffer proven infertility or disease. Altruistic surrogacy includes no money related pay to the surrogate other than the clinical costs and protection inclusion during the pregnancy. The ART Regulation 2021 gives a framework to the execution of the law on surrogacy by setting up of the National Assisted Reproductive Technology and Surrogacy Board.¹¹ This Bill was passed in early December of 2021. Some of the key features of the Act include the following-

- All clinics offering surrogacy services and facilities must register under this Act, and any practitioners working in those clinics must meet the requirements outlined in this measure.
- Following the appointment of the responsible authority, every institution that provides surrogacy treatments must submit an application for registration within sixty days. Renewal

¹¹ Anushikha Parashar, Arushi Mehtani, (2022), 'Analytical Study on Surrogacy(Regulation) Rules , 2022, Lawrbit (Available at: <https://www.lawrbit.com/article/analytical-study-on-surrogacy-regulation-rules-2022/>).

of registration is required every three years.

- Any clinic offering surrogacy services, gynaecologist, embryologist, or other medical professional is banned from performing commercial surrogacy in any way. Under the 2021 Act, only selfless surrogacy is permitted.
- According to Indian law, the intended couple, or the couple wishing to become parents, must be formally wed. Females should be between the ages of 25 and 50, and males should be between the ages of 26 and 55. Additionally, they must not already have any biological, surrogate, or adopted children. This is a crucial requirement. The mother providing this service that is the surrogate mother needs to be between the age of 35-45 years. Any woman cannot be a surrogate mother more than once in her entire lifetime.
- An intended partner who has a medical need for surrogacy must receive a "Certificate of Essentiality/Infertility" from the National/State Assisted Reproductive Technology and Surrogacy Board.
- The surrogate mother must be informed of all known negative effects and after-effects of the operation. In addition, the surrogate mother must provide written informed permission in the language she understands.
- The National Assisted Reproductive Technology Registry would be established, in accordance with this Bill, to manage the registration of the clinic offering the surrogacy procedure.

According to this Act, any pair who adopts a child through commercial surrogacy is subject to this five-year prison sentence and a fine of up to 50,000 rupees. Additionally, if the same offence is done more than once, the fine increases to 1 lakh and the sentence is extended to 10 years in prison. A maximum sentence of ten years in prison and a fine of Rs. Ten lakhs are available for any person, group, or clinic discovered to be involved in the exploitation of surrogate mothers or children born via surrogacy.

The Surrogacy (Regulation) Act, 2021, seems premised on similar social conditioning. The Act bans commercial surrogacy instead of regulating it. The act recognizes only altruistic surrogacy, meaning no remuneration paid to the surrogate apart from expenses that might be

prescribed or incurred due to insurance open only to Indian nationals, to address citizenship issues that often crop up when the surrogacy is commissioned by an overseas couple. While this is the only welcome measure, the Act is marked by conditions that are exclusionary in letter and arbitrary in spirit.¹² First, the Act discriminates against a number of groups, including unmarried women (who are excluded from the definition of "intending woman" because it only includes widows and divorcees), non-binary and same-sex couples, unmarried and single men, and same-sex couples. As a result, only heterosexual married couples are eligible to receive benefits from the Act. The SC accepted the concept of commercial surrogacy in *Baby Manji Yamada*¹³ and agreed that anyone could be an intending parent, regardless of their marital situation and sexual orientation and, this was ignored.

The SC has in *Deepika Singh* (2022) acknowledged the changing idea of the 'family' by stating that familial relationships may take the form of domestic, unmarried partnerships, or queer relationships. Such atypical manifestations of the family unit are equally deserving of protection under law and benefits under social welfare legislation.¹⁴ Altruistic surrogacy within the family is a flawed idea, loaded with patriarchal control over a woman's reproductive options, and at odds with the basic rights to privacy and reproduction, both of which are highly prized freedoms. The SC emphasized women's constitutional freedom to make reproductive decisions in its Constitution Bench decision in *K S Puttaswamy*¹⁵ (2017).

There are certain circumstances for opting Surrogacy, which are ought to be:

1. When a woman is born without a uterus, has one that is missing or abnormal, or when her uterus has been surgically removed because of an illness.
2. Despite numerous efforts at in vitro fertilization or intracytoplasmic sperm injection, the couple was unable to conceive.
3. When there have been numerous miscarriages without a clear medical cause.

¹² N Kavitha Rameshwa , 'Surrogacy Act is a Law with a Flaw', *Times of India*, (Oct, 2022), (Available at: <https://timesofindia.indiatimes.com/city/chennai/surrogacy-act-is-a-law-with-a-flaw-heres-why/articleshow/95115675.cms>).

¹³ *Baby Manji Yamada vs. UOI & Anr* , 2008 (II) SC 150;

¹⁴ *Ibid*.

¹⁵ *K. S. Puttaswamy & Anr. v. UOI & Ors.* , AIR 2017 SC 4161.

4. If a medical condition prevents conception

SALIENT FEATURES OF THE SURROGACY (REGULATION) ACT, 2021

The Surrogacy (Regulation) Act, 2021, which established the National Assisted Reproductive Technology and Surrogacy Board and State Assisted Reproductive Technology and Surrogacy Boards, was approved by the President on December 25, 2021.

1. Allows only 'altruistic surrogacy':

The Surrogacy law allows only altruistic surrogacy wherein only the medical expenses and insurance coverage is provided by the couple to the surrogate mother during pregnancy. No other monetary consideration will be permitted under the surrogacy law.

2. Married Couple allowed Surrogacy only on Medical Grounds:

Only a married pair may choose surrogacy under the surrogacy Act, and only for medical reasons. The Surrogacy legislation specifies that a married Indian "man and woman" constitutes a couple. Additionally, it specifies age requirements, with the woman's range being 23 to 50 years and the man's range being 26 to 55 years.

3. Ineligibility Criteria for Surrogate Couple:

The pair will not be qualified for surrogacy if they already have a child of their own. Although the legislation permits single women to use surrogacy, she must be between the ages of 35 and 45, a widow or a divorcee. However, males who are single are ineligible.

4. Eligibility Criteria for Surrogate Mothers:

Only a close relative of the pair who is able to provide a medical fitness certificate may act as a surrogate mother. She must be between the ages of 25 and 35, married, and have a child of her own. She may only serve as a surrogate mother once.

5. Prohibition and regulation of surrogacy clinics:

- No surrogacy facility is allowed to take part in, be associated with, or provide any

assistance with surrogacy-related activities. Additionally, it is prohibited from hiring, causing to hire, or keeping on staff anyone who does not fulfill the requirements, whether on an honorarium basis or for pay.

- No surrogacy center, pediatrician, gynaecologist, embryologist, registered medical practitioner, or other individual shall conduct, offer, undertake, promote, or associate with or use commercial surrogacy in any form; no human embryo or gamete shall be stored for the purpose of surrogacy except for storage for other legitimate purposes such as sperm banks, IVF, or medical research; and no individual shall conduct or cause to be conducted sex selection for surrogacy.

6. Regulation of surrogacy and surrogacy procedures:

No surrogacy or surrogacy procedures shall be conducted, undertaken, performed or availed of, except for the following purpose¹⁶:

- when an intending couple has a medical indication necessitating gestational surrogacy provided that a couple of Indian origin or an intending woman who intends to avail surrogacy, shall obtain a certificate of recommendation from the Board on an application made by the said persons in such form and manner as may be prescribed.
- when it is only for ,ltruistic surrogacy purposes;
- when it is not for commercial purposes or for commercialization of surrogacy or surrogacy procedures;
- when it is not for producing children for sale, prostitution or any other form of e exploitation.¹⁷

7. Written informed consent of surrogate mother:

All known side effects and after effects of such procedures shall be informed to the surrogate mother concerned and also a written informed consent of the surrogate mother

¹⁶ S. 2(r), The Surrogacy (Regulation) Act, 2021;

¹⁷ Ibid

to undergo such procedures in the language she understands is required to obtain.¹⁸

8. Registration of surrogacy clinics:

No person shall establish any surrogacy clinic for undertaking surrogacy or to render surrogacy procedures in any form unless such clinic is duly registered under this Act. Every surrogacy clinic which is conducting surrogacy or surrogacy procedures, partly or exclusively, shall, within a period of sixty days from the date of appointment of appropriate authority, apply for registration.¹⁹

9. Establishment of National Assisted Reproductive Technology and Surrogacy Registry:

There shall be established a Registry to be called the National Assisted Reproductive Technology and Surrogacy Registry for the purposes of registration of surrogacy clinics under this Act.²⁰

THE SURROGACY (REGULATION) RULES, 2022

The Central Government has notified Surrogacy (Regulation) Rules, 2022 which provides Form and manner for registration and fee for a surrogacy clinic and the requirement, and qualification for persons employed, at a registered surrogacy clinic.²¹ In order to improve the facilities provided in surrogacy clinic the Ministry of Health and Family Welfare came up with **Surrogacy (Regulation) Rules, 2022 on 21st June 2022** under the ministry of Mansukh Mandaviya, which elaborates the requirement of number of persons employed and the qualifications that they must possess. In addition to that it also provides for the form and manner in which the registration will take place and the procedure to pay the fees for surrogacy clinic.²²

1. A gynecologist, anesthetist, embryologist, and counselor must all be present in a surrogacy facility. The clinic may hire extra staff through the Level 2 clinics for

¹⁸ The Surrogacy (Regulation) Act, 2021, S. 6

¹⁹ The Surrogacy (Regulation) Act, 2021, S. 11(1)

²⁰ The Surrogacy (Regulation) Act, 2021, S. 15.

²¹ Bhumi Indulia, (June, 2022), Surrogacy (Regulation) Rules, 2022, *SCC online*, (Available at: <https://www.scconline.com/blog/post/2022/06/23/surrogacy-regulation-rules-2022/>).

²² *Supra* 48.

Assisted Reproductive Technology; typically, the director, andrologist, and shall appoint such staff as may be required to help the clinic with day-to-day operations.

2. Manner of application for obtaining a certificate of recommendation by the Board has been specified.²³
3. The intending woman or couple must purchase a general health insurance coverage in favor of surrogate mother for a period of thirty six months from an insurance company or an agent recognized by the Insurance Regulatory and Development Authority established under the provisions of the Insurance Regulatory and Development Authority Act, 1999 for an amount which is sufficient enough to cover all expenses for all complications arising out of pregnancy and also covering post- partum delivery complications.
4. The surrogate mother may not be subjected to any surrogacy treatment more than three times.
5. Consent of a surrogate mother shall be as specified.
6. A gynecologist is required to implant one embryo during a treatment session into the uterus of a surrogate mother; however, up to three embryos may occasionally be implanted.
7. According to the Medical Termination of Pregnancy Act of 1971, the surrogate mother may be permitted to have an abortion during the surrogacy procedure.
8. An application for registration for a surrogacy clinic shall be made by the surrogacy clinic which is carrying out procedures related to the Surrogacy.²⁴
9. The appropriate authority shall, after making such enquiry and after satisfying itself that the applicant has complied with all the requirements, shall grant a certificate of registration in Form 4 to the applicant.²⁵

²³ Ibid.

²⁴ Ibid

²⁵ Ibid

In the case of *Karan Balraj Mehta & Anr. v. UOI*²⁶, Karan Balraj Mehta and Dr. Pankuri Chandra petitioned the Delhi HC to decriminalize commercial surrogacy under the Assisted Reproductive Technology (Regulation) Act, 2021, and to challenge the exclusion of a single, unmarried male and a married woman with a child from surrogacy. The petitioner, Karan Mehta, argued that it is a single, unattached man's personal decision to have a child through surrogacy, and that they are prohibited from doing so because it is discriminatory and goes against Articles 14 and 21 of the Constitution. Additionally, the Act disqualifies Petitioner No. 2 Dr. Pankuri Chandra because she is devoid of a medical condition that would necessitate surrogacy and is unable to locate and obtain permission from a qualified surrogate mother. The petition argues that the right to reproductive autonomy is a component of the right to private safeguarded by Article 21 of the Constitution. Therefore, it is not possible to remove any resident's or individual's right to security from unjustified legislative intrusion into matters that typically affect a decision to bear or sire a child through surrogacy. This petition is listed for further hearing.

CONCLUSION

The idea of using a surrogate to have a child is not novel, but the surrogacy procedure has been used since ancient times. Anyone who wants to have a child can use the surrogacy technique; it is not just reserved for couples who are infertile or unable to conceive a child without a medical condition. The increase in surrogacy leads to the abuse of human rights. India is experiencing a boom in the surrogacy business, which has brought about some complexity and a number of social, ethical, and legal concerns related to surrogacy, necessitating the need for specific legislation. The Surrogacy Regulation Bill in India is timely given the need to investigate the practice of surrogacy, which is increasingly seen by the Indian public as an unethical enterprise. The bill primarily centers on outlawing the practice of exploiting both the surrogate mother and the child born through surrogacy. In a nation like India, the surrogacy procedure has both positive and negative effects. Many infertile couples who are unable to have children will find happiness if surrogacy is used skillfully, but if it is done carelessly or with the intention of making money; it will have a negative impact on society as a whole.

Overall, the surrogacy laws in India are quite restrictive, and there are significant legal and ethical concerns associated with commercial surrogacy. If you are considering surrogacy as an

²⁶ *Karan Balraj Mehta & Anr. v. UOI* ; Case No. 8448/2022

option, it is important to consult with a qualified legal professional who can advise you on the specific laws and regulations in your country.

There is a need to increase awareness in this field along with some clearance with regards to the pertaining law. There is a need to reconsider the banning of commercial surrogacy. The laws also need to be more inclusive of homosexual couples and single parents. There have to also be stricter laws governing the health of the child as well as the surrogate mother and their living conditions. Surrogacy is a blessing for couples or individuals who want to enjoy parenthood. Such point needs strong enactment. The altruistic model expects a woman to go through the physical and emotional tolls of surrogacy free of cost and only out of compassion. Such an expectation is paternalistic, unrealistic, and patriarchal in its approach. It denies a legitimate source of income to surrogates which in turn severely limits the number of women willing to go through surrogacy and indirectly denies intending parents the opportunity to avail of it. The proposed Bill continues to deny this opportunity to LGBTQ+ persons, live-in couples, and single parents. Those included within its ambit are required to have a 'certificate of essentiality stating that it is biologically impossible for the person(s) to have a child in any other way. It does not consider other medical conditions which even though do not render women infertile; make the pregnancy riskier and more difficult. It also does not consider cases where women might not want to go through pregnancy due to career-related commitments.

the country has been grappling with the regulation of surrogacy to protect the interests of surrogate mothers, intended parents, and the children born through surrogacy. The Indian government should consider banning commercial surrogacy while allowing altruistic surrogacy under strict regulation. The rights of surrogate mothers and children born through surrogacy should be protected, and the surrogacy process should be transparent and well-supported. Overall, the legal regulation of surrogacy in India should aim to balance the interests of all parties involved, including surrogates, intended parents, and the children born through surrogacy. It should prioritize the well-being and dignity of all individuals involved while preventing exploitation and commercialization of the surrogacy process.