

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

---

**Volume 4 | Issue 1**  
**2021**

---

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Surrogacy: Meaning and Legality in India

---

MS ARCHANA KUMARI<sup>1</sup> AND DR SHASHI BHUSHAN<sup>2</sup>

## ABSTRACT

*A significant strategy which alludes to an agreement wherein a woman carries pregnancy for another couple is known as surrogacy. Number of infertile couples from all over the World approach India where commercial surrogacy is not illegal. There are ethical, moral, social and other legal matters co-related with this agreement which seems to be concerned to surrogacy. The journey of surrogacy of becoming popular in India started from a surrogacy center since 2002 to the Surrogacy (Regulation) Bill, 2016, which would confine the choice of surrogacy. It is necessary to frame such laws carefully regarding some certain sensitive issues related to this agreement for the safety and security of the rights of a surrogate mother and intended parents. In the present article we have discussed the concept and meaning of surrogacy and the issues involved with commercial surrogacy.*

**Keywords:** Surrogacy, Commercial, Law

## I. INTRODUCTION

Surrogacy means "The process of carrying and delivering a child for another person."<sup>3</sup> Imminent guardians have a few options in contrast to natural kid origination and pregnancy, including the utilization of a substitute mother to convey an embedded incipient organism to term. It is significant for expected surrogacy moms and imminent guardians to completely comprehend surrogacy laws, which contrast by state.<sup>4</sup>

The "Surrogate" word has its origin within the Latin term 'Surrogatus' meaning a woman acts as a substitute for another woman. It is a strategy for helped propagation or Assisted Reproductive Technology (ART) where in the interest of someone else or couple a lady or the substitute proposals to bring a child through pregnancy and afterward return the infant to the planned parent(s) whenever it is conceived and furthermore consequently will get pay as

---

<sup>1</sup> Author is a Research Scholar at Career Point University Hamirpur(H.P.) India.

<sup>2</sup> Author is an Assistant Professor at Career Point University Hamirpur(H.P.) India.

<sup>3</sup>10 BLACK'S LAW DICTIONARY 1674 .

<sup>4</sup> Karine Bogoraz, *Student Project: Surrogacy Research Guide: Introduction*, LIBRARY GUIDES (Apr. 13, 2020 1:57 PM) <https://libraryguides.law.pace.edu/surrogacy>.

concurrent.<sup>5</sup>

The pain of a surrogate can be heartfelt by the poem of one of the surrogate mother:

*“I gave you life, but you are not mine  
Sweet little one, one day you will understand  
The way you came to be  
That you came from me  
I felt your kicks and hiccups for 9 months  
You felt my heart beating and my voice as I talked  
That scar on my belly, the one that reminds me of you  
Is the most perfect because it tells a story  
A story of a sweet little angel  
An angel that changed my life and made dreams come true  
That angel is you Maya  
As small as you are, you have changed the world  
I have never felt a love like this before  
The love of a mother to a child  
Yet so different from my own children  
A bond so strong nobody could ever break  
You special child  
I wish I could kiss, hug and hold  
But instead I just keep you in my heart  
And treasure you like gold  
You see little one you are not my own  
Surrogacy made you be  
And so surrogacy has changed me  
So this bond we have will forever stay  
As I handed you over to your loving father’s  
I whispered something to you, Do you remember?  
I sent you with a piece of my heart  
I sent you with a piece of my soul*

---

<sup>5</sup> Shikha Goyal, Surrogacy in India: History, Impact on Poor and facts, JAGRAN JOSH (August 17, 2020 17:25 IST) <https://www.jagranjosh.com/general-knowledge/surrogacy-in-india-1597665040-1>.

*Do I miss you?  
Everyday  
Do I love you?  
Every way  
And so as I celebrate mother's day  
I include you as my child  
And say thank you to you for changing me  
And making me see  
I gave you life, but you are not mine  
Sweet little one, one day you will understand  
The way you came to be  
That you came from me”<sup>6</sup>*

## II. HISTORY OF SURROGACY

In 2002, commercial surrogacy or casually 'Rent a Womb' practice was docile in India. It was done to advance clinical the travel industry in India and after this choice, India turned into "the center of surrogacy". The fundamental explanation being the ease in India that is in the U.S it cost approx \$100,000 and furthermore the nonappearance of severe enactment. According to the CII report 2012, the size of India's surrogacy industry was \$2 billion every year. Furthermore, it was assessed that in excess of 3,000 fruitfulness centers were occupied with this the nation over.<sup>7</sup>

The unregulated business of surrogacy raised concerns like untrustworthy practices, because of it the agents and business offices benefitted most, misuse of surrogate moms, surrender of youngsters resulting from surrogacy, rackets like organ exchange, undeveloped organism import, and so forth. That is the reason enactment to control surrogacy in the nation came in to compel.<sup>8</sup>

Notwithstanding, the modernistic Surrogacy appeared in mid 1970 and the main "official" lawful surrogacy law/understanding was docile. At a similar timeframe the world's first 'test tube' child - Louise Joy Brown was conceived and the surrogacy turned into the public and worldwide news.<sup>9</sup>

---

<sup>6</sup> Isabelle, *Surrogate Mother Poetry*, CANADIAN FERTILITY CONSULTING (Jan. 27, 2021, 11:51AM), <https://fertilityconsultants.ca/2013/06/surrogate-mother-poetry/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Dr. Dedeepya Rambhakta, *Surrogacy, Surrogacy in India: A Thorny Issue*, KIMS MEDICAL COLLEGE

Albeit this was not specific a surrogate mother circumstance, this occasion cleared approach to what in particular is currently known as gestational surrogacy-a training that is being utilized today for embedding both sperm and egg in a research center and later positioned into the surrogate mother's uterus.<sup>10</sup>

- World's second and India's first IVF infant was brought into the world on October 3, 1978 in Calcutta and similar made history when India turned into the principal nation to authorize commercial surrogacy in 2002 and since the time the Surrogacy got well known.
- It was not until 1980 the initially paid conventional surrogacy was led. In the 1st such instance of surrogacy, a 37 year old surrogate mother was paid \$10,000 for the prosperous accouchement of an infant kid.
- Not long after in 1983, the main prosperous pregnancy was done by means of egg donation. For this situation, a lady had the option to bring forth infant using eggs that were given from another lady. Resulting to this the 1st gestational surrogacy was done in 1985.<sup>11</sup>

#### **(A) Recent History of Surrogacy**

Throughout the long time period, surrogacy has become a significantly more mainstream process and strategy than it was only a couple many years back. Indeed, in the course of recent years, certain occasions have occurred that has made surrogacy history. For instance, in 2001 the elderly surrogate mother around then brought forth her own grandkids, while in 2005; a 58-year old surrogate mother brought forth her own twin granddaughters.<sup>12</sup>

#### **(B) Concept of Surrogacy in Ancient Time**

Procreation is a consistent process. An offspring isn't just a wellspring of solace yet additionally a transporter of one's ancestry. The family name is passed on for ages, and thusly, it's 'important' to have a kid. The whole evenhanded of marriage comes down to reproduction, lamentably. The intimacy, sexual pleasure might be lacking, but the result is essential (a baby boy preferred).<sup>13</sup>

---

(Aug. 24, 2017 12:19PM) [https://www.kimsmedicalcollege.org/2018/24-8-2017-Surrogacy-ethical%20\\_%20legal-aspects.pdf](https://www.kimsmedicalcollege.org/2018/24-8-2017-Surrogacy-ethical%20_%20legal-aspects.pdf) .

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> MD Sahabuddin Mondal, *Problems and Issues of Subrogate Mother and her Child- An Analysis*, LEGAL SERVICES INDIA (Jan. 27, 2021 12:27PM) <http://www.legalservicesindia.com/article/2310/Problems-And-Issues-of-Surrogate-Mother-and-Her-Child.html>.

<sup>13</sup> Mansi Rawat, *Youth ki Awaaz*, ED TIMES (Oct. 09, 2018 1:52PM)

This desperation to have a child has prompted a ton of uncalled rehearses, one of them being Niyoga Dharma. Niyoga signifies "delegation". In old India, it was an act of framing a transitory union to produce a child, on the off chance that the husband was impotent or dead. In the Hindu religion, it is considered as the obligation of a man to provide his wife a child. Just on the finishing of this duty, a man can enter paradise.<sup>14</sup>

On the off chance that the man can't fulfil his duty, aside from the disgrace he has to bear; he additionally needs to assign a temporary partner to his better half to finish the 'motivation behind' marriage. Preferably, the nearest alternative the spouse ought to consider is his youthful brother, and his next decision ought to be a Brahman. As per the Hindu mythology, here and there, divine beings have additionally descended to produce kids. We have a few examples of Niyoga Dharma in our sagas. In Mahabharata, Pandu's spouses Kunti and Madri had kids, albeit this wasn't viewed as a Niyoga. Pandu communicated his gloom at the possibility of passing on childless to Kunti and encouraged her to go to various men. Kunti utilized the shelters given to her by Sage Durvasa to bear three children—Yudhishtir, Bhima and Arjuna.<sup>15</sup>

Not just in Hinduism, practices, for example, levirate relationships have been referenced in Christianity, Judaism, Islam and numerous different religions.<sup>16</sup> Goddess Yogamaya made some supernatural occurrence for her seventh issue, when Devaki was pregnant. Yogamaya extricated the embryo from the uterus of Devaki while she was eight months pregnant and set it in the uterus of Rohini.<sup>17</sup>

### (C) Contemporary

With times changing and advancement occurring in each field, our philosophies have likewise developed. In any case, the significance of a children and family name proceeds. The disgrace around surrogacy actually exists; as barrenness is viewed as a revile. A great deal of couples never moves into the open – in light of the fact that pregnancy and fruitlessness are as yet quieted issues.<sup>18</sup>

Surrogacy has been standardized now generally, with famous people like Aamir Khan and Shahrukh Khan resorting on it. India legalised commercial surrogacy in 2002. From that point forward, our nation has been the most favourite objective for individuals needing a

---

<https://www.youthkiawaaz.com/2018/10/surrogacy-and-artificial-insemination-are-ancient-practices-seen-even-during-mahabharata-t/>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Bogoraz, *supra* note 4.

<sup>18</sup> Rawat, *supra* note 12.

surrogate kid. Be that as it may, the modest accessibility of the help has additionally prompted the issue of exploitation.<sup>19</sup>

#### **(D) Case Study on Surrogacy in India**

The Apex court of India by righteousness of case, 'Baby Manji vs. Union of India', has made commercial surrogacy authorized in India. India is arising as a pioneer in global surrogacy. Surrogacy in India is a lot less complex and practical than elsewhere on the planet. There is no law overseeing the surrogacy. 'Surrogacy Agreement', is the lone base, which oversees the bodies to surrogacy. The first logically recorded Test Tube Baby in Quite a while was brought into the world in 1986 and India legitimized surrogacy in 2002.<sup>20</sup>

The Supreme Court of India formally legalized commercial surrogacy in the landmark case **Baby Manaji Yamanda v. Union of India, SCC 2008 SC 1656**. In this case the Court defined "commercial surrogacy as a form of surrogacy in which a gestational carrier is paid to carry a child to maturity in her womb" and the related aspects as surrogacy agreement, the stakeholders or parties who may enter, and directed for enactment of a statutory law on the same. The Apex court conceded the void in law as well as the abnormalities occurring without law by calling surrogacy as lucrative racket. For this situation of Baby Manji, a surrogacy agreement was gone into between the natural dad and natural mother on one side and the surrogate mother on the opposite side. Yet, afterward for this situation there were issues raised on the legitimacy of the surrogacy arrangement however the court permitted the same.<sup>21</sup>

In **Jan Balaz v Union of India, AIR 2009 SC 84**, the Gujarat High Court presented Indian citizenship on two twin infants fathered through remunerated surrogacy by a German public in Anand district. The court observed: "We are primarily concerned with the rights of two newborn, innocent babies, much more than the rights of the biological parents, surrogate mother, or the donor of the ova. Emotional and legal relationship of the babies with the surrogate mother and the donor of the ova is also of vital importance." The court considered the surrogacy laws of nations like Ukraine, Japan, and the United States. Since India doesn't offer double citizenship, the youngsters should change over to Overseas Citizenship of India in the event that they likewise hold non-Indian citizenship. Balaz, the solicitor, submitted under the steady gaze of the Supreme Court that he will present his visas before the Indian

---

<sup>19</sup> *Id.*

<sup>20</sup> Dr. Santosh Kumar, *Surrogacy: How far new laws successful in combating issues in regards to surrogate mother and child* AMITY INTERNATIONAL JOURNAL OF JURIDICAL SCIENCES ( Jan. 27, 2021 6:50PM) [https://amity.edu/UserFiles/aibs/15d72016%20AIJJS%20\\_77-88.pdf](https://amity.edu/UserFiles/aibs/15d72016%20AIJJS%20_77-88.pdf).

<sup>21</sup> Rambhakta, *supra* note 8.

Consulate in Berlin. He likewise concurred that a NGO in Germany will react back to India on the status of the kids and their government assistance. The Union of India reacted that India will make all endeavors to have the kids sent to Germany. German jurisdictions have likewise consented to rethink the case whenever drew nearer by the Indian. In May 2010, the Balaz twins were given the exit and passage records that permitted them to leave India for Germany. The guardians consented to embrace them in Germany as per German principles.<sup>22</sup>

### III. TYPES OF SURROGACY

The various sorts of surrogacy can be overpowering when you're first learning about this technique for helped reproduction, however they really help to ensure that expected parents and surrogate pick the sort of surrogacy that is ideal for them. Surrogacy isn't one-size-fits-all, and a surrogacy expert can assist you with picking the cycle that is ideal for you dependent on what you want from your surrogacy experience.<sup>23</sup>

#### (A) Gestational and Traditional Surrogacy

With regards to making an embryo, there are two sorts of surrogacy to contemplate: traditional and gestational. More or less, this is what you need to know about these kinds of surrogacy.<sup>24</sup>

In Traditional Surrogacy, the surrogate's egg is utilized to make the embryo of the child she will convey (either through intrauterine insemination or in vitro treatment.) In Gestational Surrogacy, the proposed parents make an embryo utilizing their own egg and sperm or utilizing gave egg or sperm. While traditional surrogacy was the best way to finish a surrogacy throughout the majority of history, in the course of recent 30 years, gestational surrogacy has gotten the more mainstream of the two sorts of surrogacy. In addition to the fact that it allows the both parents of a heterosexual couple to be biologically identified with their children, yet it additionally takes out a portion of the legitimate and enthusiastic battles that accompany a surrogate being hereditarily identified with the kid she's having.

- **Traditional Surrogacy:**

- a) If the surrogate is identified with one of the purposive parents, traditional surrogacy can give a hereditary connection that would not have been conceivable with a given egg. In the event that the expected guardians are an equivalent sex male couple, a solitary male

---

<sup>22</sup> Kumar, *supra* note 18.

<sup>23</sup> American Surrogacy, *About Surrogacy*, SURROGATE.COM (Jan. 27, 2021 2:36PM) <https://surrogate.com/about-surrogacy/types-of-surrogacy/types-of-surrogacy/>.

<sup>24</sup> *Id.*

or a heterosexual couple where the lady can't utilize her eggs, conventional surrogacy may give them the hereditary connection they want.

- b) For planned parents who can't discover an egg contributor they like, don't need a mysterious benefactor or are hoping to lessen the expense of their surrogacy, traditional surrogacy might be best for them.

- **Gestational Surrogacy:**

- a) Intended parents and substitutes who are careful about the legalities and feelings engaged with traditional surrogacy will need to pick a gestational surrogacy.
- b) If in the surrogate's state traditional surrogacy has been made illegal, she and the intended parents should seek after a gestational surrogacy.
- c) Gestational surrogacy permits many intended moms to be identified with their kid.
- d) Intended parents who have remaining embryo from past IVF medicines can utilize those in a gestational surrogacy.

**(B) Compensated and Altruistic Surrogacy**

Another factor that makes various sorts of surrogacy is the remuneration that a substitute is paid to convey the proposed parent's child. At the point when a surrogate is given base installment for having the child (beyond reimbursement for pregnancy-related expenses), this is known as compensated surrogacy. On the off chance that a substitute doesn't get any extra payments, she will complete an altruistic surrogacy.<sup>25</sup>

- **Compensated Surrogacy:**

- a) If planned guardians feel uncomfortable asking a friend or family to turn into an unpaid surrogate, a commercial surrogacy may help wipe out the sensation of obligation that they would never pay back.
- b) Before to the matching process, who don't know each other such intended parents, a remunerated surrogacy ensures the two players interests and rights in the surrogacy process.
- c) Substitutes may come to feel angry or exploited during the philanthropic surrogacy measure, so for ladies who are uncertain, a repaid surrogacy is generally the best approach.

---

<sup>25</sup> *Id.*

- **Altruistic Surrogacy:**

- a) If in the surrogate's state compensated surrogacy agreements have been made illegal, both the intended and she should have finish their surrogacy benevolently.
- b) A compensated surrogacy is pointless; for those who are their friends or family members, such surrogate will need to convey their child due to the affection among her and the planned parents.
- c) This happens due to that surrogacy made without any payment, an altruistic surrogacy may assist intended parents with lessening the expense of their surrogacy.

**(C) Domestic and International Surrogacy**

An ART process, known as Surrogacy which is finished around the whole planet. Be that as it may, numerous nations have strict laws directing this process, so relying upon where you live; you may have the decision between two sorts of surrogacy: domestic and international. On the other side, that you live in the United States, your most ideal choice will probably be to finished a domestic surrogacy across careful lawful guidelines (different nations might be more questionable or prohibitive in their laws). What if you reside in another nation, then it's significant that you research different nations' laws with respect to surrogacy before choosing to cast about a international surrogacy.<sup>26</sup>

- **Domestic Surrogacy:**

- a) When native nation permits and regulates surrogacy in proper way, then it will be costing little and more secure to finish a domestic surrogacy.
- b) Domestic surrogacy permits intended parents and surrogates to meet, set up a relationship and all the more they effectively stay in contact during the entire surrogacy procedure.
- c) A domestic surrogacy disposes of those laws which are permitted by legal procedures that happen with bringing an baby brought into the world abroad back into their folks' country.

- **International Surrogacy:**

- a) Therefore in the case of International surrogacy such intended parents who resides in that country which restricts or declares surrogacy illegal, finish a worldwide surrogacy in a surrogacy-friendly nation like the U.S. is more secure and simpler.

---

<sup>26</sup> *Id.*

- b) The intended parents provide payment to that surrogate who carry their child in her womb, because of exchange rates and various ways of life, can radically change their life circumstance.

#### **(E) Agency and Independent Surrogacy**

Usually, there are two kinds of surrogacy with regards to working with an expert: an agency surrogacy and an independent surrogacy.<sup>27</sup> According to agency surrogacy, both the intended parents and surrogates work with a surrogacy administration or office from the earliest starting point to the furthest limit of their surrogacy process—from the underlying screening and coordinating to intervention of contact to the finish of remuneration and parentage. Also in an independent surrogacy, intended parents and surrogates both typically just work with a surrogacy legal counselor and a fertility center to finish their surrogacy process.

- **Agency Surrogacy:**

- a) Those persons who are surrogates and such intended parents have not discovered each other yet, then they go through a entrusted surrogacy agency or comparative support of securely locate the ideal match.
- b) A surrogacy organization or program will take most of the obligation out of their hands, from those intended parents and surrogates who aren't open to taking care of and assuming responsibility for all the parts of their surrogacy .

- **Independent Surrogacy:**

- a) When both the intended parents and surrogate know each other (just like friend or relative), then they may feel good without the intercession services provided by a surrogacy agency. And this is due to the pre-match of them each other and only seeks a surrogacy legal advisor and fertility center to deal with legally and clinical parts of the surrogacy.
- b) Therefore, who are hoping to get a good deal on their surrogacy without any payment, an independent surrogacy might be the less expensive choice amid these two sorts of surrogacy.

#### **IV. THE SURROGACY REGULATION BILL**

**The Surrogacy (Regulation) Bill, 2016** defines a surrogate mother as “a woman bearing a

---

<sup>27</sup> *Id.*

child who is genetically related to the intending couple, through surrogacy from the implantation of embryo in her womb.” Conceiving babies by surrogacy is an elective method more than another way. It includes penances the sacrifices made by a surrogate woman willingly to favor a miserable couple with a child and complete their family. The tremendous duty of conceiving a child who is not belonged to her but placed in her womb and afterward giving it to the intended parents, then such surrogate mother deserves a huge load of applause, where surrogacy is limited to just altruistic methods in India.<sup>28</sup>

Beyond the 2016<sup>th</sup> Bill, the **Surrogacy (Regulation) Bill, 2017** says any person who exploits a surrogate mother in any manner whatsoever it may be shall be punishable with imprisonment not less than 10 years and with fine which may extend to 10 Lac rupees. By this provision those women who are willing to be a surrogate mother feel safe and secure. The highlight of the **Surrogacy (Regulation) Bill, 2019**, Section 39 is that the principle of ‘innocent until proven guilty is not followed. In an attempt to counter this widespread exploitation, **The Surrogacy (Regulation) Bill, 2019** was passed by the Lok Sabha on 5th August 2019, and then it was referred to The Select Committee, constituting of 23 Members of Rajya Sabha on a Motion adopted by the House on the 21st November 2019 for examining and presenting report on it and later on drafting The Surrogacy (Regulation) Bill, 2020 which was subsequently approved by the Union Cabinet on 26th February 2020.<sup>29</sup>

By characteristic lawful practice, the burden of proving guilt of the accused is on the plaintiff. Section 39 says that the husband, the intending couple or any other relative of a woman and any surrogate, or whatsoever circumstances it may be, was compelled to perform surrogacy services, processes or to donate gametes for the unspecified purpose given beneath the clauses of the Section, such person shall be liable for abetment of such offence under Section 37 (punishment for initiation of commercial surrogacy) and shall be punishable for imprisonment not less than five years and a fine which may extend to up to 5 Lac rupees unless the contrary is proved.<sup>30</sup>

Various socio - ethical issues were arise because of improper legislation on this matter, it happens only when India has emerged as a worldwide surrogacy hub. <sup>31</sup>

Also, all the offences under the Act will be cognizable, non-bailable and non-

---

<sup>28</sup> Aditya Shete, *Analysis: Surrogacy Procedures in India and the Laws*, LEGAL DESIRE (Sep. 7, 2020) <https://legaldesire.com/analysis-surrogacy-procedures-in-india-and-the-laws/>.

<sup>29</sup> Sdak Singh Kalra, *Surrogacy (Regulation) Bill of 2020: Balancing Interests*, LatestLaws.com (October 01, 2020) <https://www.latestlaws.com/articles/surrogacy-regulation-bill-of-2020-balancing-interests/>

<sup>30</sup> Shete, *supra* note 27.

<sup>31</sup> Kalra, *supra* note 28.

compoundable. The motive behind this might be founded defenceless in the view of the surrogate mother because of the idea of surrogacy process. With regards to the guaranteeing great wellbeing of the surrogate mother, the duty doesn't and in this way, mustn't stop after the child is delivered as post-partum inconveniences are normal and can influence the surrogate intellectually, physically and financially. Therefore, **The Surrogacy (Regulation) Bill, 2020** for a surrogate mother, it extends the insurance cover from 16 months to 36 months.<sup>32</sup>

It is clear at first sight that this new bill has properly contemplated the eventual benefits of each parties, particularly the long due interests of a surrogate mother. This 2020 (Regulation) bill provides rights to a surrogate mother throughout the whole process of surrogacy and duties implemented on the intended couple. Also, provide severe punishment expected violators. It has been explicitly given

- that no lady will act as a surrogate mother by giving her own gametes,
- that no lady will act as a surrogate mother more than once in the course of her life,
- that a declaration of clinical and mental fitness for surrogacy and surrogacy methods from an enlisted clinical expert will be required for a surrogate mother.<sup>33</sup>

Some significant highlights of the proposed enactment are:

- There is ban on commercial surrogacy on the recommendation of The Law Commission of India, by enacting a proper legislation in the 228th Report. In pursuance of which defined under section 2(f) of the 2020 bill and allows only altruistic surrogacy in order to prevent the exploitation against the industry of renting a womb and also the surrogate mothers.
- The surrogacy Regulation bill 2020 omitted the definition of infertility defined under section 2(p) of 2019 bill and amended the section 4(a) of 2019 bill as “when an intending couple has a medical indication necessitating gestational surrogacy”.
- The Surrogacy regulation bill 2020 provide a widened ambit to the bill of 2019. According to the 2019 bill, only married Indian couples were eligible for the process of surrogacy but the 2020 bill has widened the ambit of the legislation by also permitting an “intending woman” i.e. an Indian woman who is a widow or divorcee between the age of 35 to 45 years and who intends to avail the surrogacy, to opt for surrogacy. Therefore, it

---

<sup>32</sup> Shete, *supra* note 26.

<sup>33</sup> Kalra, *supra* note 27.

was amended to say “a willing woman” which further widens the ambit for the intending couples or intending woman to find a surrogate mother.

## **V. CONCLUSION**

Surrogacy can be characterized as, when the other lady conveys the carries the child of the couples who are not fit for creating themselves. It is advantageous to the individuals who have some problem of being pregnant. It gives the bliss to the couples to finish their families. Surrogacy is performed from numerous years. It goes back to the legends like Mahabharata and Bible, in which it is significantly upheld. Surrogacy is permitted in numerous nations while different boycotts it or permits it mostly. In nations like Germany, Sweden and France and so forth it is restricted. In Belgium and numerous different nations just altruistic surrogacy is permitted. A few nations consider it as against the moral qualities and some accepts just in virtues and permits it.

The infertility rate is expanding step by step in the metropolitan territories of the country. Along these lines, this new Assisted Reproduction Method is helpful in combating the issues of fertilization in the metropolitan zones. The strategy is valuable than different techniques and offer an incredible back help for the individuals if, there isn't any path staying for the fertilization.

In the conclusion, we can say that there are some advantages of surrogacy as well as disadvantages, where people have some medical disabilities and no natural means of conceiving a child, there surrogacy plays a vital role as a bliss to such couples. For the sake of people, this should be legalized in India.

\*\*\*\*\*