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The Moral, Legal, and Social Labyrinth of Surrogacy

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ABSTRACT:

It has nearly turned into a way for those, who can't or are physically unable to have/bear children of their own, to have a family using a surrogate uterus. It is, nonetheless, a controversial procedure with its "success stories" of same-sex males and singles. That whole who reselling out on the kid and the right to remorse leaves so much more to be desired. This paper states that although counseling for the intended parents and surrogates is a must in order to avoid any problems, parental screening is also a must, as well as the doctor's responsibility to the future child. And, with the Surrogacy Act of 2021 on the books, it is easy to see that a non-discriminatory and compensatory framework must be established in order to secure the rights of the surrogate mother, but more importantly, the children that are produced as a result of surrogacy. But somewhere amongst all of that must lie some sort of balance between the moral legal and social issues of surrogacy for the surrogate mother and the parents and the child.

This article discusses the ancient beginnings of surrogacy in India, dating back to ancient Hindu mythology, where there are many examples of surrogacy. Although surrogacy would bring much joy to infertile couples, it does raise a lot of legal, social, ethical, and moral dilemmas in India. The rising controversy about surrogacy and the Indian government's efforts to outlaw commercial surrogacy and substitute it with altruistic surrogacy. It also talks about the Union Cabinet passing the Surrogacy Regulation Bill to regulate and legalize surrogacy in India.[1]

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Keywords: society, ethical dilemmas, human rights and legal issues of health, surrogacy act of 2021, surrogacy

INTRODUCTION:

[1] Divyansh Singh Sisodia. Surrogacy under the framework of the Indian Constitution. blog.ipleaders, (Aug. 27, 2024, 9:29 PM), https://blog.ipleaders.in/surrogacy-under-framework-of-the-indian-constitution/

Surrogacy is the practice of using a woman's womb to carry a fetus until birth to be raised by another.[2] It is derived from the Latin word "**subrogate**," meaning "accepted to act in the place of" or "a substitute." According to **American Law Reports**, surrogacy is a contractual agreement where the natural or surrogate mother agrees to conceive a child through artificial insemination with the natural father's sperm, bear and deliver the child to the father, and terminate all parental rights after the child's birth."[34]

Surrogacy is an accepted practice in India and is mentioned in mythological texts like the Mahabharata. Medical reasons or threats to the intended mother's body are common reasons for choosing surrogacy. For example, a woman who has had a hysterectomy may still want a biological child, and a surrogate mother could carry a fertilized embryo.[5]

The bill is analyzed, and what it means and implies is revealed about surrogacy in India. There are certain cases discussed further, showing how the response of the Indian judiciary system is made to the phenomenon of surrogacy and the different rules and regulations related to it.[6]

If you are an unmarried male, a divorced or widowed man, an unmarried woman, a transgender or homosexual, a live-in couple, a child-bearing married couple, or a married couple who is capable of conceiving a child but whose healthy and fertile wife does not want to go through pregnancy for herself, surrogacy is not for you. You are forbidden to export or use your gametes, zygotes, and embryos outside of India, whether directly or indirectly, with any party for your own use without permission from the Indian authorities under the ART Act. This, too, has posed an obstacle to accessing surrogacy overseas.[7]

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[2] bio.libretexts.org, https://bio.libretexts.org/Workbench/Principles_of_the_Human_Body/11%3A_Reproductive_System/11.02%3A_Introduction_to_the_Reproductive_System, (last visited Aug. 6, 2024).

[3] Surrogate parenting: analysis and recommendations for public policy. Hartshorn MA. *JAMA.* 1989;261:1811. [Google Scholar]

[4] Tapan Kumar Chandola1, Ritu Chhabra, Surrogacy: Need and Relevance, 06, International Journal of Law, Page No. 54-59, 2020, https://www.researchgate.net/profile/Dr-Chhabra-2/publication/359107976_Surrogacy_Need_and_Relevence/links/622865773c53d31ba4b38b2d/Surrogacy-Need-and-Relevence.pdf

[5] Suryansh, Advocates: Legality of Surrogacy in India: Everything You Need to Know**,** Khurana & Khurana **(**Aug. 27, 2024, 9:29 PM), https://www.khuranaandkhurana.com/2023/06/16/legality-of-surrogacy-in-india-everything-you-need-to-know/

[6] Shambharkar MB: a critical analysis of the Surrogacy (Regulation) Bill, /lawwallet. **(**Aug. 27, 2024, 9:29 PM), https://lawwallet.in/a-critical-analysis-of-the-surrogacy-regulation-bill-2020/

[7] Dr. Aman Hingorani: Surrogacy law in India: A teasing illusion?, bar and bench, **(**Aug. 27, 2024, 9:29 PM), .https://www.barandbench.com/columns/the-surrogacy-law-in-india-a-teasing-illusion

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In the present time, infertility has become an emerging healthcare concern in both males and females. It may be caused by one or many factors associated with age, genetics, lifestyle, and environmental aspects. As more people face problems with infertility in this modern world, the need for alternative methods of reproduction that will enable them to be parents has become more pressing. Due to advances in artificial reproductive procedures[8] , surrogacy has emerged as an alternative option. Besides the issue of infertility, societal norms have changed to facilitate surrogacy. In this liberated society in which we are presently living, both men and women are conscious of infertility as a medical issue, and the entrance to parenthood is not stringently confined to the heterosexual population. Artificial reproductive processes have allowed any gender to be a parent, and surrogacy has become one of the alternatives.[9]

Types of Surrogacies:

There are mainly two types of surrogacies: one is by the traditional method, while the second is by the gestational method. In the case of traditional surrogacy, the surrogate mother uses her egg; therefore, it does not need any other person's egg. This makes the process very simple and does not require the surrogate mother to go through many fertility treatments. Here the sperm is inserted into the uterus of the surrogate mother through a procedure called intrauterine insemination. The intended mother doesn't have to undergo any procedures regarding extracting her eggs as they are not utilized here. However, in gestational surrogacy, the method used is that of in vitro fertilization, as it is more commonly known; this being its short form; IVF technique. Only this technique is permissible in law in India. Because most surrogate women are not biologically related to the baby this is generally their preferred choice. That is, no genetic link with the baby reduces the potential for bonding emotionally. Moreover, because both the intended mother and the surrogate will be subjected to fertility treatments and egg retrievals, gestational surrogacy can be more expensive than traditional surrogacy. These are required to be supplied either by the intended mother or a donor and involve injections of hormones and close monitoring. The surrogate also undergoes medical testing, hormone treatments, and implantation procedures.[10] True to the meaning of the word, altruistic surrogacy

[8] Mother or nothing: the agony of infertility. Cui W. *Bull World Health Organ.* 2010;88:881–882. [PMC free article] [PubMed] [Google Scholar] [Ref list]

[9] *Id*, at 1710.

[10] *Id*, at 1710.

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is one that involves no financial compensation for the surrogate.[11] On its opposite, commercial surrogacy involves remunerations given to the surrogate for carrying the child, implying a profit, whereas compensated surrogacy simply covers the incurred expenses and loss of wages.[12]

The Legality of Commercial Surrogacy in India:

It has helped people who cannot have a baby themselves; at the same time, it causes problems sometimes. Commercial surrogacy, paying others to carry one's baby, has been banned in India for many reasons. First of all, the woman carrying the baby is often treated poorly and paid very low. It might cause her some problems physically, mentally, and financially. Surrogacy has also resulted in an increased rate of child trafficking. Child trafficking also increased due to surrogacy. Surrogacy can also make babies appear to be things that could be brought by people, which again is an ethical issue. There are also psychological problems regarding surrogacy. These were the common reasons why the Government of India banned commercial surrogacy wholly and regulations to govern more than 3000 IVF clinics were passed.[13] Commercial surrogacy was legalized in India between 2002 and 2015. In those legalization periods, the "businesses of commercial surrogacy flourished in lieu of the vast number of underprivileged women eager to make a decent living by renting their wombs"[14]. There is no clear data on the number of verified couples who sought out surrogate mothers in India during this legalization era. Estimates say that of the approximate 25,000 surrogate children born in India every year, at least 50% were for couples from the Western world.[15]

Since surrogacy turned out to be one of the most in-demand options worldwide, countries began to establish their set of legal regulations regarding this matter. Due to the legal framework's very nature to serve varying purposes in every other country, complicated legal difficulties

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[11] Narayan, Gaurang et al. "The Surrogacy Regulation Act of 2021: A Right Step Towards an Egalitarian and Inclusive Society?." *Cureus* vol. 15,4 e37864. 20 Apr. 2023, doi:10.7759/cureus.37864

[12] dhr.gov, https://dhr.gov.in/document/acts-circulars/surrogacy-regulation-act-2021, (last visited Aug. 6, 2024).

[13] *Commercialization of surrogacy in India: The Effects of Globalisation* (2023) *Times of India Blog*. **(**Aug. 27, 2024, 9:29 PM), https://timesofindia.indiatimes.com/blogs/voices/commercialization-of-surrogacy-in-india-the-effects-of-globalisation/

[14] Surrogacy tourism to rise. Jayaraman KS, Nature India, **(**Aug. 27, 2024, 9:29 PM), https://www.nature.com/articles/nindia.2012.41 Nature India. 2012;1:3–7. [Google Scholar] [Ref list]

[15] Daniyal S. As clamor to ban conversion grows, a reminder: five Indian states have already done so, vedkabhed, **(**Aug. 27, 2024, 9:29 PM), https://vedkabhed.com/index.php/2014/10/09/as-clamour-to-ban-conversion-grows-a-reminder-five-indian-states-have-already-done-so/

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started to develop. Whichever the purpose was to facilitate, regulate, or prohibit surrogacy laws were just so long and varying. While there are countries like the USA, Georgia, Ukraine, and Colombia that have surrogacy-friendly legislations, on the flip side, tight-fisted regimes have been imposed in Iceland, Germany, Sweden, and Austria, among others.[16] As a result, nationals from those countries that had banned surrogacy started commissioning it overseas, and with this, several statutory difficulties arose when the laws clashed across international borders[17]. This legal clash also invoked concerns about evasive travel[18]. This increasing demand, against the background of a non-regulated environment or any form of international coordination, this influx of cases opening the floodgates into India for unethical practices and abuse. There were numerous complaints with the police in the year 2018-2019 regarding harassment of surrogate mothers. Human rights exploitation rackets in the name of surrogacy were exposed, and arrests were made in the year 2019.[19]

History of Surrogacy in India:

The Hindu mythology also offers instances of surrogacy showing the secrecy due to which the practice of surrogacy still surrounds us. In Bhagavata Purana, Vishnu ji heard Vasude's prayers begging Kansa not to kill all sons being born.[20] Vishnu heard these prayers and had an embryo from Devika's womb transferred to the womb of Rohini, the other wife of Vasudev.[21] Rohini gave birth to the baby Balaram, brother of Krishna, and thereafter reared the child with utmost secrecy while Vasudev and Devki told Kansa that the child was born dead. Surrogacy also formed a part of the History of the Mahabharata. In the Mahabharata, Gandhari delivered at the place of a child, a semi-solid material. Maharishi Vyas divided that semi-solid material into

[16] Gaurang Narayan • Hara Prasad Mishra • Tarun Kumar Suvvari • Ishika Mahajan • Mrinal Patnaik • Sahil Kumar • Nidhal A. Amanullah • Smruti Sikta Mishra, The Surrogacy Regulation Act of 2021: A Right Step Towards an Egalitarian and Inclusive Society?, cureus, (Aug. 27, 2024, 9:29 PM), https://www.cureus.com/articles/148645-the-surrogacy-regulation-act-of-2021-a-right-step-towards-an-egalitarian-and-inclusive-society#!/

[17] Chhagani N. International surrogacy countries for parents, ivfconceptions, **(**Aug. 27, 2024, 9:29 PM), https://www.ivfconceptions.com/international-surrogacy-countries/ [Ref list]

[18] Legalizing altruistic surrogacy in response to evasive travel? An Icelandic proposal. Kristinsson S. *Reprod Biomed Soc Online.* 2016;3:109–119. [PMC free article] [PubMed] [Google Scholar] [Ref list]

[19] Suryansh, *Super* note 4, at 1712.

[20] Dr. P. Chand Basha, SOCIO-CULTURAL ANALYSIS OF SORROGACY, 07, International Journal of Research in Economics and Social Sciences (IJRESS), pp. 532~542, 2017, https://euroasiapub.org/wp-content/uploads/2017/11/57ESSOct-5629-1.pdf

[21] Kaur, Dr. (2012). SURROGACY: A PARADOX REGARDING MOTHERHOOD RIGHTS WITH SPECIAL REFERENCE TO INDIA. Volume II. 113-121.

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100 pieces and planted them in different pans.[22] Thus, the 100 Kauravas. The world's second and India's first IVF baby, Kanupriya was born 67 days later on the 3rd of October 1978. The baby, Kanupriya, is the result of efforts made by Dr. Subhas Mukherjee and his two mates in Kolkata. The birth of this first IVF Indian baby was part of a tremendous controversy.[23]

Legal Provisions in India:

- The Surrogacy Regulation Act, 2022
- The Surrogacy Regulation Rules, 2022
- Recent Amendments

Surrogacy Law in India:

It was in the year 2002 that surrogacy was legalized in India. India turned out to be the most preferred nation for surrogacy by foreigners. This opened up an avenue for women's exploitation as well as unethical practices. The low financial status of some Indian women compelled them to turn out to be the perfect sellers of their reproductive capacity.

In the year 2018-19, many surrogate mothers used to report harassment to the police. Many surrogate rackets had been caught in the year 2019.

On one side, the rise in Indian couples opting for surrogacy, and on another side, there is an increasing need to protect surrogate mothers from such exploitation; hence, the need arose to have a law that would safely regulate surrogacy and protect both the surrogate mother and the commissioning parents' rights.[24]

Thus, a new Surrogacy (Regulation) Bill, 2020 was brought.

The Surrogacy (Regulation) Bill, 2020:

The Surrogacy (Regulation) Bill, 2020 (hereinafter referred to as the 2020 Bill) was assented to by the Union Cabinet on 26th February 2020.

The Cabinet had cleared the Bill after incorporating all recommendations of the Rajya Sabha Select Committee. It first came up for discussion in the Lok Sabha of the Indian Parliament

[22] studocu, https://www.studocu.com/in/document/anna-university/mechanical-engineering/a-goldwin-jebaraj-surrogate-motherhood/65571880, (last visited Aug. 6, 2024).
[23] Divyansh Singh, *Super* note 1, at 1713.
[24] Suryansh, *Super* note 4, at 1713.

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when the Government of India took a stand to disallow commercial surrogacy in response to question 100 dated 4th December 2015. Further, the Surrogacy (Regulation) Bill, of 2016, came into existence, after several amendments were passed in 2018 by the Lok Sabha. The Rajya Sabha formed a committee to discuss the Surrogacy (Regulation) Bill 2019 with various stakeholders, and after its report came in, some more amendments were done which ultimately resulted in its passage as an Act on 25th December 2021. It was published along with the Assisted Reproductive Technology (Regulation) Act, of 2021, a week before. The new Surrogacy (Regulation) Act 2021 came into operation on January 25th, 2022. The revised act allows only altruistic surrogacy, which prevents abuse and exploitation of the surrogacy option by persons with the financial capacity to exploit it. Commercial surrogacy, along with trading in human gametes and embryos, is prohibited.[25]

Aim- The 2020 Bill aims to protect the surrogate mother from exploitation and to protect the rights of the child born through surrogacy.

Key Points of the Surrogacy (Regulation) Bill, 2020:[26]

i. Prohibition on Commercial Surrogacy

The 2020 Bill prohibits commercial surrogacy including the sale and purchase of human embryos and gametes.

ii. Altruistic surrogacy allowed

The infertile married couple is allowed by the 2020 Bill to opt for altruistic ethical surrogacy meaning that no awards will be received by her for carrying the baby in her womb, except for some basic medical expenses and insurance coverage.

iii. Age Requirement of intended parents

The married couple willing to have a child through surrogacy should be 23-50 years of age for a woman and 26-55 years of age for a man.

iv. Period of Infertility reduced

[25] *Id*, at 1714.

[26] Dr Nidhi Sharma: Surrogacy Laws In India, https://fertilityworld.in/blog/surrogacy-laws-in-india/

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The period of infertility has been reduced from 5 years to 1 year, as a period of 5 years is too long for a couple to wait for a child. Thus, now after 1 year of infertility also the married couple can opt to become parents through surrogacy.

v. Eligibility criteria to become a surrogate mother

Either one of the intending couples should be suffering from 'proven infertility'. Any married and willing woman between the ages of 25 to 35 years of age having a child of her own can become a surrogate mother. A married couple, who are unable to conceive after unprotected coitus or some other proven medical condition, which is preventing a couple from conception. The couples have certain medical conditions, such as absent or abnormal uterus, irreversible damage or destruction of the uterus, removal of the uterus due to cancer, fibroids, etc.[27] On medical grounds, couples prove that surrogacy is the only option left with them to have a child of their own.

vi. Following people allowed to become intended parents

The 2020 Bill allows the Indian married couple or NRI, overseas Indian citizens, or persons of Indian origin to become parents through surrogacy.

vii. Divorcee and widow included-

The Bill allows Indian divorcees or widows to become intending parents through surrogacy.

viii. Conditions for surrogacy

No surrogacy procedures can be conducted or availed except for the following purposes-

a. When the couple's medical indication indicates gestational surrogacy;

Provided that the Indian-origin couple or a woman who wants to avail surrogacy will have to apply and obtain a recommendation certificate from the Board.

b. When the surrogacy is altruistic;

c. When it is not for commercial purposes

[27] restthecase, https://restthecase.com/knowledge-bank/surrogacy-in-india (last visited Aug. 6, 2024).

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ix. Medical indication certificate necessary

A medical indication certificate from a District Medical Board is required in favor of an intending couple or woman necessitating gestational surrogacy.

x. Insurance coverage

Insurance coverage of 36 months will be provided in favour of the surrogate mother that will cover all postpartum delivery complication

xi. Equal treatment to the child

A child born through surrogacy will be considered as a biological child of intending couple. Thus, a newborn child will be entitled to all rights and privileges similar to a natural child.

xii. Consent before abortion

If the child through surrogacy is to be aborted written consent from the surrogate mother is necessary and the authorization of the proper authority. The authorization must comply with the Medical Termination Pregnancy Act, of 1971.

xiii. Option to withdraw

Till the embryo is implanted in her womb, the surrogate mother has the option to withdraw from surrogacy.

xiv. Period of Infertility

The period of infertility has been reduced from the earlier 5 years to 1 year.

xv. Who is eligible to donate the eggs?

Any willing woman can donate her eggs for a surrogacy program. She must fall under the following criteria: Must have previously successful pregnancy and delivery. She must be between the ages of 25 to 35 years. A certificate of medical, and psychological fitness for donation is mandatory.

xvi. Mandatory Registration of Clinics

The surrogacy clinics need to register themselves with an appropriate authority.

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xvii. Establishment of Boards

The Bill talks about the establishment of the National Surrogacy Board at the Central level and the State Surrogacy Board and appropriate authorities in states and union territories, to closely monitor and regulate the practice of surrogacy.

xviii. Certificate of Eligibility

The intending couple should possess a certificate of essentiality and certificate of eligibility from the appropriate authorities.

xix. Penal Provisions

If any provision of the Bill is violated then 10 years of imprisonment and a fine of 10 lakh rupees can be levied.

The Surrogacy Regulation Act, 2021:

The Act permits only altruistic surrogacy, and that would mean the surrogate mother should not be paid an amount of compensation, except for medical treatment expenses during the pregnancy period including insurance. All forms of commercial surrogacy in which the surrogate is paid in cash or kind are forbidden. Before the intended couple can commission the surrogacy, they have to get two certificates — a certificate of essentiality and a certificate of eligibility — issued by the competent authority. For issuing a certificate of essentiality, the following condition needs to be satisfied: the couple has to obtain a certificate of infertility from a District Medical Board proving their inability to conceive a child. The Magistrate Court also has to pass an order regarding custody of the child. Further, it is also necessary to provide insurance for the surrogate mother to cover postpartum complications up to 16 months after delivery.

Further, the Act prohibits any form of advertisement relating to commercial surrogacy. The punishment for these acts may extend to ten years of imprisonment and a fine extending to ten lakh rupees. It makes it compulsory for every clinic offering treatment relating to surrogacy to be registered and for the practitioners to fulfill certain criteria. The intending couple has to be legally married and fulfill age-related criteria and shall not have any child through surrogacy or adoption.

The Surrogacy Regulation Rules, 2022:

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The Central Government notified the Surrogacy Regulation Rules, 2022 laying down the eligibility and other conditions required for surrogacy clinics being registered. A surrogacy clinic must have a minimum of one gynecologist, one anesthetist, one embryologist, and one counselor to commence operation. Additional staff could be recruited from ART Level 2 clinics. The gynecologist should possess a postgraduate degree in gynecology and obstetrics and have experience in carrying out ART procedures. Surrogacy clinics are required to get themselves registered with the concerned authority, together with the payment of the prescribed fees. After verification, a certificate of registration is issued which has to be displayed prominently at the site of the clinic. Application Denial, Cancellation, or Suspension In the event of denial, cancellation, or suspension of an application, the applicant shall be entitled to present an appeal on an appeal form within 30 days. The accredited agencies shall be permitted access for making unscheduled visits to the surrogacy centers to inspect facilities, equipment, and records provided such facility visits do not pose a threat to the safety of banked gametes and embryos. The guidelines also demand the procedure to be carried out with the surrogate mother's consent willingly. The attempts for surrogacy are allowed only a maximum of three times. Usually, the gynecologist should implant only one embryo, but in exceptional cases, up to a maximum of three embryos may be allowed. In the event of the surrogate mother wanting to terminate the surrogacy, the termination must be done in terms of the Medical Termination of Pregnancy Act, of 1971.[28] Additionally, health insurance for a period of 36 months must be procured by the intended couple or woman for the surrogate mother.

Recent Amendments and Development:

The first amendment to the Rules was notified on 10 October 2022, by which Rule 5(2) relating to insurance coverage for surrogacy was amended. It was specified that according to the amended rule, the intending couple must get cover of insurance for a period of 36 months and obtain a confirmation with an affidavit. In that case, the affidavit had to be sworn before the Metropolitan or the Judicial Magistrate of the First Class. This rigidity has been eased for the first time by the 2022 Amendment, which provides that such an affidavit can be sworn before any one of two additional classes of authority, namely an Executive Magistrate or a Notary Public. It is also expected that this modification will smoothen the process and pave the way for easy application by intending couples to avail surrogacy. This amendment provides more

[28] khuranaandkhurana, https://www.khuranaandkhurana.com/2023/06/16/legality-of-surrogacy-in-india-everything-you-need-to-know/, (last visited Aug. 6, 2024).

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options to the intending couple because increasing the number of entities allowed to swear the affidavit regarding compliance with such a requirement for insurance coverage is likely to result in speedier processing of the surrogacy application. The second amendment to the Rules, which was announced in March 2023, does not allow intending couples to use donor gametes for surrogacy. The earlier rule said that the surrogacy treatment may include fertilization of donor oocyte by the husband's sperm, which some interpreted to mean that the use of donor gametes was permitted. But this provision is substituted by the 2023 Amendment with an entirely new provision stating that the couple or single woman/widow/divorcee shall not use donor gametes. It also added that surrogate mothers cannot provide gametes. Thus, surrogate parenthood might not be easy to choose for intended parents in cases where there is a medical problem with their gametes and they are in need of donor gametes for conceiving a child. This is because the amendment restricts the number of commissions for surrogate parenthood, apart from other limitations on age, marital status, and medical confluences.[29]

Some invoke the Universal Declaration of Human Rights, which states that all men and women of full age have the right to found a family [Article 16(1)], while others refer to the pronouncements of the Indian Supreme Court that family, procreation and sexual orientation form part of the dignity of an individual. A woman's reproductive choice to give birth has been held to be a dimension of her personal liberty under Article 21 of the Constitution [KS Puttuswamy (2017); Suchita Srivastava (2009)]. According to them, it is discriminatory, exclusionary, and arbitrary, and negates reproductive rights. If marriages between persons of the same sex are legally recognized in India, it is asked whether, for instance, a legally married male homosexual couple can then be denied a biological child through surrogacy to complete their family. Others suggest the current surrogacy legislation should not be changed based on the commercial exploitation of surrogate mothers and the children born of surrogacy by especially foreign couples. It bans commercial surrogacy, and the undertaking of commercial surrogacy is made a non-bailable and non-compoundable offense under the surrogacy law. The commission of such an offense invites imprisonment for a term that may extend to ten years and with a fine that may extend to ten lakh rupees.

[29] Kriti *et al*, *Methods of treatment revised vide surrogacy (regulation) amendment rules, 2023*, *SCC Blog*, **(**Aug. 27, 2024, 9:29 PM), https://www.scconline.com/blog/post/2023/03/15/ministry-of-health-and-family-welfare-notified-surrogacy-regulation-amendment-rules-legal-research-legal-update-legal-news/

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If the parties do engage in such commercial terms as the consideration for surrogacy, the very object of the law to ban commercial surrogacy stands defeated.[30] The State may contend that such commercial transaction is not enforceable, and so none of the parties can really do much about it. It is here that Section 42 of the Surrogacy Act will be handy for the surrogate mother. It has thus introduced a provision whereby the court, notwithstanding anything contained in the Indian Evidence Act, 1872, shall presume, unless the contrary is proved, that the surrogate mother was compelled by the intending couple to render surrogacy services for purposes other than those permissible under the Act. All that a surrogate mother needs to do in order to negate an altruistic surrogacy agreement or to compel the intending couple to give undue or even extortionist payments/benefits is to allege that her consent was vitiated on account of some fear of injury, or under a misconception of fact or misrepresentation in terms of Section 90 of the Indian Penal Code, 1860 (IPC), and leave it to our criminal justice system – known to make the process a punishment – to do the rest. The State could not have been unaware of the contribution that the prevalent misuse of the provisions of Section 498-A (cruelty) and Section 377 (unnatural sex) of the IPC by an estranged wife to settle marital scores and the increasing trend of the relatives of the husband being roped in under Section 376 (rape) of the IPC.[31]

Landmark Judgements:

Jan Balaz v. Anand Municipality [2009 SCC OnLine Guj 10446][32] : This is a landmark case related to surrogacy law in India. In the year 2008, the petitioner German national entered into a surrogacy agreement with an Indian woman for a child. The child was born in Gujarat, India, and the petitioner obtained a birth certificate for the child. However, the authorities did not permit him to take the child out of India. The Petitioner, therefore approached the Gujarat High Court by filing a petition seeking permission to leave India with the child. The Court dismissed the petition at the threshold on the ground that the welfare of the child and the legality of commercial surrogacy in India has to be considered. However, the court allowed the petitioner to leave the country with the child, subject to certain conditions. The case had thrown into focus the issue of commercial surrogacy in India and the necessity for more explicit laws and regulations relating to surrogacy contracts. It also brought up the importance of taking

[30] Aman Hingorani, Surrogacy law in India: A teasing illusion?,barandbench, (Aug. 27, 2024, 9:29 PM), https://www.barandbench.com/columns/the-surrogacy-law-in-india-a-teasing-illusion

[31] Shambharkar MB, Super *note* 5, at 1720.

[32] Jan Balaz v. Anand Municipality, 2009 SCC OnLine Guj 10446

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measures to safeguard the interest and well-being of the children born out of surrogacy arrangements.

Baby Manji Yamada v. Union of India [(2008) 13 SCC 518]*[33]*: This was concerned with a surrogate baby born to a Japanese couple through a surrogate mother in India. The couple divorced and the mother refused to take the custody of the child, while the father could not secure a visa to enter India to collect the child. The case has stirred many questions regarding the status of surrogate children and their rights, surrogacy clinics' obligations, and those of the intended parents. It was at the directions of the Supreme Court that the Japanese consulate in India was to issue the travel documents required for the child to be taken to Japan while recommending that the Indian government draft regulations manage surrogacy in India.

Loopholes in the Surrogacy (Regulation) Bill, 2020:

(i). In ***Consumer Education and Research Center and others v. Union of India, 1995 SCC (3) 42***,[34] the Supreme Court stated that the expression life under Article 21 of the Constitution includes the 'right to livelihood'. But this right of livelihood is violated. [35] as the 2020 Bill puts a complete ban on commercial surrogacy. Surrogacy was a means of livelihood for many low-income Indian women. A complete ban on it will now make them financially dependent on others.

(ii) In the case ***Devika Biswas v. Union of India (2016) 10 SCC 726***,[36] it held that the Right to life includes the 'right to reproduction'. The right to reproduction will include the right to carry, give birth, and raise children, but the 2020 Bill restricts an intending woman more than 50 years of age and a man more than 55 years to opt for surrogacy to become the parents.

(iii) Article 14 of the Constitution grants 'equality before the law and equal protection of law to all persons'. Nevertheless, the spirit of Article 14 allows for reasonable classification. However, the court has specified two tests to verify reasonable classification. Firstly, it should be founded on intelligible differentia, that is, the difference must have the ability to be understood. Secondly, the difference should have some rational connection to the object of

[33] Baby Manji Yamada v. Union of India, (2008) 13 SCC 518
[34] Consumer Education and Research Center and others v. Union of India, 1995 SCC (3) 42

[36] Devika Biswas v. Union of India (2016) 10 SCC 726

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such a classification. The 2020 Bill bans unmarried single women from commissioning surrogacy. No reasonable explanation has been given for why a single woman cannot be permitted to be a mother. Such differentiation has no rational relation with the object to be achieved by the Bill.

(iv). The proponents of commercial surrogacy argue that the surrogate mother should be allowed to take charges for such a long-duration service provided to the intending parents. But the altruistic surrogacy provides the surrogate mother with mere medical expenses.

(v). The Bill requires the consent of proper authority and surrogate mother for an abortion but remains silent upon the consent of intending parents. It is a loophole of which advantage can be taken advantage of by the surrogate mother.

Surrogacy and the LGBTQIA+ community:

The 2021 Act limits altruistic surrogacy to preclude homosexual couples. It panders to the stereotypical notion of a family, not only from the perspective of a heteronormative household dynamic but also presumptively upon the women's lack of autonomy. Indian law and social mores, along with religious dogma, state that for the holistic development of a child, both parents should be of two different sexes. Opposite to this way of thinking, the hypocrisy in the given idea rests on the very fact that it allows for access and use of ART services by widowed and divorced women. This is discriminatory; it derecognizes the LGBTQIA+ community from the ambit of surrogacy.[37] Curiously enough, one can still argue that the said Act is in conformance with the Universal Declaration of Human Rights, passed in 1948 and signed by India. Article 16.1 of the Declaration says, "Men and women of full age without any restriction due to race, ethnicity or religion have the right to marry and have a family". The Indian judiciary, sensitive to that, regards the right to procreate as a fundamental one. In **B. *K. Parthasarathy v. Government of Andhra Pradesh 1999(5)ALT715***, the Andhra Pradesh High Court, for instance, held that civil rights rightly included the freedom to reproduce and "the right to reproductive autonomy" indeed comes under the "right to privacy."[38]

[37] Divyansh Singh, Super note 2, at 1722.

[38] B.K. Parthasarathi vs Government of A.P. & Ors. 2000 (1) ALD 199, 1999 (5) ALT 715, Andhra High Court. B.K. Parthasarathi vs Government of A.P. & Ors.

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In the ***Navtej Singh Johar v. The Union of India*** case, the Supreme Court of India unanimously declared that Section 377 was unconstitutional.[39] The erudite judges who decided the fate of this case pronounced that to "assault" the LGBTQIA+ community on account of their sexual orientation is against the basic constitutional rights of equality, freedom of speech, right to choose, and right to dignity. The LGBTQIA+ community was also assured of being entitled to equal legal rights and to be treated no differently in society and without any stigma.[40] Through surrogate arrangements in India, many gay couples from Spain and Israel were successful in starting families.[41,42] This provides evidence that parenting a same-sex child is the same as raising a child of a heterosexual marriage. Due to the effective surrogacy ban in the region, there has been a marked surge of single gay men or gay couples as well as single lesbian females or lesbian couples choosing to become parents in Mexico or the US.[43,44] Although decriminalizing homosexuality was a welcome step, revolutionary constitutionalism and its incorporation into public policy still have a long way to go. Despite the repeal of Article 377, the LGBTQIA+ population continues to face societal stigma and denial of fundamental civil rights.[45,46] In the landmark decision of the National Legal Services Authority v. Union of India, the Supreme Court recognized transgender people as a third gender.[47] The 2021 Act makes no mention of granting the people belonging to the third gender equal rights. It is therefore safe to infer from the aforementioned legal precedents that the courts have upheld physical and sexual autonomy by decriminalizing Section 377 under Articles 14, 19, and 21. It is regrettable that the same policy has not been implemented to permit members of the LGBTQIA+ community to become parents through surrogacy.

[39] Navtej Singh Johar & Ors. v. Union of India. Writ Petition (Criminal) No. 76 of 2016.
[40] *Id*, at 1723.
[41] National Legal Ser Authority v. Union of India & Ors. Writ Petition (Civil) No. 400 of 2012], *National Legal Ser Authority v. Union of India & Ors. Writ Petition (Civil) No. 400 of.* 2014
[42] Divyanshu Singh, Super note 1, at 1723.
[43] Procreative consciousness in a global market: gay men's paths to surrogacy in the USA. Smietana M. *Reprod Biomed Soc Online.* 2018;7:101–111. [PMC free article] [PubMed] [Google Scholar] [Ref list]
[44] Fatherhood as a spatial-contextual phenomenon: Israeli gay fathers through surrogacy. Tsfati M, Nadan Y, Biton N. *Men Masc.* 2020;24:590–600. [Google Scholar] [Ref list]
[45] Suryansh, Super note 4, at 1723.
[46] The Surrogacy Regulation Act 2021: another attempt to reproduce a heteronormative patriarchal society? Babbar K, Sivakami M. https://feminisminindia.com/2022/02/02/the-surrogacy-regulation-act-2021-another-attempt-to-reproduce-a-heteronormative-patriarchal-society/ *Fem India.* 2022;20:20. [Google Scholar] [Ref list]
[47] Devika Biswas, Super note 27, at 1723.

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Excluding live-in relationships from the scope:

Live-in partners are ruled out from the ambit of the Act. Live-in relationships, occurring between two consenting adults, are not illegal in India, as generally misunderstood. The same was upheld in the case of ***Lata Singh v. State of UP***, 2006. The Supreme Court in ***S. Khushboo v. Kanniammal*** held that a live-in relationship comes under the ambit and is protected by Article 21- right to life. The Supreme Court, in the case of ***Badri Prasad v. Director of Consolidation***, held that there existed a valid live-in relationship for a period of 50 years.[48] In the similar case of ***Payal Sharma v. Superintendent. Nari Niketan***, Allahabad High Court while echoing "A man and a woman, even without getting married, can live together if they wish". The courts have thus made it clear that not every conduct that is socially acceptable must necessarily be treated as illegal.[49] Yet, it does not say why the right to choose the path of parenting is denied to these couples, and that is something that is yet to be talked about. Under the latest Medical Termination of Pregnancy Amendment Act, 2021, the word 'husband" has been replaced by "partner", which also extends the right to use abortion services[50], to any woman with an unwanted pregnancy, whether married or not. Therefore, it is tantamount to hypocrisy when Indian courts approve of live-in relationships, but instead of considering the merits of a legal question on such an issue, they would rather ponder whether it is likely to "promote" the concept of "promiscuity", and insulting too when such promiscuity is de facto associated with unmarried women. In the same vein, it is not proper for the Act to use the same theory in restricting who may be a surrogate.

Altruistic model promoting "forced labor":

The nagging fear in the House is that the incidence of illicit or clandestine surrogacy would increase as commercial surrogacy becomes prohibited. The general tendency of the infertility healthcare industry to maximize profits through the use of unethical and corrupt methods will further facilitate the path to exploitation and corruption.[51,52,53,54] The recent case of a minor

[48] Badri Prasad vs Dy. Director of Consolidation. No. 1978 AIR 1557, 1979 SCR (1]

[49] Talawar N. Legal status of live-in relationship in India, legalbites, **(**Aug. 27, 2024, 9:29 PM), https://www.legalbites.in/legal-status-of-live-in-relationship-in-india/#:~:text=In%20Payal%20Sharma%20v.%20Superintendent%2C%20Nari%20Niketan%20the [Ref list]

[50] The Medical Termination of Pregnancy (Amendment) Act, 2021.

[51] Mother or Nothing, Super Note 9, at 1724.

[52] Daniyal S. As, Super note 13, at 1724.

[53] Chhagani N, Super note 14, at 1724.

[54] Suryansh, Super note 4, at 1724.

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girl allegedly being compelled to sell her eggs for donation is one classic example of the ills that can happen.[55] Commercial surrogacy, if altogether prohibited, then would amount to a violation of Article 19(1). Poverty as it exists and other feelings encourage forced labor. It is for this reason that the bodily autonomy of the consenting adults' right to earn a livelihood must not come at the cost of human dignity, which a commercial racket seemingly exploits. The aim, therefore, would be to settle for a compromise that enables commercial surrogacy to take place under the protection of an umbrella of legislation concerning human rights. To this end, some scholars have devised concepts of "compensatory surrogacy" where costs can be determined by qualified authorities.[56],[57]

Long-term health implications on the surrogate mother and the fetus: an unsettled debate:

The concern of teratogen and maternal drug abuse has always been there as it affects the health of the fetus. If, in any case, a fetus is affected due to an unwanted or intentional overuse of drugs by the surrogate, the rules and regulations say nothing about the consequences to be faced by her. [[58],[59]] The present Act also does not provide any enlightenment on the possible risk that the mother may have contracted some form of venereal disease and the possibility that the infection may affect the fetus in utero. Precautionary elaborate screening of intending parents is an apparently workable solution in preventing such mishaps from happening.[60],[61] Many studies also report that the incidence of postpartum consequences is significantly higher in surrogate pregnancies. The commonly encountered maternal complications are gestational diabetes mellitus, hypertension complicating pregnancy, and risk of postpartum hemorrhage.

[55] 6 hospitals, 4 in Tamil Nadu, flouted rules while harvesting eggs of Erode girl, timesofindia, **(**Aug. 27, 2024, 9:29 PM), https://timesofindia.indiatimes.com/city/erode/6-hospitals-4-in-tn-flouted-rules-while-harvesting-eggs-of-erode-girl/articleshow/92760238.cms [Ref list]

[56] Aggarwal S, Garg L. LSE - Human Rights: the new surrogacy law in India fails to balance regulation and rights. [Jul; 2022]. 2016. https://blogs.lse.ac.uk/humanrights/2016/11/23/the-new-surrogacy-law-in-india-fails-to-balance-regulation-and-rights/ [Ref list]

[57] Behera S. A critical analysis of the Surrogacy (Regulation) Bill, 2020. [Jul; 2022]. 2020. https://lexforti.com/legal-news/surrogacy-regulation-bill-2020/ [Ref list]

[58] 6 Suryansh, Super note 4, at 1725.

[59] 7thpaycommissionnews.in https://7thpaycommissionnews.in/central-govt-employee-opts-for-a-surrogate-child-what-says-ccs-leave rules/#:~:text=The%20prospective%20surrogate%20mother%20must%20also%20declare%20that

[60] Medical and mental health implications of gestational surrogacy. Yau A, Friedlander RL, Petrini A, et al. *Am J Obstet Gynecol.* 2021;225:264–269. [PubMed] [Google Scholar] [Ref list]

[61] American surrogacy, https://www.americansurrogacy.com/surrogate/risks-of-being-a-surrogate-mother,

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Considering that surrogacy is associated with the technique of IVF where generally more than one embryo is implanted, there is a risk for the fetus related to multiple gestations, low birth weight, and preterm delivery.[62] Merely providing insurance for a period of 36 months may not help the surrogate mother [[63],[64]] The present Act does not contemplate health issues with respect to the surrogate mother and the child.

Unseen mental health implications:

Though the present Act is explicit and stringent on the aspect of ascertaining the psychological suitability of a surrogate, it keeps silent on the aspect of de novo psychiatric disorders manifesting subsequent to implantation. Besides, unresolved mental health issues of the surrogate mother may have implications for the fetus in utero.[[65],[66]] The present Act only talks about ensuring psychological fitness while screening and accepting surrogate mothers. Although there is such a provision, the Act does not specify a formal psychiatric assessment by a mental health practitioner for a psychological fitness certificate. This reflects the ignorance of legal bodies toward the addressing of possible mental health issues for holistic health care delivery.[67],[68] Furthermore, surrogate babies cannot be overlooked for a wide array of short-term and long-term mental issues. A few studies point out the possibilities relating to the surrogate mother who may suffer from postpartum depression, postpartum blues, and postpartum psychosis. Considering the well-being of the child, it is of utmost importance to

[62] Surrogacy and pregnancy. Phillips AM, Magann EF, Whittington JR, Whitcombe DD, Sandlin AT. *Obstet Gynecol Surv.* 2019;74:539–545. [PubMed] [Google Scholar] [Ref list]

[63] Suryansh, Super note 4, 1726.

[64] Surrogacy: outcomes for surrogate mothers, children, and the resulting families-a systematic review. Söderström-Anttila V, Wennerholm UB, Loft A, Pinborg A, Aittomäki K, Romundstad LB, Bergh C. *Hum Reprod Update.* 2016;22:260–276. [PubMed] [Google Scholar] [Ref list]

[65] India's unregulated surrogacy industry. Shetty P. *Lancet.* 2012;380:1633–1634. [PubMed] [Google Scholar] [Ref list]

[66] Reconceiving surrogacy: toward a reproductive justice account of Indian surrogacy. Bailey A. *Hypatia.* 2011;26:715–741. [Google Scholar]

[67] BBC, http://www.bbc.com/news/world-asia-india-37182197, (last visited Aug. 6, 2024).

[68] Reorienting the ethics of transnational surrogacy as a feminist pragmatist. Banerjee A. https://www.jstor.org/stable/10.5406/pluralist.5.issue-3 *Pluralist.* 2010;5:107–127. [Google Scholar]

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cater to the emotional and mental dimensions of health. These lacunae have to be filled effectively.[697071]

Discrimination on the basis of "ableism":

The new Act allows a couple having a child diagnosed with some incurable physical and mental illness to have the services of surrogacy as duly approved by the District Medical Board. However, this is an unclear and ineffective guideline in the light of defining the limits of such disability and at the same time various conditions, which it posits. It further creates a lacuna as regards the understanding of the extent of the disability and determining its degree of dependence. Hence, the present algorithm stands to be insufficient, not specifying and explaining clearly the physical/mental disability that makes unjust discrimination against the common man on the basis of ableism.[72] On the other hand, upon the arrival of a new healthy child, the disabled child risks being overlooked and underappreciated economically and emotionally. Similar to the case of a second child, although the coming of the second child can spur interactions and the development of emotional bonding with the first child, forming an effective support system can be tricky, especially if the second child feels it to be forced.[73], [74]

The downfall of procreative medical tourism:

As surrogacy was totally legal in the whole Indian territory during the reported period, advances in surrogacy contributed to the emergence of "procreative medical tourism". One of the main reasons infertile couples come to India for infertility treatments is the affordability of treatment and availability of all modern reproductive techniques. Subsequent to the landmark cases, ***Baby Manji Yamada vs. Union of India and Jan Balaz vs. Anand Municipality***, the provisions for surrogacy, as related to the contracts of custodianship and citizenship of the

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[69] 6 hospitals, Super note 46, at 1727.

[70] Aggarwal S, Super note 47, at 1727.

[71] Surrogate mothers 10 years on: a longitudinal study of psychological well-being and relationships with the parents and child. Jadva V, Imrie S, Golombok S. *Hum Reprod.* 2015;30:373–379. [PubMed] [Google Scholar] [Ref list]

[72] *Id*, at 1727.

[73] An international view of surgically assisted conception and surrogacy tourism. Ahmad N. *Med Leg J.* 2011;79:135–145. [PubMed] [Google Scholar] [Ref list]

[74] Surrogacy and "procreative tourism". What does the future hold from the ethical and legal perspectives? Piersanti V, Consalvo F, Signore F, Del Rio A, Zaami S. *Medicina (Kaunas)* 2021;57:1–5. [PMC free article] [PubMed] [Google Scholar] [Ref list]

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children born to intending foreign nationals, have been put to test.[75] With the agenda of protection of child rights, the current Act was designed keeping in mind the ban for foreigners from availing the services of surrogacy in India. The result was an oversupply for this huge population of "fertility tourists" coming to India.[76],[77] While the present Act is one step towards safeguarding the rights of the child, it has totally overlooked the economic aspects and financial compensation for the surrogate mother. India is a poor country, and when surrogacy was initiated in the country, it was found to be one way through which women from the poorer sections could get employment. In this altruistic model, there is no economic advantage for women of poor backgrounds, and with the above-mentioned examples of forced labor and covert surrogacy, the surrogate women fail to reap economic gains. Thus, finding alternatives that strike a balance rather than completely banning commercial surrogacy will help provide an effective solution to tackle the risk of exploitation of poor surrogate mothers.[[78],[79]]

Short-term disability insurance coverage: a seemingly possible solution for the compensation of lost wages:

The STD insurance coverage is one of those programs, which offers early financial support to the disabled in order to assist them in continuing their work. The provision prevents long-term benefits with the retention of a modest compensation.[80] This provision has recently been extended to surrogates so as to make up for some of the wages lost. Although this insurance, in general, does not compensate for all the lost income of the surrogate, yet it will be of some help to them. Whether they would be eligible to avail themselves of the maternity benefits allowing them up to 26 weeks of paid maternity leave is not clear. Options like short-term

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[75] Sahabuddin Mondal MD. Problems and issues of surrogate mother and her child. [Jul; 2022]. 2021. https://www.legalservicesindia.com/article/2310/Problems-And-Issues-of-Surrogate-Mother-and-Her-Child.html [Ref list]

[76] Suryansh, Super note 54, at 1728.

[77] *Id*, at 1728.

[78] *Id*, at 1728.

[79] *anham: Lexington Books.* Blue Ridge Summit, PA: Lexington Books; 2014. Globalization and Transnational Surrogacy in India: Outsourcing Life; p. 258. [Google Scholar] [Ref list]

[80] Benefit duration and return to work outcomes in short term disability insurance programs: evidence from temporary disability insurance program. Bourbonniere AM, Mann DR. *J Occup Rehabil.* 2018;28:597–609. [PubMed] [Google Scholar] [Ref list]

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disability insurance, available in some parts of the US, maybe a workable alternative in such instances.[81,82]

Aside from the compensation for the health insurance of the surrogate, to prevent ethical problems that are not related to compensation, additional monetary funding may be needed. The international model suggests providing independent legal representation for the surrogate enough in monetary compensation for the losses in terms of finances and possible consequences to mental and physical health in the future.[83,84]

Glass ceiling "women's rights"

Under the amended Medical Termination of Pregnancy Act, of 1971, in 2021, unmarried pregnant women are legally allowed to have abortions if they so wish.[85] The same Act, while recognizing a woman's rights over her own body, has contradicted this by being at variance with the Surrogacy Act that denies these services to unmarried women. While it is true that there have been some cases where women were abused in the exercise of their human rights in the setting of commercial surrogacy, it is also a fact that many examples have given them a dignified life, financial independence, and at times the opportunity to educate their children in an attempt to secure their future.[86] A woman's choice in respect of her reproductive rights is a basic worship and an inseparable part of her freedom and liberty as guaranteed under Article 21 of the Constitution of India.[87] Using marriage as a social fiction to define eligibility for surrogacy and becoming a surrogate curbs reproductive autonomy and confines beneficial

[81] Disability insurance: maternity and pregnancy leave. [Jul; 2022]. 2016. https://www.guardianlife.com/disability-insurance/pregnancy [Ref list]

[82] Dear Savvy Surrogate. Please explain short term disability. [Jul; 2022]. 2018. https://www.newenglandsurro.com/blog/surrogacy-short-term-disability-lost-wages [Ref list]

[83] Regulating the international surrogacy market:the ethics of commercial surrogacy in the Netherlands and India. Blazier J, Janssens R. *Med Health Care Philos.* 2020;23:621–630. [PMC free article] [PubMed] [Google Scholar] [Ref list]

[84] Regulation of surrogacy in India: whenceforth now? Parry B, Ghoshal R. *BMJ Glob Health.* 2018;3:0. [PMC free article] [PubMed] [Google Scholar] [Ref list]

[85] Medical Termination of Pregnancy (Amendment) ACT 2021 - a review. Khan MK, Ali K. *Int J Forensic Med Toxicol Sci.* 2022;7:1–3. [Google Scholar] [Ref list]

[86] Vashisth A. Surrogacy and women's right in India. [Jul; 2022]. 2020. https://lawtimesjournal.in/surrogacy-and-womens-right-in-india/ [Ref list]

[87] Justice K.S. Puttaswamy & Ors. V. Union of India (UOI) & Ors. 2017 (10) SCC 1. [Jul; 2022];https://indiankanoon.org/doc/91938676/ *V. Union of India (UOI) & Ors.* 2017 10:1–15. [Google Scholar] [Ref list]

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provisions of law to a section of society.[88] More significantly, with regard to the adjustment of the definition of reproductive rights, placing an age limit on women to become either surrogate mothers or intending mothers denies them their basic reproductive rights.

CONCLUSION:

Surrogacy has been a significant source of income for many low-income Indian women and clinics, but it has also been a source of abuse and harassment. The 2020 Bill, which bans commercial surrogacy, does not allow single unmarried women to become mothers or homosexual couples to become parents through surrogacy. This has led to childlessness remaining taboo in society, and surrogacy may be the last ray of hope for many people who may return helplessly due to the provisions of the bill. Surrogacy has been practiced since ancient times and is not limited to couples who are infertile or not able to have a child without any medical deformity. As India becomes a booming industry for surrogacy, there are complexities and social, ethical, and legal issues related to surrogacy. The Surrogacy Regulation Bill in India comes at the right time to address the complexities and social, ethical, and legal issues related to surrogacy. The bill focuses on prohibiting the exploitation that is practiced with the surrogate mother and the child born through surrogacy. The Surrogacy (Regulation) Act of 2021 attempts to regulate surrogacy in India, but it falls short of meeting the Golden Triangle Test of protecting fundamental rights guaranteed by the Indian Constitution. The Act effectively excludes certain sections of society, such as LGBTQIA+ individuals, from opting for surrogacy as a last resort for biological parenthood. Additionally, the Act places numerous hurdles in the name of protecting women from the pitfalls of commercial surrogacy and the artificial reproduction industry, which could have unintended consequences. There is a need to amend the Act to make it a more comprehensive piece of legislation that supports an inclusive and egalitarian society. This can be achieved by acknowledging the shortcomings, addressing the problems, and ultimately arbitrating the law to strike a balance between the interests of all stakeholders. The new laws and regulations must also take into account changing societal patterns to ensure they remain relevant and effective in addressing surrogacy laws.

[88] Mahapatra.D Mahapatra.D. Unwed woman cannot be denied right to abortion, says Supreme Court. [Jul; 2022]. 2022. https://timesofindia.indiatimes.com/india/unwed-woman-cannot-be-denied-right-to-abortion-supreme-court/articleshow/93038683.cms

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