INTRODUCTION

The most awaited good news for anyone in their life is when they become a parent. A new born baby is a doting darling of a family. It gives a new sense of purpose in life to some while to some others it brings about a fulfilling life experience. Nature has endowed upon women the divine capability of giving birth to humankind. Motherhood is a sublime journey, which almost every woman desires to walk through. At times this process of attaining motherhood comes with complications and at some other times certain medical conditions take away their very ability to conceive a child.

Earlier, adoption was a way out for couples for walking through parenthood. However, with the hassles in the adoption procedure and the advancement of medical sciences and technology, modern means have been developed to treat infertility. Assisted reproductive technology (ART) is a process of fertility treatment used to attain pregnancy, bypassing intercourse with the help of procedures such as fertility medication, artificial insemination, in vitro fertilization (IVF) and surrogacy. In general\(^2\), ART procedures involve surgically removing eggs from a woman's ovaries, combining them with sperm in the laboratory, and returning them to the woman's body or donating them to another woman. Since it is an expensive method, it is attempted only when other methods fail. The first successful birth of a "test-tube baby", Louise Brown, occurred in 1978. In 2012 it was estimated that five million children had been born worldwide using IVF and other assisted reproduction techniques\(^3\).

One of the implementation procedures for IVF which has recently caught much legal attention is surrogacy. According to the Black’s Law Dictionary\(^4\), surrogacy means the process of carrying and delivering a child for another person. A surrogacy arrangement or surrogacy agreement is the carrying of pregnancy for intended parents. Some view it as renting a womb,
while to some others it is the donation of a womb for needy infertile couples. Surrogacy, in general, is of two types: Gestational and Traditional. In gestational surrogacy, the resulting child is genetically unrelated to the surrogate while in traditional surrogacy the child and the surrogate are genetically related. In a surrogacy agreement, if there is a provision of consideration along with the medical expenses occurred then it is commercial surrogacy agreement while on the other hand when it is devoid of consideration it takes the altruistic form.

The paper, in the beginning, gives a historical glimpse of surrogacy and its gradual transformation into the idea of commercial surrogacy. It next focuses on social and legal aspects pertaining to India before and after the Surrogacy Bill 2016. It also discusses the feasibility of the public policy that governs the nature of commercial surrogacy and tries to develop a legal argument whether commercial surrogacy is reciprocally beneficial or not.

HISTORY AT A GLANCE

Having children and carrying human race forward through centuries started since Adam and continues till now. In the Jewish scriptures, according to the rabbinical enumerations of the 613 commandments, the commandment to procreate is the first mitzvah in the Torah:

"And God blessed them, and God said unto them: Be fruitful, and multiply [Peru Urevu], and replenish the earth, and subdue it, and have dominion over the fish of the sea and the fowl of the air, and over every living thing that creepeth upon the earth."

— Genesis, 1:28

Infertility has been a social stigma and has been dealt with differently by various religions and countries around the world. It will be improper to think that surrogacy saw the light with recent medical advancements. Rather, surrogacy has marked its presence since the ancient times which is reflected in several religious scriptures.

In Indian mythology there is a reference to surrogacy when the embryo was transferred from the womb of Devaki to that of Rohini, the first wife of Vasudeva, during the birth of Lord Krishna, to prevent the baby from being killed by Kamsa.

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5 "Reproductive Law": Lisa Feldstrin Law Office
In 1978, the first test-tube baby Louise Brown, was born in England. The year 1980 saw a Michigan lawyer Noel Keane writing the first surrogacy contract. He continued his work on surrogacy through his Infertility Centre in the course of which he created the contract leading to the Baby M case.

**MEDICAL TECHNOLOGY, REQUIREMENTS, AND CONDITIONS**

The medical conditions which genuinely prompt for surrogacy are when a woman's fallopian tubes are missing or blocked, she suffers from endometriosis, her age, how long the couple has waited with uncertain infertility and when a man has low sperm counts. It also may be an option when the woman suffers from one of the five types of gynaecologic cancers and is unable to gestate.

Most surrogacy agencies and fertility clinics require surrogates to meet general qualifications such as be in good physical and mental health, must have carried and delivered at least one child free of complications, be less than 43 years of age (some clinics will accept older woman in certain circumstances; others have younger age cut-offs for all surrogates).

**SURROGACY LAWS: AS IT STANDS IN THE WORLD**

From its advent, surrogacy has sailed through many legal storms due to its unconventional concept altering the existing understanding of family. Also, the diverse religious and cultural beliefs across the globe play an influential role in formulation of legal rules related to it. Further, non-uniformity of laws across countries accentuates the impediments faced in regulating it. It is thus important to understand as to what laws regulate surrogacy in various countries.

**USA**

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The case which first triggered the necessity to formulate the laws for the regulation of surrogacy is the famous Baby M case of New Jersey. Since then there has been wide disparity of laws from state to state in the USA. The basic issue in the States is due to this non-uniformity and lack of clarity in laws across the States, thus leading to disputes with ambiguous jurisdictions.

The states that do not allow any form of surrogacy are Arizona, Indiana, Michigan, New York and District of Columbia of which the latter three consider it a crime while in the rest of them it is void and unenforceable. Washington criminalises commercial form of surrogacy. Further, in states other than those mentioned above or in the table below, there is no lucid legislation in this matter. In some cases, it is probably enforceable while in others it is probably unenforceable.

The States where surrogacy is allowed and regulated can be seen in the following table:10

<table>
<thead>
<tr>
<th>States</th>
<th>Gestational/ Traditional</th>
<th>Commercial allowed/not allowed</th>
<th>Eligible parents</th>
<th>Registered parents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arkansas11</td>
<td>Both</td>
<td>Allowed</td>
<td>Married (Heterosexuals and Homosexuals), Single parents</td>
<td>Surrogate Mother is registered mother unless orders issued</td>
</tr>
<tr>
<td>California12</td>
<td>Both</td>
<td>Allowed</td>
<td>Married heterosexuals and unmarried individuals</td>
<td>Intended parents</td>
</tr>
<tr>
<td>Florida13</td>
<td>Both</td>
<td>Not Allowed</td>
<td>Married heterosexuals (both above 18 years)</td>
<td>Intended parents</td>
</tr>
</tbody>
</table>

11 ARK. CODE ANN. § 9-10-201(2015)
12 Part 7 (commencing with Section 7960) of Division 12 of the Family Code (leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201120120AB1217)
13 FLA. STAT. ANN. § 742.16 (2016)
<table>
<thead>
<tr>
<th>State</th>
<th>Surrogacy</th>
<th>Intended Parents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illinois</td>
<td>Both</td>
<td>Allowed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Married heterosexuals (both above 21 years) and single parents</td>
</tr>
<tr>
<td>Nevada</td>
<td>Gestational</td>
<td>Allowed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Married heterosexual couples</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Both</td>
<td>Allowed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Married heterosexual couples</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Gestational</td>
<td>Not Allowed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Married heterosexual couples</td>
</tr>
<tr>
<td>Texas</td>
<td>Both</td>
<td>Allowed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Married heterosexuals and unmarried individuals</td>
</tr>
</tbody>
</table>

**UK**

**Legal status:** Surrogacy is legal in the United Kingdom, but commercial surrogacy is not legal. Commercial surrogacy is prohibited through Surrogacy Arrangements Act 1985. But, Surrogate relationship is recognized under section 30 of Human Fertilization and Embryology Act 1990. The law states clearly that no surrogate may receive any form of payment during or after a surrogacy agreement. But the intended parents are expected to cover all reasonable expenditures related to surrogacy procedures.\(^{18}\)

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\(^{14}\) 750 ILL. COMP. STAT. ANN. 47/1 to 47/75 (West Supp. 2008)  
\(^{15}\) NEV. REV. STAT. ANN. § 126.045 (2004)  
Legal rights of the baby:

a. Maternal right: The surrogate mother is the legal mother of the baby and has the right to keep the baby even though she is not genetically related to the child. Any surrogacy agreement is not enforceable by the law, and the parenthood of the intended parents is established through a parental order with agreement from the surrogate mother.

b. Paternal right: At the time of the childbirth, the husband or civil partner of the surrogate mother is the legal father of the child. The legal parent can be changed through a parental order or adoption. If a surrogate has no partner or they're unmarried and not in a civil partnership, the child will have no legal father or second parent unless the partner actively consents.

c. Parental order: Parenthood of the child can be legally transferred to the intended parents through a parental order. For a parental order to be granted, following are required:

- Both the intended parents are over 18 years of age.
- At least one intended parent is biologically related to the child.
- At least one intended parent is domicile of the UK, Channel Islands or the Isle of Man.
- The intended parents must be in a stable relationship. Since April 2010, an unmarried couple or same-sex couple can apply for a parental order.
- The surrogate mother and her husband/civil partner have to give consent out of free will for the parental order. The surrogate mother cannot validly give her consent until the child is six weeks old.
- No kind of payments should be made apart from reasonable expenses and any other expense as directed by the court.

ISRAEL

Israel is the country which stands apart from the rest in embracing the technological advancements in the field of reproduction with open arms along with proper regulations governing them to facilitate the needy. The reasons behind such a progressive acceptance are three factors which are deeply tied to their religious faith and historical backdrop.

The first point lies in their faith in Judaism whose scriptures have evidently broader interpretation of sexual and family life. Unlike laws in Christianity, in Judaism, sex is not

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considered shameful, sinful or obscene. Though to procreate is not the sole purpose of having sex but procreation is itself a necessity. According to the Torah, three out of their four matriarchs were infertile. Chapter 16 of the Genesis narrates how one of the infertile matriarchs, Sarah, asked her handmaid Hagar to bear a child with her husband, Abraham. It was the first instance of surrogacy in their religious scriptures. Thus even today Israel has maintained a pro-natal policy in its legislations and parenthood regarded as a fundamental human right.

Secondly, it is found that Jews inherit many genetic disorders which also include infertility. Many recessive diseases caused by genetic mutations among Ashkenazi Jews from Eastern Europe are disabling and fatal. They occur when a foetus inherits two mutations in the same gene, one from each parent.

Thirdly, the effects of the systematic murder of six million of the Jewish population by the Nazis in the deadliest genocide till date, known as the Holocaust, still haunt them. Thus a race of population who have an intensified interest in proliferating generations carrying their lineage had experienced a shocking attack eliminating nearly two-thirds of their population in Europe.

It, therefore, has been among its major priority to maintain highly efficient healthcare systems particularly in supporting the advanced reproductive technologies. The legislative assembly of Israel, the Knesset, on 17th March 1996 passed a bill allowing surrogacy, making it the first country to accept surrogacy legally. In 1992, Aloni Commission was set up to investigate and adopt advancements in reproductive technology, thus balancing the state's interest in population control while respecting personal autonomy. It also allowed other women for becoming gestational surrogates and getting compensated for their time and suffering, thus giving rights to surrogacy agreement law.

The Approval Committee, which is appointed by the Ministry of Health, is authorised to review and approve surrogacy contracts. It is comprised of two specialists in obstetrics and gynaecology, a specialist in internal medicine, a clinical psychologist, a social worker, a public

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representative who is a lawyer and a religious official of the religion of parties to the surrogacy agreement. The committee takes necessary steps to ensure all the parties are treated fairly and all concerned parties abide by existing laws. The committee does not interfere in negotiations corresponding to the amount of compensation.

INDIA

The inception of surrogacy in India took place in 1978 with the birth of a girl named Kanupriya through the IVF technology\(^{24}\). India's first surrogate baby opened her eyes on June 23rd, 1994, but it caught attention worldwide in 2004, when Dr. Nayana Patel’s Akanksha Infertility Clinic in a small town of Anand in Gujarat, helped a 44-year-old Indian woman to give birth to a surrogate child for her daughter in the U.K. This gained more audience in 2007, when Oprah Winfrey interviewed a U.S. couple pursuing surrogacy in India during her daytime television program\(^{25}\). Since then this industry has never looked back, rather it has boomed with a business of $400 million a year, with 3,000 fertility clinics across India, as estimated by Word Bank in 2012\(^{26}\).

India is one of those countries where people worship Goddesses on one hand and consider girls as a burden on the other hand. From sunrise to sunset in her life, she perpetually struggles to protect her life and dignity. She lacks independence of voice and thought. Female infanticide, sexual abuse, dowry deaths and domestic violence are common in households. Under such circumstances, when a woman is not able to conceive, she is subjected to prejudice followed by atrocities.

So with the advent of surrogacy, an infertile woman gets to smile while the surrogate receives a financial boost towards improving her life and that of her family. Moreover due to ban on surrogacy in their countries and sometimes due to high expense of the procedure, many foreigners visit India for availing the option at cheaper rates. The usual fee for the entire procedure is around $25,000 to $30,000 in India which is around a third of that in developed countries like the USA\(^{27}\). This attracts foreigners opting for surrogacy and thus India has

\(^{24}\) “Is Paying the Poor to Have Children Morally Wrong?” http://www.feministezine.com/feminist/international/WombsforRent.html


\(^{27}\) 228th Law Commission Report : NEED FOR LEGISLATION TO REGULATE ASSISTED REPRODUCTIVE TECHNOLOGY CLINICS AS WELL AS RIGHTS AND OBLIGATIONS OF PARTIES TO A
emerged as the hub of fertility tourism. In places like the Akanksha Infertility Clinic, an Indian gestational surrogate receives between $2,800 and $5,600 for her services\textsuperscript{28}. What the surrogates benefit from this is financial assistance worth ten years of salary for a rural livelihood. But here also they are exploited by middle men and fertility clinics. Sometimes this leads to human trafficking and many more social evils. To balance both the sides, the role of strong legislation is essential.

The first case that opened legal complications was that of the case of Baby Manji Yamada vs. UOI in 2008. An Indian woman accepted the contract of surrogacy from a Japanese couple, who even before the delivery of the baby got divorced, leaving the child legally parentless and with uncertain citizenship\textsuperscript{29}.

Further in another case, Nikolas and Leonard\textsuperscript{30} born of an Indian surrogate mother to a German couple in January 2008, were stateless, the Supreme Court of India came to their rescue by getting them exit permits in May 2010. Similarly, Itai and Liron born to an Israeli gay couple through a surrogate Indian mother got stranded in Mumbai and were granted Israeli passports on compassionate grounds by an Israeli Court only after a DNA test established their paternity.

**JOURNEY OF INDIAN LEGISLATION ON SURROGACY TILL 2016**

1. In 2005, Indian Council of Medical Research (ICMR) issued guidelines for accreditation, supervision, and regulation of ART clinics in India. In this, the surrogate mother was not considered to be the legal mother. The birth certificate was made in the name of the genetic parents.

\textsuperscript{28} *Ibid* 22

\textsuperscript{29} Baby Manji Yamada vs. UOI 2008; As per Indian law, the legal mother of the child should be the intended mother, but in the above case, after the divorce of the Japanese couple, who were the intended parents, the father wanted to raise the child on his own while the mother did not want to do so. So although the baby had three mothers (the intended mother, the surrogate mother and the woman whose eggs were used to create the donor), no one was the legal mother of the child. As per the Guardians and Wards Act 1890, a single man cannot adopt a baby girl. Hence the intended father was not able to apply for adoption of the baby even though he was the genetic father. The above case clearly represents the legal difficulties of ascertaining rights of the child born through surrogacy without the presence of clearly defined framework.

2. The draft "Assisted Reproductive Technology (Regulation) Bill and Rules 2008" prepared by ICMR has following provisions.\textsuperscript{31}

a. Surrogacy is legally enforceable and at par with Indian Contract Act 1872 and other laws.
b. Intended parents must accept the legal guardianship of the child
c. Single persons can also opt for surrogacy.
d. NRIs and foreign residents have to appoint a local guardian.
e. The surrogate mother has to relinquish all rights over the child. A seminar on “Surrogacy – Bane or Boon” was held at the India International Centre on 13.02.2009\textsuperscript{32}. The discussion revolved around the abovementioned draft Bill and Rules. Certain loopholes were spotted in it and a suggestion surfaced for the creation of a specialized "Surrogacy Court".

3. The 228\textsuperscript{th} report of the Law Commission was submitted on August 2009. It suggested a ban on commercial surrogacy, sex selective surrogacy, and traditional surrogacy form. It also recommended that the surrogacy contract should include financial support for baby in cases of death of commissioning parents before delivery of the baby as well as an insurance cover for the surrogate. Further, it also suggested that no adoption should be required for the surrogate child to be the legitimate child of the commissioning parents.

**FEATURES OF SURROGACY BILL 2016**

The features of the Surrogacy Bill 2016 are as follows:

- Prohibition of commercial surrogacy and provision of ethical surrogacy for needy infertile couple
- Establishment of National Surrogacy Board at national level and State Surrogacy Board and appropriate authorities at state and Union Territory level.
- Age restriction applicable for intended parents with age limit of 23-50 years for female and 26-55 years for a male.
- Restricted to Indian citizens and the intended parents should be legally married for at least five years.
- Only a close relative of intended parents within the age of 25-35 years can be the surrogate mother, and the surrogacy is limited to only once for any female in her lifetime.

\textsuperscript{31} Assisted Reproductive Technology (Regulation) Bill and Rules 2008 : to provide for a national framework for the regulation and supervision of assisted reproductive technology and matters connected

\textsuperscript{32} Ibid 26
- Parental order regarding the birth of the child is to be issued by a court of the Magistrate of first class.
- The surrogacy clinics shall have to maintain all records for 25 years

**IMPEDEMENTS AND ISSUES**

Surrogacy revolves around carrying forward human lineage for generations to come with an unusual approach and a matter of such significance will undoubtedly raise the brows of many aspects, like moral, legal and medical. Since this involves many stages ranging over a large period, each stage, from the making of the contract till the delivery of the baby to intended parents; it would certainly entail multiple hurdles to cross. A stage by stage approach to unravel the difficulties faced in all aspects, with the aid of several cases may help us to figure out what the legislation requires.

**STAGE I: BEFORE THE AGREEMENT**

1. **Social perspective**

In some way, surrogacy distorts the conventional idea of father, mother, and family. The basic unit of the society is the family and when its long accepted structure comes under dispute, it becomes difficult to digest. Also, some view it as using a woman's body as a commodity providing the service of procreation. To some others, it demeans women, in an already existing patriarchal society, whose notion about woman only being a mean to beget the next generation, is yet to fade off. Thus a social stigma is attached to surrogacy.

On the other hand, surrogate mothers are mostly independent thinkers who can break free from the chains of traditional views to be of service to relieve needy couples from their agony. For the couples with infertility issues, who long to be parents, surrogacy is a boon of medical advancement. Since surrogacy involves a lot of contingencies and complications, the support of society is critical. It is thus essential to embrace this advancement to alleviate the anguish of deprived couples.

2. **Who can be the Intended Parents?**

The medical indications urging a venture into surrogacy, which has been stated earlier, should ideally be qualifications for intended parents. But technically, anyone can opt for surrogacy. Therefore due to the hassles of adoption procedure in various countries and also getting the
chance of parenting one’s own biological child bypassing pregnancy, surrogacy has opened the floodgates of interests shown by married couples with no fertility issues or sometimes even having their kids, unmarried couples, single parents, and same-sex couples. There has been a lot of debates and cases associated with it.

One case associated with same sex couple is A.G.R. v. Brisman\(^{33}\) in New Jersey. The plaintiffs, a same-sex couple, entered into a surrogacy contract with the sister of one of them, but after the child-birth, the surrogate mother challenged the agreement in court claiming that due to her religious beliefs against homosexuality, she felt uncomfortable about the plaintiffs raising the child and wanted its custody taking the ground that gestational surrogacy contracts were invalid in the state of New Jersey. The court ruled in her favour.

Another similar case of K.M. v. E.G\(^{34}\), petitioner egg donor sought to establish a parental relationship with five-year-old twin girls born to respondent gestational mother, the donor's former partner. The trial court granted the gestational mother's motion to dismiss the petition based on the donor's waiver, in an ovum donor form, of her right to claim legal parentage. The Supreme Court reversed the decision for the gestational mother, finding that both parties were mothers of the children. The donor was a parent because genetic consanguinity could be the basis for a finding of maternity just as it was for paternity.

Another point of contention is when intending parents opt for cross-border surrogacy as it is either illegal in their country or most importantly because they get a benefit on the cost of the procedure. But what ensues is a legal battle as to in which jurisdiction, in the case of any dispute, should the case lie. And to fight such a case, they also have to cope with the language barrier. At times ensuring the citizenship of the child also becomes a Herculean task.

3. **Who can be a surrogate mother?**

Most important part of surrogacy is who offers to be the surrogate mother. Laws of most countries have fixed the conditions of a surrogate about her age, nature of family and satisfactory pre-medical conditions as mentioned earlier. Along with all this the consent of her partner, if any, is extremely essential. Surrogates do not always enter such contracts for monetary benefits but also for feeling a sense of self-fulfillment or in some other cases for

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experiencing the joy of pregnancy. Their motive and background screening can make the process further smooth.

4. Formation of Contract

A properly negotiated and a well-written contract can cross many legal hurdles which might arise in this process. First, it is important to look into the validity of surrogacy contract in a country i.e. whether it is valid and enforceable, void and unenforceable or penalized. Also, it is important to determine which form of surrogacy is allowed - gestational or traditional, commercial or altruistic. The jurisdiction in a case of any dispute should also be provided explicitly.

Further, the intended parents should be encouraged for the to buy an insurance cover for the surrogate so that in case any unforeseeable mishap to the health or life of the surrogate can be compensated to her family members. Moreover, there might be a possibility of the couple abandoning the child if it is born with any defect. A strong legislation regarding these should be made to avoid such cases.

STAGE II: AFTER THE AGREEMENT AND DURING PREGNANCY

1. Proper care of the surrogate

Co-operation with the surrogate on the part of both the intended parents as well the medical professionals are necessary to ensure successful delivery of the baby without exploiting the surrogate or abusing her. A negative impact of commercial surrogacy may be that the surrogate may take the pressure to successfully deliver a baby to make the intended parents happy. In some cases, they also take the pain in overcoming the fear of attachment with the baby. Along with taking care of her physical health, she should be provided emotional support as well as psychological counselling.

In *Stiver v. Parker*35, a Michigan negligence case, the U.S. Court of Appeals, Sixth Circuit, determined the rights and duties in a surrogacy agreement established before Michigan's 1988 statutory criminalization of such agreements. Due to the surrogate mother's exposure to cytomegalovirus, the baby suffered birth defects.

2. Complications during pregnancy

At times the pregnancy is terminated due to medical complications but there also have been cases where the surrogate mother was forced to abort. Such forced abortions may have an adverse effect on the health and mental conditions of the surrogate.

3. Pre-birth orders

To avoid any dispute regarding the custody of the child after the birth, the intended parents appeal in the court for obtaining the certificate of legal guardians of the child.

In Hodas v. Morin\textsuperscript{36}, an equity action was sought for by the plaintiffs, the genetic parents who contracted with a gestational carrier to bear a child at a Massachusetts hospital, for a declaration of paternity and maternity and for a pre-birth order establishing the plaintiffs' legal parentage. The court ordered in favour of the petitioners.

STAGE III: AFTER THE PREGNANCY

1. Breach of contract by surrogate

The famous case of Baby M\textsuperscript{37} illustrates this point. The Sterns entered into a surrogacy contract with the Whiteheads whereby Mrs. Whitehead would bear the child of Mr. Stern through artificial insemination and relinquish custody of the child to the Sterns upon birth. Once the child was born, Mrs. Whitehead found herself unable to part with the child, and sought to retain custody. The trial court devoted the major portion of its opinion to the question of the baby’s best interests, finding that specific performance would not be granted unless that remedy was in the best interests of the child. On the question of best interests, the Supreme Court agreed substantially with both the trial court’s analysis and conclusions. However, the Court differed in its review and analysis of the surrogacy contract.


2. **Emotional attachment of surrogate**

Teman\(^{38}\) in his research found that in nearly all the investigated cases, the surrogate mother developed emotional dependence on the intended parents, and as the birth approached, nearly always developed the fear that the intended mother would abandon her after the birth.

3. **Influence on children of surrogate**

Sometimes children of surrogate, if small, find themselves confused when the baby goes missing after delivery. Due to attached social stigma with surrogacy, they too become a prey of mockery by their peers.

4. **Medical risks**

Surrogacy process has risks associated with IVF, fertility medications, pregnancy, and childbirth. So before taking the decision, the intended parents and the surrogate mother should hold a detailed discussion and should include the risks involved in the surrogacy contracts.

**CONCLUSION**

Surrogacy, as a concept shakes the root of a family, which is an integral part of the society. Though its purpose was to perpetuate happiness among those deprived of parenthood, the open-ended, non-uniform or prohibitive legislations worldwide has led to confusion among innocents and malpractices by those trying to bend the law to their advantage. Thus, regulation of such a practice is a necessity. However, this should not necessarily imply the imposition of an absolute ban on it. As can be seen from laws of a few progressive countries, commercial surrogacy is not as such a detrimental proposal. Rather if properly regulated by suitable legislation and well-implemented provisions, many women in need of securing their future can benefit immensely. Moreover, all nations worldwide must decide upon such laws in consensus. But it should be reserved as an alternative option in extreme cases on both ends, i.e. of the surrogate as well as the couples. So working women desiring to lead in their career ladder or women attempting to avert the pain of gestational period, should not be encouraged to opt for surrogacy, as a bond of love and affection is deeply rooted in the due process of pregnancy which is essential for both the mother and the child. In the same lines, commercial surrogacy

\(^{38}\)Teman, E. (2001). “Technological Fragmentation and Women’s Empowerment, Surrogate Motherhood in Israel”
should be guided by the need of the surrogate regarding her financial needs. Further, adoption process must become hassle free so that people don’t opt for surrogacy to evade the rigours of adoption.

The need of a surrogacy contract varies from case to case. With the dynamics of social situations and medical conditions, no regulation can completely solve all issues balancing each party’s interest. Thus, a government panel of experts should be appointed along with carefully drafted regulations to keep a smooth check in this regard. On the other hand, banning the private players cannot be a solution, as it will leak out in forms of other malpractices. Rather regulating them by monitoring the cases, facilities provided and keeping track of their database under a State-appointed board will mitigate major loopholes. Thus, efforts should be made to take the aid of the boon of medical science while removing disparities as well as fallacies in law and warding off the bane resulting from it.