

Surrogacy Arrangement: A Socio-Legal Study in Lucknow City

SUMMARY OF THESIS

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Introduction

Motherhood of woman is beautiful regard given by the nature. When a couple is not capable to produce a child, due to any physical incapacity, they have only one option i.e. to adopt a child. But their wish to have a genetically related child is still unfulfilled. The advance medical reproductive technology of surrogacy has provided way to the couple to have a child that is genetically related to them. New medical technology has in the recent times made extraordinary advances in responding to the desire of woman or men to have no child. It has witnessed phenomenal growth in the area of reproduction. It has made possibility for couples who would be not capable to conceive and bear of child to able themselves. This technology has been common today in our society, knowing which of Assisted Reproductive Technology (ART) or Surrogacy Arrangement Method. Assisted reproductive technology is a medical science method to achieve pregnancy by artificially or partially artificially means, and is primarily used in fertility treatment. “Technology has made tremendous changes in the field of science. One of the fastest growing technologies is Assisted Reproductive Technology which has made it possible to make a sperm or embryos cryopreserved and use it to conceive children even after the death of one of biological parents.”¹

The Assisted reproductive Technology has been accepted as a medical treatment for infertile couples. It is reported that around 15% couples of the world are infertile. The Hague conference on Private International Law, 2014, has reported that, in2010, it is that estimated 48.5 million couples worldwide were said to be infertile. India has an estimated 19-20 million infertile couples, according to the World Health Organization (WHO).²Surrogacy is a composite medical method, and in order to create an understanding of the surrogacy conception, it is necessary to comprehend the origins, evolution, and explanations of the meaning of surrogacy as explained in

¹ Sufiya ahmed (ed.), *Surrogacy and ART in India: Socio-Legal and Ethical Dilemma* 57(Satyam Law International, New Delhi, 2020).

²Roupa Z.,Polikandrioti M.(et al) “Causes of Infertility in Women at Reproductive age” vol.3 *HSJ* 5(2009)Last visited on 10-04-2018
<https://www.hsj.gr/medicine/causes-of-infertility-in-women-at-reproductive-age.pdf>

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many reports and laws. Surrogacy and other terminology used in the procedure are medical terms that require explanation for the average person to understand. One, in six couple's worldwide exercise some form of infertility problem at least once during their reproductive life duration. Among these an estimated 19-20 million live in India, according to World Health Organization. More than 3.75 million children around the world have been born through in-vitro fertilization or related technique during the last thirty two years.³

These are known collectively as Assisted Reproductive Technology (ART). They take different processes from comparatively simple intra-uterine (IUI) to in-vitro fertilization (IVF), more frequently known as "test-tube baby technology." Although ARTs are often referred to as "modern technology of reproduction," they existed as early as in the 16th century.⁴ Surrogacy has become common among all techniques. Surrogacy has appeared with the use of a woman's womb to reproduce kids for another woman as a fresh stage of science development for reproduction. 'Surrogacy' is one of the most effective techniques of overcoming biological and social infertility. The notion of surrogacy is commonly acknowledged throughout the globe. Surrogate motherhood is regarded by infertile couples as a boon because it is a revolutionary hope to have a kid.⁵

Infertility is a common global medical destruction, which is thinks as a providential curse vertically in the sequence of socio-economic discrimination and psychological ordeal a between the desert couple and individuals. Infertility may lead to extra-marital relationship, domestic violence, divorce, witchcraft, depression, suicide, and other social stigma including ostracism. Mankind has sought answer to the question of fertility since time immemorial, but it was only during the 20th century the medical community started treating infertility as disease.⁶ For example, women face social and economic disadvantages, making children less women more vulnerable to blame, mental and physical abuse, drop-out and divorce risk, social

³Dr. M.P. Verma, *Surrogacy: Medico-Legal Paradigm* (G.B. Books 1sted.2016).

⁴Sama, *ARTs and Women: Assistance in Reproduction or Subjugation?* (Sama-Resource Group for Women and Health, New Delhi ed1st 2006).

⁵Dr. S.S.Das and PriyankaMaut, "Commercialization of surrogacy in India: A Critical Analysis" *Research Gate* (2014).<https://www.researchgate.net/publication/281710247>

⁶Dr. G.K. Goswami, *Assisted Reproduction and Conflict in Rights* (Satyam Law International New Delhi, edn.2017).

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exclusion, and lack of access to adequate treatment.⁷The causes of primary and secondary infertility are male and female, and the factors that contribute directly to infertility vary widely among region and culture.⁸Infertility is defined as the inability to get pregnant within twelve months, despite having frequent and unprotected sexual intercourse⁹.

Both males and females are affected by infertility and both males and females are equally responsible for the infertility. One third of cases of infertility can be attributed to male reproductive causes alone, one third can be attributed to female causes alone and one third can be attributed to male causes plus female causes. Male infertility factor is a complicated disease affecting a big industry of the population; however, it is unknown to many of its etiologists.¹⁰

Current Assisted Reproductive Technology (ART) : Artificial Insemination (AI), Intra-uterine Insemination (IUI), Intracytoplasmic Sperm injection (ICSI), Gamete Intrafallopian Transfer (GIFT), Zygote Intrafallopian Transfer (ZIFT), In Vitro fertilization (IVF), Surrogacy.¹¹Louise Brown and Dr. Edwards are famous; few Westerners know that the world's second and first IVF infant, Kanupriya Agarwal, was born in Kolkata (then Calcutta) on October 3, 1978, just sixty-seven days after Brown's birth. A team led by Dr. Subhas Mukherjee conceived and delivered Kanupriya in vitro, referring to her after an Hindu goddess who represents the feminine creative force with the nickname "Durga. Seventeen year later and twenty-five years after the birth of Duraga, the Indian scientific community finely recognised Dr. Mukherjees achievement.¹²Surrogacy is a process or arrangement by which a woman decides to carry a pregnancy for another person or persons who, after

⁷Anjali Widge and John Cleland, "The Public sector's role in infertility management in India", *HPP* (2009). Access on 20-10-2017 <https://academic.oup.com/heapol/article/24/2/108/593016>

⁸*Ibid.*

⁹Linda Bickerstaff, *Science and Society Technology and Infertility: Assisted Reproduction and Modern Society*, (The Rosen Publishing Group, New York 1st edition 2009).

¹⁰AzaBahadeenTaha and KhanzadHadi Rashid, "Etymology of Infertility in Couples attending maternity hospital in Erbil" *ZJMS*, vol.17 (2013). Access on 23-09-2019.

¹¹Mosammat Rashida Begum, "Assisted Reproductive Technology: Techniques and Limitations" vol.26 *JBCPS* (2008) Access on 12-10-2017 <https://www.researchgate.net/publication/270114969>

¹²Daisy Deomampo, *Transnational Reproduction: Race, Kinship, and Commercial Surrogacy in India* 40 (SAGE Publication India Pvt Ltd, New Delhi, 2017).

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conception, will become the parent(s) of the new-born child. This refers to a contract in which a woman is carrying a pregnancy for another couple.¹³

The term "surrogate" is rooted in "subrogare" (to replace) in Latin, meaning "named to act instead another."¹⁴ Definition of surrogacy method **The New Encyclopedia Britannica** defines 'surrogate motherhood' as the practice in which a woman bears a child for a couple unable to produce children in the usual way.¹⁵ **Surrogacy, as defined by the Warnock Committee**, is the "practice whereby one woman carries a child for another with the intention that the child should be handed over after birth."¹⁶ Types of Surrogacy, Surrogacy arrangements are four types by medically prescribes. Which are traditional surrogacy, gestational surrogacy, commercial surrogacy and altruistic surrogacy? Commercial surrogacy is form of gestational surrogacy, in which surrogate mother has carried pregnancy for consideration.¹⁷

As a result, surrogacy is both a threat and a opportunity. On the one hand, it allows infertile couples and surrogate moms to realize their dreams of having a child and being able to better care for their families. On the other hand, there is a possibility that women will be exploited and converted into baby producers as a result of the commodification of children and parenthood. There have been several arguments for and against surrogacy, and it is difficult to determine what is morally correct and what is wrong. Both opponents and advocates of surrogacy agree, however, that the practice raises a number of social, ethical, and legal concerns.¹⁸

Although some rule and regulation have been put in place, there is still not enough being done on a national level to protect the interests of Indian women who serve as surrogate mothers, the children they bear, or the intended parents who travel long distances to commission pregnancies. This research will look into these

¹³Dr J SrinivasRao and Dr.Matin Ahmad Khan, "Surrogacy in India: Current Perspectives" vol. 3 *IJMHR* (2017). Access on 25-11-2018

¹⁴Nayana Hitesh Patel and YuvrajDigvijay SinghJadeja (et al), "Insight into Different Aspects of Surrogacy Practices" vol 11 *JHRS* (2018)Access On 23-10-2019
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6262674/pdf/JHRS-11-212.pdf>

¹⁵*Ibid.*

¹⁶Shaun D. Pattinson, *Medical Law and Ethics* 309 (Sweet & Maxwell, London, 3rd Edi. 2013)

¹⁷ Supra note Dr.Aneesh V. Pillai, *Surrogate Motherhood and the Law: International and National Perspectives* 53-54 (Regal Publication, New Delhi, 2015). Access on 25-10- 2019

¹⁸"Surrogate Motherhood-Ethical or Commercial" *Centre for Social Research (CSR)* access on 23-10-2018<https://wcd.nic.in/sites/default/files/final%20report.pdf>

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difficulties. The findings will reveal the current position of moms, parents, and children, as well as serve as a foundation for policy proposals.¹⁹

Discussions have raged around the world over the last few decades on the degree to which the human body and its component parts can be purchased, sold, leased or donated. In particular, gestational surrogacy has become more common in recent years and, in a growing number of cases, people seeking to access surrogate services are leaving their own countries to do so. There are a range of questions regarding surrogacy, including ethical concerns about the trafficking of surrogates in the global marketplace, the increasing potential for reproductive tourism as a result of national regulatory differences, and geographical and socio-economic imbalances between suppliers and buyers. The need and frameworks for the development of international legislation to protect all parties involved in international gestational surrogacy should therefore be more closely examined.²⁰

Italy, Germany, Turkey, and Japan prohibit surrogacy arrangement. Commercial surrogacies are permitted in California and the Ukraine. Italy, Germany, France, Switzerland, and several Australia States prohibit commercial surrogacy contract. The enforcement of surrogacy contract is sharply limited in Canada. The early response of the UK Parliament was to institute the Warnock Committee in 1982 to investigate 'recent and potential developments in medicine and science related to human fertilization and embryology and 'to consider what policies and safeguards should be applied. Any and all future contract between the surrogate and the couple was declared null and void in the Warnock study, 1984, and commercial surrogacy was banned. The Surrogacy Agreement Act was passed in 1985, which did not authorize commercial surrogacy, but allowed altruistic surrogacy to be paid to the surrogate for her and the health of the foetus during pregnancy at a fair cost.²¹

In very different ways, U.S. states have responded to the policy issue of surrogacy. Some states permit surrogacy expressly. Other states, however, leave surrogacy partially or completely unaddressed and some explicitly forbid surrogacy

¹⁹*Id.*

²⁰Kristiana Brugger, "International Law in the Gestational Surrogacy Debate" vol.35 *FILJ* (2012). Access on 11-05-2017 <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2438&context=ilj>

²¹Mandeep Borkataky, "Is the law regulating surrogacy in need of reform?" *Research Gate* (2015) access on 15-07-2017 <https://www.researchgate.net/publication/277300043>

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altogether. Surrogacy is prohibited in China. The new law passed 2015 in Thailand, and Commercial surrogacy is prohibited. Russian legal regulation of assisted reproduction in general and surrogate motherhood specifically, although being permissive on the whole, is fragmentary and not always consistent. Regardless of the reasons why surrogacy is utilized, up until recently the legal regulation of surrogacy in South Africa has been shrouded in much uncertainty. It was only with the promulgation of Chapter 19 of the Children's Act that some clarity was provided on the issue of surrogacy under South African law and the conditions under which surrogacy may be undertaken and surrogate motherhood agreements (SMA) may be entered into. However, despite the benefits that this chapter holds, it is not without pitfalls.²²

India's ministry of Health and Family Welfare has drafted a bill to regulate cases of commercial surrogacy after India's first major legal cost involving commercial surrogacy the baby Manji's case²³ ICMR presented a national regulation addressing not only commercial surrogacy but also other Reproductive Technologies. And the regulation was known as draft assisted Reproductive Technologies Regulation and Rules Bill 2008²⁴ which was changed in 2010 and named as Draft Assisted Reproductive Technologies Regulation and rules bill 2010²⁵ with some changes in the Draft bill of 2008. Furthermore done 2009 law requisition need also submitted its report card ahead surrogacy also situated curtailed certain suggestion on the regulation from claiming this act.

The government has drafted many draught Bills to regulate surrogacy throughout the years in 2008, 2010, 2014, 2016, 2019, and the most recent draught Bill is the Surrogacy (Regulation) Bill, 2020, in response to the rapid proliferation of surrogacy clinics around the country. The new Bill establishes various guidelines and limitations on who is eligible for and who is not eligible for surrogacy. The bill wants to outlaw commercial surrogacy and limit ethical and altruistic surrogacy to lawfully

²²C van Niekerk, Section 294 of the Children's Act: Do Roots Really Matter? vol.18*PELJ* (2015) access on 23-11-2018<http://dx.doi.org/10.4314/pej.v18i2.11>

²³Amrita Panday, *Wombs in Labor Transnational Commercial Surrogacy in India* (Columbia University Press, New York, 2014)

²⁴Assisted Reproductive Technologies Regulation and Rules Bill, 2008

²⁵ Assisted Reproductive Technologies Regulation and Rules Bill, 2010

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married infertile Indian couples. Surrogacy is also prohibited for overseas Indians, foreigners, unmarried couples, live-in partners, and gay couples.

Judicial response on surrogacy issues related. Thus we find that in some countries the law has been settled while in others, it is in the process of making. The country where in the law has not been drafted or is in process of drafting, the concerned courts have responded in diverse ways in the cases coming before them concerning surrogacy arrangement. Let's discuss some leading cases national and international label.

India has emerged as a hub of medical tourism. This Ministry of Tourism, Government of India boasts Confederation of Indian Industry (CII) reported that of the largest service sectors with estimated revenue of around \$ 30 billion constituting 5% of GDP". It also noted that it was medical tourism behind such figures and estimates. Reasons that have India centre stage in healthcare sector include cost in terms of usage of English language, no waiting period accomplished medical staff including the doctors and know-how, among others.²⁶

India's surrogacy industry is vilified by women's rights groups who say fertility clinics are nothing more than "baby factories" for the rich. In the absence of regulation, they say many poor and uneducated women are lured by agents, hired by clinics, into signing contracts they do not fully understand.²⁷ The law relating to surrogacy contracts is unclear and uncertain. Different countries have different laws with respect to validity and enforceability of surrogacy contracts. The ART Bill expressly provides for entering into surrogacy agreement between the surrogate mother and the couple who is seeking surrogacy through the use of assisted reproductive technology and that the surrogacy agreement shall be legally enforceable.²⁸ 3.12 Rights of a Child Born through various ART Technologies 3.12.1 a child born through ART shall be presumed to be the legitimate child of the couple, having been born in wedlock and with the consent of both the spouses.

²⁶Parliament of India RajyaSabha, Report: 102, The Surrogacy (Regulation) Bill, 2016 (Department-Related Parliamentary Standing Committee on Health and Family Welfare, 2017). http://164.100.47.5/committee_web/ReportFile/14/100/102_2018_6_15.pdf

²⁷Nita Bhalla and MansiThapliyal, "India seeks to regulate its booming 'rent-a-womb' industry" Health care and Pharma (2013) access on 20-11-2018 <https://www.reuters.com/article/us-india-surrogates-idUSBRE98T07F20130930>

²⁸Assisted Reproductive Technology (Regulations) Bill 2013, (Tentative Draft) Date Jun. 27, 2013, Legislative Department, Ministry of Law & Justice, Government of India [hereinafter ART Bill 2013]

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The surrogacy arrangement comes with many types of risks. Unfortunately, the common risk is related to the surrogate. The most immediate reason of concern is medical dangers to the surrogate's physical and emotional health. We discovered that the practice of multiple embryo transfers, multiple pregnancies, foetal reductions, and caesarean procedures to produce a successful pregnancy had substantial consequences for the surrogates' health.²⁹

The right to privacy is understood to include the right to procreate. Commercial surrogacy and prostitution are often compared by opponents of surrogacy. Understanding the problem's intrinsic complexity necessitates knowledge of its historical background. Baroness Warnock headed the Committee of Inquiry into Human Fertilizations and Embryology, which was founded in 1982 and reported in 1984. Surrogacy, they claimed, "provided us with some of the most challenging challenges we encountered," and the group was unable to reach an accord. The moral and social problems to surrogacy were emphasized by the committee, which unanimously agreed that surrogacy purely for convenience was "absolutely morally wrong. "Surrogate mothers are subjected to domestic abuse and household instability as a result of male partners' dislikes. Furthermore, it is unknown whether the surrogate will be able to have sexual interactions with her spouse."³⁰

The above discussion we find the extract as- No Specific Legislation Related to Surrogacy, Enforceability of surrogacy contract, Commodification of Motherhood, Baby Selling, Exploitation of poor women, Surrogacy Degrades the Dignity of Woman, Surrogacy has been equated with Prostitution, Attachment with the Gestational Mother, Legitimacy of Children under Personal Law, Consummation of Marriage, Legal Status of Surrogate Child and Indian Evidence Act, 1872, Law of Adoption and Surrogacy and Legal Concern Relating to Commissioning Parent.

²⁹Sama Resource Group for Women and Health, *Surrogacy Information Brief*" (1st ed. Sama Resource Group for Women and Health, New Delhi. 2014) www.samawomenshealth.org

³⁰Arti Gupta, Viviktha Ramesh, "Surrogacy: blessing or curse to poor society in India" *Healthcare in Low-resource Settings* volume 3:5465 (2015) access on 12-09-2019 <https://www.researchgate.net/publication/295861915>

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“Infertility” is defined as failure to achieve pregnancy during one year of frequent, unprotected intercourse.³¹

Surrogacy (Regulation) Bill 2016 of section 2 (p), infertility is defining as “infertility” means the inability to conceive after five years of unprotected coitus or other proven medical condition preventing a couple from conception.³²

The World Health Organization (WHO) provides a clinical definition of infertility, that infertility as “a disease of the reproductive system defined by the failure to achieve a clinical pregnancy after 12 months or more of regular unprotected sexual intercourse.”³³

Meaning and Definition of Surrogacy

Surrogacy is a method of assisted reproductive technology. Surrogacy is the term used when a woman agree to became pregnant a deliver a child for a contracted party. There are different form of surrogacy and different reasons why one technique may be used over another. One of the most common reasons for surrogacy is the infertility of the woman, sometimes due to damage to the uterus, or even having not uterus at all. Here the in vitro fertilized (IVF) embryo of the “commissioning couple” will be placed in the uterus of the surrogate mother who will go through the process of pregnancy, give birth to the child and hand it to the commissioning couple. One may term this a “full” surrogacy with the surrogate mother having no genetic relationship to the child.³⁴

Surrogacy define in Indian Surrogacy (Regulation) Bill 2016 in section 2(z b) such “surrogacy” means 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.³⁵

³¹Available at <https://www.aafp.org/afp/2007/0315/p849> (Last access on 14-04-2018)

³²Surrogacy (Regulation) Bill, 2016 (Act 257 of 2016)

³³Available at <http://www.who.int/reproductivehealth/topics/infertility/definitions/en/> (Last visited on 16-04-2018)

³⁴Michael Davies, *Tax book on Medical Law* page no. 252 (Oxford Press, Great Clarendon Street, ed. 2nd/ 2009)

³⁵Surrogacy (Regulation) Bill, 2016 (Act 257 of 2016)

Surrogacy define in U K Surrogacy Arrangement Act 1985 thus “surrogacy” section 1 (2) means a woman who carries a child in pursuance of an arrangement- (a) made before she began to carry the child, and (b) made with a view to any child carried in pursuance of it being handed over to, and the parental right being exercised (so far as practicable) by another person or other person.³⁶

Surrogacy, as defined by the Warnock Committee, is the “practice whereby one woman carries a child for another with the intention that the child should be handed over after birth”.³⁷

The word ‘surrogate’ has its origin in Latin ‘surrogatus’, past participle of ‘surrogare’, meaning a substitute, that is, a person appointed to act in the place of another. Thus a surrogate mother is a woman who bears a child on behalf of another woman, either from her own egg or from the implantation in her womb of a fertilized egg from other woman.³⁸

Types of Surrogacy

Surrogacy arrangement are four type by medically prescribes. Which are traditional surrogacy, gestational surrogacy, commercial surrogacy and altruistic surrogacy?

Traditional Surrogacy

In tradition surrogacy the surrogate is pregnant with her own biological child but this child was conceived with the intention of relinquishing the child to be raised by others such as the biological father and possibly his spouse or partner and thus the child that result is genetically related to the surrogate mother. The child may be conceived via sexual intercourse, or frozen sperm or impregnated via IUI (intra uterine insemination), or ICI (intra cervical insemination), which is performed at a fertility clinic. Sperm from the male partner of the “commissioning couple” may be used, or alternatively, sperm from a sperm donor can be used.³⁹

³⁶Surrogacy Arrangements Act, 1985 (Act c. 49 of 1985)

³⁷Shaun D. Pattinson, *Medical Law and Ethics* 309 (Sweet & Maxwell, London, 3rdedn, 2013)

³⁸Law Commission of India, 288 the Report on Need for Legislation to Regulate Assisted Reproductive Technology Clinic as well as Right and Obligations of Parties to Surrogacy, (August, 2009).

³⁹Deepa Mishra “Surrogacy in India: Legality” vol. 3 *IJSRMP*. 2258 (2015).

Gestational Surrogacy

The second, termed gestational surrogacy is done through in vitro fertilization (IVF), in which the egg of the intended mother or of an anonymous donor is fertilized in a Petri dish with the sperm of the intended father or of a donor and the embryo is transferred to the surrogate's uterus. All the cases in this study are gestational surrogacies; that is, the surrogate has no genetic connection with the baby.⁴⁰

Altruistic Surrogacy

In altruistic surrogacy where the surrogate receive no financial reward for her pregnancy or the relinquishment of the child (although usually all expenses related to the pregnancy and birth are paid by the intended parent such as medical expenses, maternity clothing accommodation, diet and other related expenses).⁴¹

Commercial Surrogacy

Commercial surrogacy is form of gestational surrogacy, in which surrogate mother has carried pregnancy for consideration.⁴²

The Indian Surrogacy (Regulation) Bill, 2016 is proposed in Lokshabha. The bill has defined two types surrogacy arrangement as "altruistic surrogacy" and "commercial surrogacy".

Section 2 (b) according to bill "altruistic surrogacy" means the surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses incurred on surrogate mother and the insurance coverage for the surrogate mother, are given to the surrogate mother or her dependents or her representative.

Section 2 (f) "commercial surrogacy" means commercialization of surrogacy services or procedures or its component services or component procedures including selling or buying of human embryo or trading in the sale or purchase of human embryo or gametes or selling or buying or trading the services of surrogate

⁴⁰Amrita Pande, "Commercial Surrogacy in India: Manufacturing a Perfect Mother Worker", vol. 35, no. 4, *UCP* 03(2010)

⁴¹*Ibid.*

⁴²*Ibid*

motherhood by way of giving payment, reward, benefit, fees, remuneration or monetary incentive in cash or kind, to the surrogate mother or her dependents or her representative, except the medical expenses incurred on the surrogate mother and the insurance coverage for the surrogate mother. Commercial surrogacy is present time more controversial in world wide.⁴³

1.4. Statement of Problem

The women health is a serious issue in surrogacy. In India, health got little importance as ART clinics generally ignores regular medical checkup, no proper food, no special hostels for pregnancy time or generally had very poor conditions staying home to live in. The surrogacy involves many risks to baby health such as genetic disorders, low birth weight or membrane damage, etc. as many survey studies reported. Further in case of defected or disabled baby, baby has been generally left with surrogate mother or in an orphanage and an innocent baby has to suffer for whole the life for a crime did by his/her intended parents.

The legal status of surrogacy in India helps in growing child trafficking industry. Surrogacy leads to commoditization of the child, breaks the bond between the mother and the child, interferes with nature and leads to exploitation of poor women in developing countries.

Many religions do not allow surrogacy even in case of in vitro fertilization like in Catholicism. According to it a child is a gift not right and adopting unnatural means are gravely immoral. Also in Judaism surrogacy is permissible in limited terms. However there is little or no restriction on surrogacy in Hinduism but surrogacy rarely used by Hindus. Many argue that adopting orphan child should be given preference than allowing commercial surrogacy. It challenges the moral values of society.

International Surrogacy involves bilateral issues, where the laws of both the nations have to be at par/uniformity else the concerns and interests of parties involved will remain unresolved. Many times citizenship issues arise due to lack of information on laws of both the countries.

⁴³Surrogacy (Regulation) Bill, 2016 (Act 257 of 2016)

The legal aspects surrounding surrogacy are complex, diverse and mostly unsettled. In most of the countries world over, the woman giving birth to a child is considered as the Child's legal mother. India is one country amongst the few, which recognize the Intended/ Commissioning Parent/s as the legal parents. Many states now issue pre-birth orders through the courts placing the name(s) of the intended parent(s) on the birth certificate from the start. Commercial surrogacy has been legal in India since 2002. However commercial surrogacy has been completely prohibited in the recent surrogacy bill of 2016, but it yet to be to become the Law.

The object of thesis is to discuss and explore the surrogacy law and policy; to highlight the shortcoming in law and policy and suggest better initiatives to mend in concern lacunas. Against this background, the study is intended;

Objectives of Study

The objectives of the study are as given below:

1. To study the concept of surrogacy.
2. To study legal position of surrogacy in various countries including India.
3. To know the rights and duties of surrogate parties.
4. To examine the present social and health protection rights ensured to the surrogate mother.
5. To discuss the status of child who has born in consequence of surrogacy.
6. To explain and critically analyse the recent surrogacy bill 2016.
7. To study and analyse the recent trends of surrogacy arrangement in Lucknow.

Hypothesis

The following propositions are to be tested in the thesis:

1. Surrogacy is a growing phenomenon during recent years despite absence of law regulations in this area.
2. It has now become hub industry, the 15 percent increasing infertility.
3. The legality of surrogacy arrangement is debatable and the right and responsibility of the parties are not settled.

Research Question

The following research questions are to be answer in the thesis:

1. What are the reasons giving rise to a debate over surrogacy?
2. What are the international regime regarding surrogacy?
3. Are there specific law regarding surrogacy in India?
4. What are the rights and duties of surrogate parties?
5. To what extent the Law Commission of India have played role regarding surrogacy arrangement in India?
6. Are there any safeguard to ensure the safety of surrogate mother?
7. What will be the status of child who has born in consequence of surrogacy?
8. What are the provisions in the recent surrogacy bill?
9. Why there is need to amend the surrogacy bill?

Research Methodology

The methodology adopted and data analysis techniques used in pursuance of the objectives of the study. This study used mix method (Qualitative as well as Quantitative Technique) of data collection, analysis and interpretation according to requirement of objectives.

Researcher has methodology adopted for the study will be doctrinal and empirical research of situational analysis study through the means of a survey. The research will be based on empirical study which will be conducted in the fertility centres Lucknow. The data will be collected throwing the detailed questionnaire among the sample of 500 people including medical practitioner, health care staff, surrogate mother, and stake holders. The collected data will be coded and edited and

Research Design

Descriptive Research Design studies seek accurate observations and the research design focuses on the validity (accuracy) and reliability (consistency) of the observations, and the representativeness of sampling (Blanche et al. 2006).

The present work is confined to a limited period (2017-2021). Therefore, Cross-sectional Design has been used rather than longitudinal design. Cross-sectional

research refers to studies which take a snapshot of a situation in time. It examines how something is done at the time of the research study. It measure units from a sample of the population at one point of time.

Population

The population of this study constitutes all stakeholders who are major in age and residing in District Lucknow, Uttar Pradesh, India.

Sampling Unit

Sampling unit is the resident of District Lucknow, Uttar Pradesh, India.

Sample Size

For populations that are large, Cochran (1963) suggested formula yield a representative sample for proportions. He assumes there is a large population but that we do not know the variability in the proportion. Therefore, assume $p=.5$ (maximum variability). Furthermore, suppose we desire a 95% confidence level and $\pm 5\%$ precision.

The formula suggested by Cochran is as follows:

$$n = pq \left(\frac{z}{e}\right)^2$$

Where

‘p’ is the frequency of occurrence of something expressed as a proportion

‘q’ is the frequency of non-occurrence of the same event and is calculated as (1-p)

‘z’ is the confidence level related value of the standard normal variable

‘e’ is the tolerable level of error in estimating ‘p’

Adopting the suggested formula by Cochran, for the present study, the total sample size comes 385. In this study we have taken 430 as a sample size to reduce the margin of error. But unfortunately our valid sample size is 218.

Methods of Data Collection

The type of data to be collected and sample size depends on the nature of the study and its research objectives (Hair et al. 2003). In this study we have used, Primary and Secondary methods of data collection. Primary methods of data collection include Close-Ended Structured Questionnaire Survey to collect primary data and for Secondary methods of data collection we used secondary sources such as research journals, magazines, internet and books.

The data collection was done in Lucknow, District of State Uttar Pradesh, and the period was from 2017 to 2021, wherein 430 questionnaires were distributed to respondents who are major in age and residing in District Lucknow, Uttar Pradesh, India.

Research Instrument

The structured questionnaire had two parts. First part dealt with the demographic profile of the respondents while second part dealt with the different questions which are related to Surrogacy matters.

Statistical Tools of Analysis

The coded and tabulated data were analyzed using both descriptive and inferential statistical techniques. Mean, standard deviation, range have been calculated to draw a profile of the respondents and their responses. The data set was analyzed with the help of SPSS 20.0.

Descriptive statistics includes numbers, tables, charts, and graphs used to describe, organize, summarize and present raw data. In this study, descriptive statistics has been used to summarize the basic characteristics of the data.

Inferential Statistics has been used to draw conclusions about the population from the sample collected. The two main methods used in inferential statistics are estimation and hypothesis testing. The study in this case has used hypothesis testing for understanding the population. The tools used are briefly described below:

Chapterisation

The thesis is divided into the following eight chapters:

Chapter- I Introduction; This chapter introduced an overview on above title and described the surrogacy related laws in contexts to the Surrogacy Arrangement.

Chapter- II History and concept of surrogacy: Under this chapter described meaning, concept of surrogacy.

Chapter- III International law related to surrogacy: This chapter focal point is legal instruments related surrogacy at international level.

Chapter- IV Indian law and policy related to surrogacy: This chapter described Indian laws and policies concerned to surrogacy at present.

Chapter-v Judicial response towards surrogacy: This chapter focused international and Indian judiciary on surrogacy related matters and issues.

Chapter- VI Socio-legal, ethical and moral issues related to surrogacy: This chapter includes information related to surrogacy as socio-legal, ethical and moral.

Chapter- VII Data analysis and interpretation: This chapter analyzed and interprets data related to surrogacy collected through questionnaire.

Chapter- VIII Conclusion and suggestions: This chapter conclude the above mentioned chapters and thereafter given some valuable suggestions.

Chapter- I Introduction

This chapter introduced an overview on above title and described the surrogacy related laws in contexts to the Surrogacy Arrangement.

Chapter- II History and Concept of surrogacy

Under this chapter described meaning, concept of surrogacy.

Infertility is defined as the inability to get pregnant within twelve months, despite having frequent and unprotected sexual intercourse. According to the Surrogacy

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(Regulation) Bill, 2019 is define infertility as of Sec. 2 (p) “Infertility” means the inability to conceive after five years of unprotected coitus or other proven medical condition preventing a couple from conception;⁴⁴

The ancient period (3500 BC-500 AD) marks the beginning of civilization development from Indus Valley to Vedic Civilizations. The practice of Niyogapratha or Levirate was prevalent in the development of the child during this time. It was also clear from the Vedic literature that during that time the general population was familiar with the idea of artificial insemination (AI) involving manual semen injection into the women's reproductive tract. Enchantment mixtures (' Magic potions ') created during this era by the sages to make them pregnant by the queen of childless kings was a typical practice. Therefore, people were aware of the concepts of assisted reproduction and control of gamete during that period.⁴⁵

Assisted reproductive technology (ART) is used to treat infertility. It includes fertility treatments that handle both a woman's egg and a man's sperm. It works by removing eggs from a woman's body. The eggs are then mixed with sperm to make embryos. The embryos are then put back in the woman's body. In vitro fertilization (IVF) is the most common and effective type of ART.

Assisted reproductive technology (ART) refers to all technology where gametes are manipulated outside the body. It does not include where only spermatozoa are manipulated like intrauterine insemination (IUI).

Surrogacy is an important fertility treatment in which in vitro fertilization (IVF) has made motherhood possible for women without the uterus, with uterine anomalies preventing pregnancy, with severe medical problems, or To achieve motherhood with other contraindications for pregnancy by using an embryo produced by itself or by a donor and transferred to the gestational carrier's uterus.⁴⁶

⁴⁴The Surrogacy (Regulation) Bill2019, (Bill No.156 of 2019).

⁴⁵RadheyShyam Sharma and RichaSaxena (et al), “Infertility & assisted reproduction: A historical & modern scientific perspective”*IJMR*, (2018). Access on 23-10-2019 <https://pubmed.ncbi.nlm.nih.gov/30964077/>

⁴⁶Nayana Hitesh Patel and YuvrajDigvijay Singh Jadeja (et al), “Insight into Different Aspects of Surrogacy Practices” vol. 11 *J Hum ReprodSci* (2018). Access on 26-10-2020 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6262674/>

Chapter- III International law related to surrogacy

This chapter focal point is legal instruments related surrogacy at international level.

Surrogacy Law in United Kingdom

The UK was one of the first countries in the world to provide a comprehensive legislative structure to regulate assisted reproductive technologies (ARTs) after a lengthy process.⁴⁷ United Kingdom Altruistic surrogacy is legal. Commercial surrogacy is banned. Surrogacy is recognized under section 30 of the Human Fertilization and Embryology Act 2008; In May 2016, Surrogacy-related commercial arrangements are prohibited by the 1985 Surrogacy Arrangements Act.

Surrogacy Law in US

United States There is no federal law governing surrogacy across the country; regulations vary at the state level. Surrogacy is allowed in most states without any specific legislation regulating its use; 14 states (among which Texas and California) have targeted surrogacy legislation in place; 12 states have strict limitations in place (such as deeming contracts void and unenforceable); only 3 states ban surrogacy altogether (Louisiana, Michigan and Nebraska), whereas New York passed a new piece of legislation, set to go into effect on 15 February 2021, allowing for compensated surrogacy arrangements and provides a Pre-Birth Order, which confirms the legal parentage of the intended parents at the moment of the child's birth.

Surrogacy law in China

Chinese legislation does not restrict or authorize surrogacy activities directly. "According to Article 3 of the Administrative Measures for Assisted Reproductive Technology published in 2001, "the procurement or selling of gametes, zygotes and embryos in any form" and "Any form of surrogacy technology may not be used by medical institutions and medical staff in China. The Standing Committee of the National People's Congress, however, removed this section of Article 6 in December 2015, suggesting a change in the Chinese government's attitude. Nonetheless, Ethical Principles of Assisted Reproductive Technology and Human Sperm Banks,

⁴⁷AmelAlghrani and Danielle Griffiths, "The regulation of surrogacy in the United Kingdom: the case for reform" vol. 29 *SRO* (2017) Access on 10-02-2020. http://sro.sussex.ac.uk/id/eprint/68402/4/2017_02_CFLQ_165_Griffiths.pdf

Subsection 5, Part 3, also released in 2001, it still describes any surrogacy technology as unlawful, banning the conduct of surrogacy procedures by medical personnel.

Surrogacy Law in Japan

No legislation governs surrogacy use. Guidelines and legal opinions released by professional societies and government agencies, based on societal and cultural deeply rooted elements, have however stigmatized and discouraged such a practice.

Surrogacy Law in Thailand

Before the enactment of the ART Act in 2015, Thailand represented an attractive destination for international surrogacy. Only opposite-sex married couples as Thailand residents are allowed to have a commercial surrogacy contract arrangement. On 19 February 2015, the Thai Parliament enacted a bill meant to regulate surrogacy on its territory. The text put in place major restrictions. It came into effect on 30 July 2015. In the past, Thailand was a popular destination for couples seeking surrogate mothers.

Surrogacy Law in Russia

Full or gestational surrogacy is legal, i.e., the surrogate mother cannot have a genetic tie with the child. Commercial surrogacy is legal as well.

Surrogacy Law in Australia

Altruistic surrogacy is legal in all jurisdictions except the Northern Territory; commercial surrogacy is a criminal offense. In the Australian Capital Territory, under the **Parentage Act 2004**(ACT),⁴⁸ altruistic surrogacy is allowed while ‘commercial substitute parent agreements’ are prohibited.

Surrogacy Law in South Africa

Only altruistic surrogacy is allowed, including for singles and same-sex couples; access is only legal for residents, and surrogate mothers may not be financially rewarded other than compensation for pregnancy-related expenses. Section

⁴⁸Australian Capital Territory, (Parentage Act 2004) Access on 20-05-2018<https://www.legislation.act.gov.au>

19 of the Children's Act, which regulates surrogacy in South Africa, entered into force on 1 April 2010.

Surrogacy's legal challenges are complicated, varied, and largely unresolved. In most nations around the world, the woman who gives birth to a child is considered the legal mother of the kid. However, in a certain countries, the intended parents are acknowledged as legal parents from the moment the child is born because the Surrogate has agreed to surrender the child to the intended parents. India is one of the few countries in the world that recognises the intended parent(s) as legal parents. Many countries now use the courts to issue pre-birth orders, which include the name(s) of the intended parent(s) on the child's birth certificate. The following are the surrogacy positions in various countries.

Chapter- IV Indian law and policy related to surrogacy

This chapter described Indian laws and policies concerned to surrogacy at present.

In 2000, the ICMR released a statement of specific principles for Assisted Reproductive Technologies with respect to Surrogacy⁴⁹, the guidelines offered several protections to the surrogate in India.

In the backdrop of tremendous growth of surrogacy clinics across the country, the Government has formulated various draft Bills to regulate surrogacy over the years in 2008, 2010, 2014, 2016, 2019 and latest draft Bill being the Surrogacy (Regulation) Bill, 2020. The new Bill provides certain rules and restrictions on who can avail and who cannot avail surrogacy. The Bill proposes a complete ban on commercial surrogacy, restricting ethical and altruistic surrogacy to legally wed infertile Indian couples only. It also creates a ban on the overseas Indians, foreigners, unmarried couples, live-in partners and gay couples to be a part of surrogacy.⁵⁰

Thus in place on dodge difficulties What's more upsetting situations, far reaching enactment ought a chance to be sanctioned taking under thought Different

⁴⁹ *Id.*

⁵⁰ Dr.DipankarDebnath, "The Surrogacy (Regulation) Bill, 2020: A Critical Analysis of the Provisions In The Light Of Procreative Choice of Surrogate Mother to Use Her Agency" vol. 5 *IJCRT* (2020)

existing enactment Likewise need been happened for japanese couples situation of baby Manji Also German couples instance for janBalaze⁵¹ which makes thereabouts huge numbers legitimate issues of the couples same time bringing their youngster with their home country. Thereabouts with succeed for everyone these issues an free enactment needed, existing Indian laws need aid completely contrary with advanced medicinal headway.⁵² Chapter 5

Chapter 5 Judicial Response toward Surrogacy

Judicial response on surrogacy issues related. Thus we find that in some countries the law has been settled while in others, it is in the process of making. The country where in the law has not been drafted or is in process of drafting, the concerned courts have responded in diverse ways in the cases coming before them concerning surrogacy arrangement. Let's discuss some leading cases national and international label.

In re Baby M Case : Instead, in the court's judgment, the surrogacy contract is based on principles that are directly contrary to the objectives of our laws.

Johnson v. Calvert Case: California Supreme Court found the intended mother to be the child's "legal, natural" mother, and held that the surrogacy contract was not "inconsistent with public policy."

Doe v. Kelley Case : In this case, the Michigan Court of Appeals held that, even though a couple might legally use a surrogate to conceive a child, any payment made to the surrogate in exchange for the release of her parental rights to the child was illegal under state law.

New State Ice Co. v. Liebmann Case : Where he wrote in dissent: "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

⁵¹Anil Malhotra and Ranjit Malhotra, *Surrogacy in India -A Law in the Making*,57-58 (Universal Law Publishing Co., New Dehli, 2013). (AIR 2010 Guj 21)

⁵²S.s. Das, "Commercialization of Surrogacy in India: A Critical Analysis", vol. *Research Gate* (2014) <https://www.researchgate.net/publication/281710247>

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Baby Cotton' case : Cotton subsequently established the UK's first surrogacy agency, Childlessness Overcome through Surrogacy (COTS), and has recently stated she does not regret the choice she made.

In **Re M**, Black LJ allowed the surrogate, X, to keep the child, despite having no genetic link, due to the IPs' "potentially exploitative" behaviour, and that the child's welfare was more likely to flourish with X as a result of already having a child and being more accustomed to a child's needs.

Despite the courts' tendency to retrospectively authorise payments, it is clear from **XX v Whittington Hospital NHS Trust** that they are still ambivalent to commercial surrogacy. Here, a patient was claiming damages because of the hospital's negligence by failing to recognise signs of cancer.

Baby Mukai case : A de facto ban on surrogacy in Japan led Mukai and Takada to find a jurisdiction that would allow them to contract with a surrogate mother.

Adair & Anor and Bachan : Court must proceed with caution, particularly due to the risk of exploitation of vulnerable women in poorer countries,

Bernieres and Anor & Dhopal, The result of this decision is that the legal parentage of thousands of Australian children of surrogacy arrangements which do not comply with the strict requirements of State laws remain in doubt.

Farnell v. Chanbua Discussion should be had with the Commonwealth Government and other states and territories concerning the issue of the granting of citizenship, passports, and/or long-term visas to children born as a result of commercial surrogacy arrangements given the specific complexities that arise in relation to ART, donor conception, and surrogacy, and the strong public policy position against commercial surrogacy taken in Australia.

Down syndrome (Baby Gammy) case carried by a Thai surrogate while taking his healthy twin sister. This case, in fact, made international headlines and highlighted to the eyes of the world the laxity of ART regulations in Thailand.

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In *Rypkema v. British Columbia*⁵³, a case decided while legislation for the Assisted Human Reproduction Act was pending but before the Act was passed, the Director of the Vital Statistics Agency refused to list the intended parents as the legal parents of a child born out of a gestational surrogacy arrangement.

*JR. v. L.H.*⁵⁴ declared that the intended parents who were also the genetic parents in an uncontested gestational surrogacy arrangement were the legal parents of the child.

In *Re M.D.*,⁵⁵ a case filed after the issuance of the Assisted Human Reproduction Act, the Ontario Superior Court of Justice granted custody to the intended parents, declared the intended parents to be the mother and father of the child, and directed the Deputy Registrar to amend the registration of the birth of the child to show that the intended parents were the mother and father.

Baby Manji Yamada vs Union of India & Anr : The court also held that the medical procedure even in commercial surrogacy is legal in India as it is in many countries of the world

Jan Balaz V. Anand Municipality and others (AIR 2010 GUJ 21): In the lack of any legislation to the contrary, the Court opined that the gestational surrogate who gave birth to twins should be recognized as the legal mother of the twins. It was stated that the factum of the babies' births had been confirmed, and that they were born in India to an Indian mother. The egg donor is also said to be an Indian woman; in any case, the babies' mother is an Indian national. Even though the children are regarded as illegitimate children born in this country to an Indian person, they are nonetheless eligible for citizenship by birth.

P. Geetha V. The Kerala Livestock Development Board Ltd., 2015 SSC:The court had the opportunity to address a number of important issues in this case, including the concept of motherhood obtained through medical technology, including surrogacy, the legal safeguard for maternity rights, the right of a child to health care,

⁵³*Rypkema v. British Columbia*, [2003] B.C.J. No. 272, 2003 BC.C. LEXIS 4820, at *4-8(B.C.S.C. Nov. 28, 2003)

⁵⁴*J.R. v. L.H.* [2002] O.J. No. 3998, 2002 ON. C. LEXIS 799 (O.S.C.J. Sept. 3, 2002).

⁵⁵*Re M.D.* [2008] O.J. No. 07, 2008 ON. C. LEXIS 1147, at *1, 36 (O.S.C.J. Mar. 10, 2008).

as well as the incorporation of international convention laws into municipal law, and beneficial interpretation of laws.

Chapter 6 Socio-legal, ethical and moral issues related to surrogacy

This chapter includes information related to surrogacy as socio-legal, ethical and moral.

Surrogacy carry social stigma in the society as it is equated with prostitution and by virtue of that it is argued that it should be disallowed on moral grounds. Surrogate mothers are kept in isolation from families and allowed to meet families in weekends, which are against the human rights. Hence, there are number of ethical, social, legal and psychological issues associated with surrogacy. New industry in India surrogacy, the article started, was India's new form of outsourcing, where couples from all over the world could hire India women to bear their children for a fraction of the cost of surrogacy elsewhere and with no government regulation. which require urgent need for framing and implementation of law.

Chapter 7 Data Analysis and Interpretation

This chapter analyzed and interprets data related to surrogacy collected through questionnaire.

Chapter 8 Conclusion and suggestions

Hypothesis Testing

The following propositions are to be tested in the thesis:

H_{01} : Surrogacy is not a growing phenomenon during recent years and there is no absence of law regulations in this area.

H_1 : Surrogacy is a growing phenomenon during recent years despite absence of law regulations in this area.

Table no. 26 shows that Surrogacy is a growing phenomenon during recent years despite absence of law regulations in this area. Pearson Correlation is .774 and

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hence the statistical evidence does not support the null hypothesis and the data favors the alternative hypothesis.

Table no. 26: Correlations

		Surrogacy is a growing phenomenon during recent years	Absense_law
Surrogacy is a growing phenomenon during recent years	Pearson Correlation	1	.774**
	Sig. (2-tailed)		.000
	N	218	218
Absense_law	Pearson Correlation	.774**	1
	Sig. (2-tailed)	.000	
	N	218	218

****.** Correlation is significant at the 0.01 level (2-tailed).

H_{02} : It has not now become a hub industry, there is not a 15 percent increasing infertility.

H_2 : It has now become hub industry, the 15 percent increasing infertility.

Table no. 27 is shows that it has now become hub industry, the 15 percent increasing infertility. Pearson Correlation is .318 and hence the statistical evidence rejects the null hypothesis and the data favors the alternative hypothesis.

Table no. 27: Correlations

		Surro_hub_I ndustry	Increasing_infert ility
Surro_hub_Industry	Pearson Correlation	1	.318**
	Sig. (2-tailed)		.000
	N	218	218
Increasing_infertility	Pearson Correlation	.318**	1
	Sig. (2-tailed)	.000	
	N	218	218

****.**Correlation is significant at the 0.01 level (2-tailed).

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H₀₃: The legality of surrogacy arrangement is not debatable and the right & responsibility of the parties are settled.

H₃: The legality of surrogacy arrangement is debatable and the right & responsibility of the parties are not settled.

Table no. 28 is shows that the legality of surrogacy arrangement is debatable and the right & responsibility of the parties are not settled. Pearson Correlation is .210 and hence the statistical evidence rejects the null hypothesis and the data favors the alternative hypothesis.

Table no. 28: Correlations

		SurroArrang _debetable	RR_are_Settele d
SurroArrang_debetable	Pearson Correlation	1	.210**
	Sig. (2-tailed)		.000
	N	218	218
RR_are_Settele d	Pearson Correlation	.210**	1
	Sig. (2-tailed)	.000	
	N	218	218

****.** Correlation is significant at the 0.01 level (2-tailed).

Chapter 8 Conclusion and suggestions

Conclusion

Surrogacy has seen a recent surge in popularity due to technology advancements like as IVF, a softening of cultural attitudes, and the tendency of having children later in life. It has grown into a global phenomenon during the last two decades. Louise Brown, the world's first IVF baby, was born on July 25, 1978, in the United Kingdom. Kanupriya (alias Durga), On October 3, 1978, the world's second and India's first IVF baby was born, 67 days later. In the well-known "Baby M" case, a court in the state of New Jersey recognized the legitimacy of the traditional/genetic surrogate mother for the first time in 1986. Surrogacy is a process in which a surrogate mother carries and delivers a child for the benefit of another couple or individual.

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Some couples have been able to start children that they would not have been able to start otherwise thanks to advances in reproductive technology. The present legal anomalies around international surrogacy, on the other hand, have caused a slew of issues for all parties involved. Surrogacy may never reach its full potential unless some type of regulation is implemented soon. Over the last decade, the number of global surrogacy partnerships has expanded significantly, prompting concerns about social justice, exploitation, and human rights breaches. Advances in reproductive technologies have caused major legal, moral, and ethical controversies in the world today. There are currently no international norms or guidelines governing global surrogacy arrangements, and there is limited national control or monitoring in some countries where the practice is common, such as India. Surrogacy is a complex topic that involves morality, paternity, the natural mother–infant bond, and the nuances of inequity in a globalised world, all of which connect with a multibillion-dollar industry.

Thailand, termed the "womb of Asia" by some, is the most common destination for international surrogacy. Hundreds of thousands of couples travelled to Thailand to hire women to carry their children. This influx eventually led in a slew of controversies arising from the mostly unregulated business. A surrogacy partnership between an Australian couple and a Thai surrogate resulted in the birth of Baby Gammy, who has Down syndrome and heart and lung abnormalities. Because of these developmental problems, Gammy's intended Australian parents abandoned him in Thailand, leaving his destitute surrogate mother to care for him. Gammy's twin sister was healthy when the couple returned to Australia. Not just his intended parents, but the entire world was outraged by Baby Gammy's desertion. Surrogacy may never reach its full potential unless some type of regulation is implemented soon. The surrogacy market is rapidly growing, and the current challenges that couples and surrogates face will not be remedied by keeping the system as it is. Sovereign countries have the right to rule their inhabitants without interference, but a single regulatory framework for the surrogacy business would benefit both the people of signatory countries and those who participate in cross-border surrogacy partnerships. Regulators are desperately needed to address the difficulties that put the children and adults involved in international surrogacy in danger on a daily basis.

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After the United States, India has become a popular surrogacy destination in the last decade. According to the Global Surrogate Mothers Advancing Rights, 50,000 couples may use it each year. Due to the intended parents' economic and political backgrounds (who come from developed countries where surrogacy may be prohibited), the numerous medical facilities offered by the medical community, and the low socio-economic background of Indian women, a plentiful source of "reproductive labour," both demand and supply are high in India. The popularity of "medical tourism," or, in this case, "fertility tourism," adds another degree of complexity. "Fertility tourism" has grown in popularity in recent years in nations with relatively lenient assisted reproduction technology legislation, such as India, Ukraine, and even the United States. This Note will provide an outline of the key centres of operation in the "fertility tourism" boom, as well as the main legal difficulties that arise in international surrogacy.

Surrogacy arrangements with women from low-resource countries like India or Thailand are becoming more popular, not only because they are less expensive than elsewhere, but also because the laws in their home countries, where commercial surrogacy is either highly restricted or illegal, may be less restrictive. In Canada, Israel, and the United Kingdom, commercial surrogacy is forbidden, but an altruistic surrogate may be reimbursed for reasonable pregnancy-related expenditures. In Germany, Italy, France, Japan, and China, surrogacy is outright forbidden, and no type of surrogacy is permitted. Despite the fact that numerous states in the United States have permissive surrogacy laws, US residents continue to engage in worldwide surrogacy arrangements with women from other countries due to the exorbitant costs. The Thai government began working on new surrogacy legislation in February 2015, following the infant Gammy and Shigeta issues. On July 30, 2015, the ART Act went into effect. Because only married couples can employ surrogates and "same-sex marriage is not recognized" in Thailand, the law "prohibits commercial surrogacy serving foreign customers" and excludes same-sex couples as well. Both the husband and wife must be Thai to qualify for a surrogacy agreement, or "if only one applicant is Thai, the couple must have been married for at least three years." The ART Act clearly prohibits any party from benefitting from the arrangement, and the surrogate mother must be a "blood relative of either of the applicants" and have previously given birth. The provisions of the ART Act, as detailed in the Draft Law, entirely

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prohibit surrogacy for commercial purposes, with offenders facing up to 10 years in prison, a fine of up to 200,000 baht, or both.

Surrogacy regulations vary widely in the United States because they are governed by each of the 50 states and the District of Columbia, with surrogacy being completely illegal in Washington, DC and practically unregulated in the rest of the country. Regardless of stated statutes in a state, actual surrogacy practices can differ substantially from statutory surrogacy laws. Statutes in states like Arizona, Indiana, Michigan, and although gestational surrogacy contracts are unenforceable in New York, the practise of surrogacy continues, and the vast majority of surrogacy agreements are successful. Surrogacy is widely permitted in states like California, Illinois, and Nevada, and these jurisdictions provide regulatory structure, making them the most surrogacy-friendly, with California being a popular destination location for international surrogacy arrangements. In states like Colorado, Georgia, and Oregon, there are no explicit surrogacy laws, and there are no published cases to set precedent. Many nations around the world restrict commercial surrogacy arrangements, making finding a surrogate mother extremely difficult. In comparison, IVF and surrogacy procedures in India cost less than a third of what they do elsewhere, and the easy availability of surrogacy services has prompted a global flood of patients to India. In India, a surrogacy package costs between \$10,000 and \$35,000, whereas in the United States, it costs between \$59,000 and \$80,000. In 2012, the 3,000 fertility clinics operating across India, offering artificial insemination, IVF, and surrogacy procedures, were anticipated to produce more than \$400 million in revenue. In the same year, the number of medical tourists climbed from 150,000 to 450,000, and the number of surrogate births doubled, with estimates ranging from 200 to 350. Before recent legislation, Commercial surrogacy is expected to be a \$2 billion market by 2012, according to the Confederation of Indian Markets, and a \$6 billion industry by 2018, according to the Indian Council of Medical Research. Commercial surrogacy has remained mostly uncontrolled in India over the past two decades, despite its growing popularity. Surrogacy is a rare occurrence in India, with about 1% of couples seeking Assisted Reproductive Technologies (ART) treatment. But, especially since India became the "global centre of commercial surrogacy," it is the most contentious infertility therapy, criticized as a baby business, a capitalist market, and a patriarchal exploitation of vulnerable women. Surrogacy thus attracts a rising amount of attention

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from the media, academics, and students, as well as Non-Governmental Organizations (NGO). The fact that there is no specific law governing surrogacy in India adds to the issues.

Surrogacy is legally deemed to be part of ART treatment, which has been regulated in India since 2005 by consecutive Assisted Reproductive Technologies (Regulation) Bills. With an increase in reports of surrogate mothers being exploited, unethical techniques being used, and children being abandoned as a result of surrogacy, the government was compelled to outlaw commercial surrogacy and all forms of exploitation carried out in the name of surrogacy. The Indian Council of Medical Research (ICMR), which is mandated by the Indian Government, created all of the bill's suggestions based on public debates, consultations, and comments. Before being approved as a Bill, these suggestions are sent to the government for examination and change. The ICMR assessed the ART Bill 2010 in 2012, but it has yet to be officially approved by the government. Meanwhile, the Government of India made new ideas in a Cabinet Note in December 2012, before final adoption of the text of the previous Bill. Surrogacy was only available to married couples and foreigners with a medical visa as a result of this restriction (in order to avoid legal problems when foreigners wish to return to their home country with the new born). In September 2013, this Cabinet Note went into effect. Furthermore, same-sex couples are not recognized in India, according to a Supreme Court order from 2013. As a result, they are ineligible to become parents through surrogacy. Surrogacy access in the country has been curtailed as a result of these measures. The government has drafted many draught Bills to regulate surrogacy throughout the years in 2008, 2010, 2014, 2016, 2019, and the most recent draught Bill is the Surrogacy (Regulation) Bill, 2020, in response to the rapid proliferation of surrogacy clinics around the country. The new Bill establishes various guidelines and limitations on who is eligible for and who is not eligible for surrogacy.

People are beginning to believe that India's surrogacy clinics use unscrupulous techniques to entice people in order to make a lot of money. Through numerous legislation and acts, the government has attempted to control surrogacy clinics. However, the government must take numerous steps to ensure that the rules are strictly enforced. Commercial surrogacy must be outlawed in India, and surrogacy

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clinics must be closely supervised and appropriately sanctioned if found guilty. Surrogacy must be controlled and ethically conducted in the best interests of the patient and the community.

The Surrogacy (Regulation) Bill 2019 is a bill that regulates surrogacy. Commercial surrogacy is prohibited; however altruistic surrogacy for infertile Indian couples is permitted. The couple must have been married for at least 5 years and have documents from new regulatory organisations verifying either partner's infertility to be eligible for altruistic surrogacy. According to the bill, LGBTQ+ families, single parents, unmarried couples, foreign citizens, and anyone outside the age groups of 23-50 for women and 26-55 for males are not eligible for surrogacy. Furthermore, altruistic surrogates for the intending parents can only be the intended parents' "close relatives" (undefined). Surrogate moms must also be between the ages of 25 and 35, and they are only allowed to carry one child. If IPs pay a surrogate mother more than a "reasonable" amount for 16 months of insurance coverage for postpartum birth complications, they might face up to ten years in prison. Due to the lack of provisions to ensure that the altruistic surrogate is not exploited, as well as the possibility to appeal government decisions to approve or refuse surrogacy, this bill has caused significant debate. The Surrogacy (Regulation) Bill 2020 is a bill that seeks to regulate surrogacy. It makes it possible for any "willing" woman to become a surrogate mother. Live-in couples, divorced women, widows, non-resident Indians (NRIs), persons of Indian origin (PIO), and overseas citizenship of India (OCI), among others, were included. The five-year term of confirmed infertility has been decreased to one year. It aims to allow potential infertile Indian married couples aged 23-50 years for females and 26-55 years for males to use ethical altruistic surrogacy. It suggests establishing a National Surrogacy Board at the federal level, as well as State Surrogacy Boards and competent authorities in each state and union territory. Surrogate mothers' insurance coverage has been expanded to 36 months, up from 16 months in the previous edition. The bill requires the couple to get a certificate of necessity as well as a certificate of surrogacy eligibility. It suggested banning commercial surrogacy, as well as the selling and purchase of human embryos and gametes. Surrogacy is a topic that is fraught with ethical, moral, and legal concerns. Surrogate mothers are subjected to physical, mental, and financial exploitation in all aspects of surrogacy because the pain and agony they have endured cannot be realized

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by the prospective mother, which is why it is critical that her interests be protected under the contract in such a way that a proper balance can be maintained between both mothers (prospective and surrogate). Rather than treating the contract as a commercial one for which the Bill provides a penalty, the interests of the person providing a womb for surrogacy must be monetarily protected under it, including the provision of proper insurance and medical expenses that are borne by the surrogate mother, as well as physical and mental sufferings.

Before entering into an agreement between the parties, proper counseling should be conducted in order to preserve the parties' numerous rights, including the surrogate mother's right to procreate. There is no doubting that, rather than emotional or other variables, the economic factor is the one that receives the most attention since it is seen as the fundamental and most important factor related to the right to livelihood.

Other human rights considerations include the right to individual autonomy, the right to health, including reproductive liberty, the right to dignity, and the right to privacy, among others. These considerations should be made clear to the surrogate mother, who is poor and illiterate and has no idea about legal complications that may arise at any time during the pregnancy.

Apart from the financial aspect, the surrogate mother's procreative right should be properly protected, and special attention should be paid to her health (both mental and physical) during pregnancy, because she should not be left vulnerable at such a vulnerable stage of pregnancy, and she should not be left vulnerable after the baby is delivered, putting her health in jeopardy.

In empirical study through questionnaire the analysis of data leads to findings of this research. The findings and subsequent discussion are to be viewed in the context of objectives of the study in order to relate to same with outcome of study. The various objectives of the study are to evaluate. Table no. 5 and Chart no. 5 is related to qualifying question for respondents. . The question was “*Do you know about of Test Tube Baby Technique/ IVF, Surrogacy?*” Researcher has received 430 filled questionnaires. Under these filled questionnaire researcher found that 218 respondent are know about the Test Tube Baby Technique/IVF Surrogacy. So out of 430

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questionnaires only 218 questionnaires was valid for data analysis and interpretation. Only 218 respondents are qualified and found suitable for further questions. Table number and Chart number 6 is related to question “***Do you know about of Test Tube Baby Technique/ IVF, Surrogacy? If Yes, How to know this?*** Table shows that 46.8 percent of respondents are gain knowledge / information about Test Tube Baby Technique/ IVF, Surrogacy from Friends and Relatives, Electronic & Print Media and Internet. The second highest number of respondents are know about Test Tube Baby Technique/ IVF, Surrogacy through Internet their percentage is 22.5. Electronic and Print Media have the third highest sources of information about Test Tube Baby Technique/ IVF, Surrogacy and Table also show that Friends and Relative are the least sources of information about Test Tube Baby Technique/ IVF, Surrogacy. Their share is eleven percent. Table and Chart number 7 is related to question “***Do you know about of Surrogacy Arrangement?***” This table shows that 74.8 percent of respondents are know about Surrogacy Arrangement. While 18.8 percent of respondents are not known about Surrogacy Arrangement and 6.4 percent of respondents are not able to answer this question. Table and Chart number 8 is related to question “***Is there any Difference between In-Vitro Fertilization and Surrogacy Arrangement?*** Here 60.6 of respondent said that there is any difference between In-Vitro Fertilization and Surrogacy Arrangement, while 11.9 percent of respondents are finds not any difference between In-Vitro Fertilization and Surrogacy Arrangement and Can’t Say are in sixty in numbers. Table and Chart no. 9 is related to question “***What are the Possible Impact of infertility, Impotency or Natural Incapacity?*** The question is trying to analyse the Possible Impact of infertility, Impotency or Natural Incapacity with five different closed ended options i.e. Persons are affected by inferiority complex, they keep them cut off from the mainstream of society, Persons suffer from depression, Broken Marriage and All of the above. The table shows that highest numbers of respondents responds on all of above (57.8 %), the second highest option is Persons are affected by inferiority complex i.e. 20.6%, Persons suffer from depression is on third position, Broken Marriage gets forth number i.e. 8.7% and least highest is They keep them cut off from the mainstream of society. Table and Chart no. 10 shows that Social Experience of Infertility. In this table we can see that 52.8 percent of respondents choose the all of above options which is highest score of social experience of infertility while Attitude of people in society is the second highest

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preferred option i.e. 25.2 percent. Attitude of life partner is the third highest preferred option, fourth one is Attitude of relatives (8.3%) and in least preferred option is Attitude of family members (3.2%). After the analysis of Social Experience of Infertility question, the next question is related to find out the Most Suitable Alternative for Infertility, Impotency and Natural incapacity. For this table and Chart no. 11 shows that In-Vitro Fertilization and Surrogacy Arrangement are the most suitable alternatives. Surrogacy Arrangement has the highest scorer (17.4%) in comparison to In-Vitro Fertilization (14.7%). Any other method (if there is) is the lowest preferred option by the 4.6 percent of respondents. Table and Chart no. 12 is related to analysis and interpretation of Reasons for the Mushroom Growth of ART Clinics in India. Here our respondents have different opinions regarding mushrooming growth of ART clinics in India. These opinions are classified into four different categories. The table and Chart shows that Desire to have a baby (41.7%) is the most preferred reason for mushrooming of ART clinics in India. While Desire to have a male child is the second most (39%) most preferred reason for mushrooming, Any other Desire have the third most (12.4) preferred reason for mushrooming lastly Desire to have a female child have the least (6.9%) preferred reason for mushrooming of ART clinics in India. Table and Chart number 13 shows that frequency of respondent's opinions (in regards to commercialisation of IVF and Surrogacy Arrangement at present times) on three nominal scale Yes, No and Can't Say. The data analysis and interpretations clearly shows that 61.5 % of respondents said Yes for its commercialisation, 15.1% are in against of its commercialisation and 23.4% respondents are not able to express their opinions against commercialisation or not. Another table and Chart number 14 is about the awareness of Surrogacy & ART Bill. Table shows that 45.9 percent of respondents have the information about Surrogacy & ART Bill, 27.1 percent of respondents are not aware about Surrogacy & ART Bill, while 26.6 percent of respondents not able to say anything about Surrogacy & ART Bill and lastly .5 percent of respondent have read about the bill in newspaper but don't have descriptive knowledge. Majority of respondents (100 out of 218 respondents) have well awareness and knowledge about Surrogacy & ART Bill The table and Chart related to opinions on **“Surrogate Mother develops a Sentimental Relation with the Child”**. Here 147 respondents dominate on 71 respondents. 147 respondents means 67.4 percent opted 'Yes' and 9.6 percent of respondents opted 'No' while 22.9

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percent of respondents are not able to clearly opted for any above option. The Table and Chart no. 17 related to the question “Surrogacy Arrangement should be available only to Naturally Incapable Parents?” and respondents opinions. The table shows that 140 respondents (64.2%) are in favour of this question while 45 respondents are against it. Only 33 respondents are not able express their opinion in ‘Yes or No’. The table and Chart no. 18 are related to question ‘Should Single Parents have Right to Baby through Surrogacy Arrangement?’ Here 153 respondents are opted ‘Yes’ while 30 respondents opted ‘No’. And 35 respondents are ‘Can’t Say. The table and Chart no. 19 is based on question **“Whether Transgender, Gays or Bisexuals should be allowed to have Baby through Surrogacy Arrangement?”** The data analysis shows that 138 respondents are in favour of Transgender, Gays or Bisexuals be allowed to have Baby through Surrogacy Arrangement, while 37 respondents opted ‘No’ and 43 respondents opted Can’t Say which is second highest in number. The table and chart related to question ‘Should ART and Surrogacy Arrangement be permitted at professional Level?’ In this table we can see that 117 respondents opted ‘Yes’ 50 respondents are not in favour at professional level while 51 respondents opted Can’t say. The table and chart no. 21 is related to question reveal that 64.7 percent of respondents are the first highest in numbers who wanted to strictly prohibited Sex-determination in ART and Surrogacy Arrangement. Can’t Say scored second highest in numbers and least scorers of respondents are categorized in ‘No’. In another question when next question was asked from respondents about “whether IVF and the Surrogacy Arrangement is being Misused?” Table no.22 and chart no. xxx shows that 133 respondents opted ‘Yes” which is highest in numbers. Can’t Say supporter respondents are the second highest in numbers and least number of respondents (21 respondents) are against the question. Table and chart no. 23 revealed respondent opinion on question ‘Do you think that a proper law is necessary to regulate surrogacy?’ that 173 respondents opted ‘Yes’ for proper law is necessary to regulate surrogacy. Table and chart also shows that 5.5 percent of respondents are not in favour of this question and they are all in least number i.e. 12 respondents, while there are also we have another option for this question to respondents i.e. Can’t Say. So Can’t Say respondents are the second highest in this data analysis. The table and chart no. 24 is related to respondent’s opinions on question ‘Do you think that there is exploitation of surrogate mother?’ The chart and table shows that 151 respondents

opted 'Yes', 16 respondents opted 'No' which is third in score and 51 respondents are categorized in 'Can't Say' which is second highest in score. Table and Chart no. 25 shows the question '**Whether there should be a proper compensation system for the surrogate mother?**' For this question opinion of 183 out of 218 respondents opted 'Yes' which is the highest in score. 'No' opinion respondents are in least number i.e. 7 respondents only. And third are those respondents who opted 'Can't Say' is only in 12.8 percent which is the second highest category.

8.2 Suggestions

On the basis of the study conducted by the researcher, the researcher wants to give the following suggestions:

1. There is an urgent need to have a specific and comprehensive law for the regulation and control of commercial surrogacy in India.
2. To protect the rights of women and children, laws should be drafted and executed to address the grey areas.
3. It should consider problems such as surrogacy access, liability issues, the child's best interests, parentage, and so on.
4. The conditions and circumstances must be clearly confirmed, and a strong balance must be maintained between the surrogate mother's responsibilities and the protection of her rights' dignity.
5. In all surrogacy arrangements, the relationship between the surrogate mother and the child, as well as the commissioning parents, should be clearly defined and made uniform.
6. Surrogacy has achieved a successful balance between societal and private individual requirements. Before consenting to and signing a contract, both the surrogate and the infertile couple should get legal advice and that should be included in the contract; there will also be a second legal parent if the first parent has troubles.
7. The child's nationality should equal to that of the commissioning parents.
8. Personal laws regarding the rights and legitimacy of a surrogate child must be amended.
9. The welfare of the child in all circumstances should be given top priority.

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10. Commercial surrogacy should not be completely prohibited; it should be allowed with restrictions for limited purpose.
11. The clinical practices of Artificial Reproductive Technology should be governed by appropriate regulations.
12. Most importantly, the rights and obligations of the biological parents and surrogate mother should be determined by the statute not by the contract. Such a socially sensitive issue should not be regulated by contractual relations.
13. Local guardian are uncertain in surrogacy law in India, it should be fixed by law.
14. The government should encourage the couple to adopt a child. Only infertile couples should be permitted to use surrogacy, not those who already have a child. In the case of commercial surrogacy, the hospital authority should not allow a middleman.
15. The media and NGOs should be used to raise public awareness about the risks associated with human egg donation and surrogacy arrangements involving surrogate mothers.
