

SURROGACY (REGULATION) ACT 2021 OF INDIA: VIOLATION OF THE FUNDAMENTAL RIGHTS OF PEOPLE TO CHOOSE MODES OF PARENTHOOD

ANJNA KUMARI

Research Scholar, School of Law, Maharaja Agersen University, Baddi, Solan, Himachal Pradesh

Abstract

Surrogacy took a long journey of ups and downs to decide which country might have which type of surrogacy whether the commercial or altruistic. The applicability depends on one Nation's own decision. Due to the dearth of legislation the practice of commercial surrogacy is currently unregulated in India. The lack of a legal framework leaves surrogates miserable to numerous forms of exploitations and health hazards. After facing criticism for its previous bill on regulating surrogacy the government of India has given its approval to the bill which was passed by Lok Sabha on 17 Dec, 2021 after the Rajya Sabha passed the same bill on Dec.8th, 2021. The surrogacy (Regulation) Act 2021 came into effect from on Dec.25th 2021. An act to constitute in order to regulate the practice and process of surrogacy National Assisted Reproductive Technology and surrogacy board, state Assisted Reproductive Technology and surrogacy boards were established. This bill covers only Indian married couples, widows and divorcee single women whereas the single father, live-in partners and LGBTQ community couples are barred. The LGBTQ community form 15% of the total population and around 20% of the population going for surrogacy accounts for single parents. By restricting the act only to the Cis-gender, heterosexual couples and single mothers (widows and divorced) the act infringes the right to parenthood for the disqualifying others on the basis of nationality, married status, sexual orientation or age, does not appear to qualify the test of the equality and protection of life and personal liberty and privacy. Fundamental rights give us equality before the law and equal protection of laws, right to privacy, right to dignity, right to livelihood and right to parenthood. So this act is legally void and is violation of the fundamental rights and human rights also.

Keywords: Surrogacy, Assisted Reproductive Technology, Commercial surrogacy, Surrogacy boards, Cis-gender, Health hazards.

INTRODUCTION

Marriage in our society is considered as one of the most important institution or ritual phenomenon through which a couple conceives a child. Begetting a child is very important to our society to complete family tree. It is very difficult for the Indian society to imagine a family without children. Till today the only solution for childless couples was adoption. Advancement in Assisted Reproductive Techniques (A.R.T) such as donor insemination and, embryo transfer methods, have revolutionized the reproductive environment, resulting in Surrogacy, as the most desirable option. The system of Surrogacy has given hope of ray to many infertile couples, who long to have a child of their own. Opting advantage of the advanced medical facilities, they seek alternative solutions like Artificial Reproductive Technology (ART), In-Vitro Fertilization (IVF) and, Intra-Uterine

Injections (IUI), in the hope of having a child of their own image. Surrogacy is a process in which another woman can agree to carry a baby for another person. In simple words she provides her womb for growth of another person's baby to hand over the child after the birth to the intending couple. It is also known as *contract pregnancy* as there is a legal agreement with a woman to give all parenting rights.

MEANING OF SURROGACY

The word 'surrogate' has been derived from a Latin word 'surrogatus' which means to "put in another's place" or "to substitute". A person appointed to represent or act on behalf of another. A Surrogate Mother is a woman who bears a child on behalf of another woman, from her egg or from the implantation in her womb of a fertilized egg from other woman. A Surrogate Mother volunteers to carry an unborn child that is not her own but relates to another family. This process is adopted in the two ways.

First, there is **Traditional Surrogacy** under which there are typical Surrogates, a woman that is artificially inseminated with a father's sperm and reproduces with her own egg.

Second, there is **Gestational Surrogacy** where the Surrogate Mother carries an embryo comprised of the egg of the biological (intended) mother and the sperm of the biological (intended) father. The Surrogate's egg is not used.

DEFINING OF SURROGACY

According to **Black's Law Dictionary**, 'an agreement wherein a woman agrees to be artificially inseminated with the semen of another woman's husband'.

The New **Encyclopedia Britannica** defines- 'Surrogate motherhood' as the practice in which a woman bears a child for the couple to produce children in the usual way'.

In **Medical parlance**- The term surrogacy means using of a substitute in place of natural mother. It allows any "willing" woman to be a surrogate mother and proposes that widows and divorced women can also have benefit from its provisions to have a child, besides infertile Indian couples.

ARRANGEMENT OF SURROGACY

Altruistic surrogacy: Altruistic Surrogacy is a situation where the Surrogate receives 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 parents such as medical expenses, maternity clothing, accommodation, diet and other related expenses.

Commercial Surrogacy: Commercial surrogacy is a form of Surrogacy in which a gestational carrier is paid to carry a child to maturity in her womb and is usually resorted to by higher income infertile couples who can afford the cost involved or people who save or borrow in order to complete their dream of being parents. Commercial surrogacy is prohibited including sale and purchase of human embryo and gametes.

REVIEW OF LITERATURE

Malhotra in his article, "Draft Surrogacy Bill Violate Fundamental Rights of People to Choose Modes of Parenthood" (2016) writes that the new bill on surrogacy namely the surrogacy (regulation) bill, 2016 violates the article 14 and 21 of the constitution of India by banning commercial surrogacy in India. He further explains that, it is not the state to decide the modes of parenthood. Constitutionally, the state cannot interfere in the prerogative of a person(s) to have children, naturally or through surrogacy. **Kumar (2016)** "Surrogacy transaction- a perspective on the constitutional and contractual aspects" in this article highlights the positive and negative aspects of surrogacy under constitutional and contractual framework. **Mohnot & Singh (2018)** state in their book "Surrogacy & The Law" gives contributions of modern reproductive technology and advancement in the field of surrogacy in parenthood or to fulfill the desire of getting own child. The book provides a useful and practical guide for the surrogacy and their modern techniques mostly used to achieve pregnancy and own genetic child. **Dubey & Tiwari (2020)** In this article both analysis the surrogacy as the need of society and the regulation bill 2020 proper implementation will surely protect the rights of surrogate mothers and constitutional provisions and save the ultimate goal of this act. **Kumara (2020)** states in her book "Surrogacy A critical analysis" that the surrogacy has tried to collect the different concepts and laws related to it and its issues. The legal implications of various changes and new concepts of surrogacy have been examined critically and analyzed which makes it more fruitful and effective.

Sharma “social, ethical, medical & legal aspects of surrogacy: an Indian scenario” the author discusses different types of infertility and to fulfill the desire of such infertile couple to have a child through surrogacy procedure. **Pahuja (2021)** states in her book “Surrogacy Law, Practice and Policy in India” have tried to explain concept of surrogacy and its various forms. The author focuses on legal and judicial approaches towards surrogacy in various countries like India. **Venkatesh**, in the article “Rise or Fall of Surrogacy Laws in India?” has discussed about surrogacy act and Assisted Reproductive Technology Act. The impact of these legislations is to highlight the positive & negative aspects of surrogacy under constitution or its nexus.

RESEARCH METHODOLOGY

The research methods have been designed to fit the main objectives of the study. The study will be based upon partly doctrinal and analytical. In this connection all the relevant data has been collected from various books, journals, articles, news-papers, internet and judicial decisions. These types of researches have hypotheses which are to be proven by analyzing various sources of data. The secondary sources in the form of book reviews, Articles, Journals, dictionaries, newspapers and internet etc. and primary sources such as judgments of supreme courts, high courts, reports of law commission, parliamentary assembly debates etc. The research method which has been adapted by researcher is analytical and observes the data to get the results for verification of total hypotheses.

STATEMENT OF THE PROBLEM

This research is trying to analyze the various facets of law on Surrogacy in India and Surrogacy (Regulation) act 2021. No doubt surrogacy is a booming practice and need of hour to those who due to some reasons could not complete their family tree. Surrogacy is good alternate for women who have infertile or genetic problems or other medical reasons. By this technique both the parties become satisfied. It is creation for non traditional families. This technique is faster than adoption and result oriented. Surrogacy in form of reproductive technology is the latest tool for the fight against infertility or is it right to say to fulfill the desire of parenthood to all people is recoverable.

SCOPE OF THE STUDY

In this research, the researcher will mainly focus on the positive and negative aspects of the surrogacy. The researcher has also included the positive and negative arguments and finally reached to the conclusion that surrogacy is bliss

for the society. The best form of it is altruistic surrogacy and it is a very useful concept in society for treating the infertility. With the surrogacy technique hopeful parents can raise the child from birth itself. To protect the rights of women and her dignity from men dominated society there are many provisions laid down by our constitution. During the research I have tried to throw light on the social and legal aspects of Surrogacy particularly prevailing in India where surrogacy is a ray of hope for unblessed.

OBJECTIVE OF THE STUDY

The main objectives of the study are: -

- To study the overview of Surrogacy (Regulation) Act 2021.
- To describe the problems relating to surrogacy in India.
- To study the effects of Surrogacy on Indian Society which further widens the outlook of legislator, executive and judiciary?
- To suggest policy recommendations for protection of rights through legal provisions of Surrogate mother, Child and the Commissioning parents based on the study.

HYPOTHESIS

- What are the eligibility criteria for surrogacy? Is it available to single men, gay couple, and unmarried heterosexual couples?
- Whether Surrogacy is a better way to reduce the infertility or childlessness and to have own child which fulfills parent's desire and completes family tree?
- Does Surrogacy Act 2021 protect the scope of fundamental rights?

ANALYSIS OF THE PROVISIONS UNDER THE SURROGACY (REGULATION) ACT, 2021

The bill or The Surrogacy (Regulation) Act 2021 came into effect from on Dec. 25th 2021. The draft Bill contains 54 clauses which are divided into eight chapters. A Brief about the chapterisation of the Draft act is as following: -

Chapter I: It Contains the Preliminary (sec.1-2) and (sec.2) provides the various definitions in this act such as Altruistic surrogacy (no charges, expenses or fees) and commercial surrogacy (giving payment, reward or benefit). It also defines

intending parents as a married Indian citizen, a widow or divorcee between the ages of 35 to 45 years.

Chapter II: It provides Regulation of surrogacy clinics. (sec.3) deals with prohibition and regulation of surrogacy clinics. Clinics must be registered with the concerning state governments and unregistered clinics are barred such clinics will have no right to adopt the procedure of surrogacy. This sec. deals with the parentage and abortion of surrogate child in which a child born by surrogacy procedure will be considered to be the biological child of the intending couple or intending women. It requires the written consent of the surrogate mother and the authorization of the appropriate authority for the abortion of the surrogate child. This authorization must be according to the Medical Termination of Pregnancy Act, 1971. Further before the embryo is implanted in her womb the surrogate mother will have an option to withdraw from the concept of surrogacy.

Chapter III: Regulation of surrogacy & surrogacy procedures (sec.4-10) this chapter is divided in 4 parts-

First part deals with the five purposes for which surrogacy is granted such as (1) when an intending couple or intending women of India has a medical indication for gestational surrogacy (means a practice whereby a surrogate mother carries a child for the intending couple through implantation of an embryo in her womb and the child is not genetically related to the surrogate mother) (2) altruistic (3) for any condition or disease specified through regulations, and (4) that surrogacy is not for commercial purposes (5) not producing children for sale, prostitution or other forms of exploitation.

The Second Part deals with Eligibility criteria for intending couples which include 'certificate of essentiality' and a 'certificate of eligibility' issued by the appropriate authority.

1) A certificate of essentiality shall be issued when the following conditions are fulfilled: -

- A certificate of a medical indication in favor of either or both members of the intending couple or intending woman for gestational surrogacy from a District Medical Board.

- An order of parentage and custody of the surrogate child passed by a Magistrate's court

- Insurance coverage for a period of 36 months from 16 months provided in the earlier version which covers post natal delivery complications for the surrogate.

2) The certificate of eligibility for the intending couple shall be issued upon fulfillment of the following conditions: -

- The couple being Indian citizens
- Between the ages of 23 to 50 years old (wife) and 26 to 55 years old (husband)
- They do not have any child biologically, adopted or through surrogacy and it would not include a child who is mentally or physically challenged or suffers from life-threatening disorder or fatal illness.
- Other conditions that may be specified by regulations.

The third part deals with the Eligibility criteria for surrogate mother and to obtain a certificate of eligibility from the appropriate authority, the surrogate mother has to be: -

- A married and willing woman between the ages of 25 to 35 years having a child of her own.
- Surrogate only once in her lifetime.
- Possesses a certificate of medical and psychological fitness for surrogacy from a registered practitioner.
- The surrogate mother cannot provide her own gametes for surrogacy.

The fourth part deals with the "Rights of surrogate child" in which the child will be entitled to all the rights and privileges available to a natural child under any law for time being in force.

Chapter IV: It prescribes Registration of surrogacy clinics. (Section 11-16) deals with "Registration of surrogacy clinics" by the appropriate authority in order to undertake surrogacy or its related procedures within a period of 60 days from the date of appointment of the appropriate authority. "Registration of

certificates”, which are valid only for three years and will be renewed. “Cancellation or suspension of registration” by the appropriate authority if there is any infringement of the provisions of the Act. The “Appeals” against orders such as rejection or cancellation of certificates, registrations and applications passed by the appropriate authority to the State and Central Government respectively.

Chapter V: National/State Assisted Reproductive Technology and surrogacy (Section 17-34) deals with National and State Surrogacy Board which consist of various members from Parliament, State Legislative Assemblies, Executives, and ten experts’ members appointed by the Central and State Government. The function of Boards is to advise the Central Govt. on policy formulation relating to surrogacy, monitor and review the implementation of the Act or rules and regulations, laying down the code of conduct of surrogacy clinics, supervise the functioning of State Surrogacy Board and performance of various bodies constituted under the Act.

Chapter VI: This chapter deals with the functioning of appropriate authority. (Section 35-37) deals with the Appropriate Authority which consists of Joint Secretary and Joint Director of the Health and Family Welfare Department, an eminent woman representing women’s organization, the officer of Law Department of the State or the Union territory and eminent registered medical practitioner. Within the 90 days of Bill becoming a statute, the Central and State Governments shall appoint one or more appropriate authorities. The functions of the competent authority include: (i) Granting, suspending or cancelling the registration of surrogacy clinics (ii) Implementation to standards for surrogacy clinics (iii) Investigating and taking action against violation of the provisions of the Bill (iv) Recommending modifications to the rules and regulations in accordance with changes in technology or social conditions. Further, Appropriate authority shall exercise the powers such as (i) Search any suspected place, document and summon to any person who is in possession of any information relating to the violation of the provisions of this Act (ii) Maintain the document details of registration, cancellation, and renewal of surrogacy clinics; grant of certificates to the intending couple, surrogate mothers and license of the surrogacy clinics in such format as may be prescribed and submit the same to the National Surrogacy Board.

Chapter VII: It deals with offences and penalties (Section 38-45) penalizes any person up to 10 years imprisonment and fine up to 10 lakh rupees for offenses such as advertising or undertaking commercial surrogacy in any manner, disowning or exploiting the surrogate child or surrogate mother, selling or importing human embryo or gametes for surrogacy purpose and conducting sex selection in any form for surrogacy. Punishment for not following altruistic surrogacy shall be punishable with imprisonment for a term which may extend to five years and with fine which may be extend to five lakh rupees for the first offence and imprisonment which may extend to 10 years and with fine which may extend to 10 lakh rupees.

Chapter VIII: It provide Miscellaneous provisions (Section 46-54) and includes power to search and seize records etc. and the power to make rules and regulations by the Central Government and by the Board, protection of government or any appropriate authority from any prosecutions for the actions taken by them in good faith and power of the central government to remove the difficulties for the provisions which are inconsistent with provisions of this act.

THE SURROGACY (REGULATION) ACT, 2021: WHETHER IT VIOLATES FUNDAMENTAL RIGHTS

Fundamental rights are guaranteed by constitution to all persons and legal entities without any discrimination. They uphold the equality of all individuals, the dignity of the individual, the large public interest. The purpose of the surrogacy act 2021 is to affirm effective regulation of Surrogacy, prohibits commercial, and allows ethical surrogacy. It will also prevent the exploitation of surrogate mothers and children born through surrogacy. Although the act is made with the motive of preventing this exploitation, but some of the clauses do not appear to be in consonance with the Constitutional Provisions. As the act fails to pass the “Golden Triangle” test laid down by the Supreme Court which inspects the constitutional validity of the laws enacted by the Government. This test checks the equality, liberty, and freedom of rights; it aims as to ensure that the basic fundamental rights of individuals are not encroached upon by the State. Further the right to life includes the right to reproductive autonomy that includes the right to procreation and parenthood.

RIGHT TO EQUALITY U/A 14

According to constitution under Article 14- guarantees *equality before law and equal protection of laws to all persons*. The fundamental principle of Article 14 forbids class legislation but permits reasonable classification. To pass test of permissible classification, the Court has laid down two tests which must be satisfied i.e. intelligible differentia and rational nexus.

- The classification must be based on an intelligible differentia, which distinguishes persons, or things that are grouped together from others left out of this group.
- The differentia must have a rational relation to the object sought to be achieved by the statutes in question. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

When the classification is not found on any intelligible differentia and has no nexus with the object to be achieved, the differentiation is invalid. The classification in the Act based on of marriage by allowing on to married couples is arbitrary and would not stand the test of reasonable classification under Article 14 of the Constitution. Especially when single parent's i.e. non-married individuals or parents are allowed to adopt children.

The act must be striking down of Section 377 of the Indian Penal Code by the Supreme Court, which decriminalized consensual sexual relations between two adults of any sexuality. So, the act denies the rights of homosexual (cis-gender) couples to commission a child and refuses to acknowledge these couples as legitimate.

In **National Legal Services Authority v/s Union of India** the Supreme Court of India held that Transgender have also been considered as a third gender and gives them equal power as gender of male and female. But the act fails to provide for equality of those basic rights to every gender. The current Surrogacy (Regulation) Act, 2021 creates a specific criterion, which is very narrow for commissioning surrogacy and it would deprive transgender from commissioning surrogacy.

Article 14 of the Constitution of India guarantees equality before the law. The use of any person in the provision ensures that the benefit of Article 14 is not

confined to citizens alone but is available to any person within the territory of India. But this act only allows an Indian citizen to be part of surrogacy and not permits Indian origin foreigners.

The primary objective of the act is to prevent misuse of surrogacy and to shield women from exploitation. But this could prove inimical, as the domestic altruistic surrogacy will offer an opportunity for corruption and exploitation, pushing surrogacy into unethical hands. It could allow underground abusive trade in surrogacy. Therefore, these provisions cannot stand the test of constitutional validity.

RIGHT TO TRADE AND PROFESSION U/A 19(1) (G)

The act is violating Article 19(1) (g) which guarantees the *freedom of trade and profession*. Being not an absolute right, Article 19 (6) provides certain grounds on which the said right can be reasonably restricted. One of them includes restrictions in the interest of the general public. And the Surrogacy (Regulation) act, presents itself in the interest of the general public, but it fails.

In **Chintaman Rao v. State of MP** the Supreme Court of India, has correctly confined the word 'restrictions' of Article 19 (6) and stating that the phrase 'reasonable restriction' imposed the limitation on a person in the enjoyment of the right which should not be arbitrary or of excessive nature beyond what is required in the interest of the public. In the same case court also held that the law should strike the proper balance between the freedom guaranteed under Article 19(1) (g) and the social control according to Article 19 (6).

But criminalizing the commercial surrogacy completely refuses the individual freedoms and fails to strike the mandatory balance required between individual freedom and social control. In **State of Maharashtra v. Indian Hotel and Restaurant Association**, the Supreme Court had held that a total ban on bar dancing is unconstitutional as the ban stating that the "cure is worse than the disease" given that contrary to its purpose, resulting in many women being forced into prostitution and violated their right to carry on one's profession or occupation under Article 19 (1) (g) of the Constitution. Similarly, putting a blanket ban on commercial surrogacy in the act and legalizing only altruistic surrogacy also goes against Article 19 (1) (g) of the Constitution. And it will not achieve the objective of this potential Act, as surrogates carrying a child of intending couple could still be subject to exploitation, the only difference being

that she will not be paid for it. The women that if she wants to rent her womb or not and society has no role to play in this particular situation.

RIGHT TO LIFE AND PERSONAL LIBERTY UNDER ARTICLE 21

Article 21 of the Constitution of India declares as it is a sacred and cherished right to life and personal liberty to enjoy, it has an important role to play in every person's life. It also enshrines the principles of Right to Life, Personal Liberty, and Right to Livelihood. The right to life includes the right to reproductive autonomy– that includes the right to procreation, family breeding and parenthood. In *Devika Biswas v. Union of India* the Supreme Court held that to reproduction in an important component of the *Right to Life* under Article 21. These reproductive rights of women include the right to carrying a baby, giving birth, and raising children. They also include rights to privacy, dignity, and integrity of one's body. Thus, restricting surrogacy only to heterosexual couples and widow or divorcee women within a certain age group and denying reproductive choices to LGBT, single persons, and older couples, is the violation of the Article 21.

According to Constitution, State cannot interfere in the prerogative of any person whether the child through natural process or through surrogacy. The Hon'ble Andhra Pradesh High Court in the case of **B.K. Parthasarathi v/s Government of Andhra Pradesh high court** held that state's interference on procreation amount to a direct encroachment on one's "*right to privacy*" that has been recognized as a facet of right to life under Article 21. In **K S Puttaswamy v Union of India**, where bench held that privacy of any person covers personal autonomy relating to the body, mind, and to making choices or decisions. In a Suo Moto PIL filed for the deplorable condition of a female prison inmate in which high court stated that a "woman alone should have the right to control her body, fertility and motherhood choices". As the right to decide about reproduction is essentially a very personal and private decision and it should be according to women's choice and controlled by the women's body but in this act, State interfere in such decision-making process. If a woman wants to help a needy couple by providing a child of his own or by offering one's womb, then the state cannot interfere with this humanitarian act, and rather, such acts should be appreciated.

In the **Consumer Education and Research centre and Ors v/s Union of India**, the Supreme Court stated that the expression life under Article 21 of the Constitution has a much wider meaning and it includes the right to livelihood. This principle was also recognized in **Olga Tellis v/s Bombay Municipal Corporation**. But this '*right to livelihood*' is violated in the Surrogacy act as it imposes a complete ban on commercial surrogacy threatens an important possibility for poor women to earn desperately needed money, or to achieve some kind of financial independence or stability for themselves and their families by giving consent to be surrogates instead of monetary compensation. It is admitted that exploitation of poor women is rampant in India through brokers especially in case of renting a womb but a blanket ban on commercial surrogacy does not provide justice to them, and instead, it will take away the right to livelihood that women are guaranteed in the Constitution of India.

Thus Act is clearly a violation of the right to livelihood, right to privacy, and right to reproductive autonomy under Article 21. The act fails to pass the Golden Triangle test. It must be borne in mind that in India surrogacy is not just any other sector it is the primary source of income for woman who are economically backward. It is also a main source of income for all those who work at surrogacy clinics. It must be modified to strike a correct balance between its provisions and the rights of citizens.

SUGGESTIONS AND LOOPHOLES

Today surrogacy is a need of our society. In some cases, surrogacy is the last hope for those infertile couples, who are unable to get their biological child or complete family tree. The role of a child would not undertake in a society. Childlessness affects the social and psychological aspect of a family and ultimately the society. Having a child makes a couple's life more meaningful and complete and the object of a fundamental right is to make life more meaningful, complete, and worth living. Therefore, surrogacy should come under the purview of fundamental rights.

Age Criteria: The act provides the criteria of age which are unequal for intending parents and surrogate mother. Intending parents are between the age 23-50 female and 26-55 male while the surrogate mother between 25-35 yrs of age. Widow and divorcee women must be 35-45 years. This is very unjust to

those who don't fall under this category group and want child and this discrimination in violation of article 14 in case of surrogacy adoption.

Certificate for Eligibility: the act mentioned this provision that an eligibility certificate is issued by the appropriate authority but not mention that validity of certificate.

No Payment for Surrogate: Act prohibits the commercial and allows the altruistic surrogacy. It is morally wrong to the lady who carries a child for intended couple for 9 months and suffers lot of pain trauma and after that she gets nothing in return. The poor surrogate mother gets financial security, and on other hand, the infertile couple gets their long-desired biologically related child. And apart from that, it includes foreign currency investment and financial growth. Thus, it is necessary to find a midway that facilitates commercial surrogacy but in a regulatory manner. It is violation of the Article 19 freedom of trade and profession and rights of livelihood.

Only for the Married Indian Couple: The act is only allowed to the heterosexual couples and single mothers (widows and divorced) and not allowed single parents and LGBTQ community couple. Thus the act infringes the right to parenthood for the disqualifying others on the basis of nationality, married status, sexual orientation or age, does not appear to qualify the test of the equality and protection of life and personal liberty and privacy.

The requirement regarding maintenance of the National Registry may state several issues as the information received from donors, surrogates, intending couple, women and medical staff would invariably be in the nature of personal and sensitive personal data, particularly since the ART act also mandates provision of Aadhar details of the donor. The law has not provided for protection and security of such information stored and processed which is a serious violation of privacy of individuals and also of the protection granted to such sensitive personal information under the IT Act 2000.

CONCLUSION

The surrogacy act is unsuccessful in maintaining a balance between regulations and rights and it is not constitutionally valid as can be seen from the interpretation of Article 14, 21 and 19 (1) (g) as well as from the decision given by Hon'ble Supreme Court in the landmark judgments etc. The ban of

commercial surrogacy and a lot of restrictions for the performance of surrogacy does not appear as a good legislation or welfare for the needy persons amounting discrimination against single father, LGBTQ couples, live-in partners as it doesn't provide them equal opportunities and equal rights.

REFERENCES

- S s Das, "commercialization of Surrogacy in India: A Critical Analysis" Researchgate 19October, 2016 available at: <https://www.researchgate.net/publication/281710247>
- Anuj Kumar, "*Surrogacy transaction- a perspective on the constitutional and contractual aspects*" available at: <https://legaldesire.com> (Last visited on 1st Feb, 2022)
- Rekha P, Pahuja, "*Surrogacy Law, Practice and Policy in India*". (Bloomsbury 1st Edn.2021)
- R.S. Sharma "social, ethical, medical & legal aspects of surrogacy: an Indian scenario". IJMR.2014 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4345743/>
- New World Encyclopedia. <http://www.newworldencyclopedia.org/entry/surrogacy>
- The Surrogacy (Regulation) Bill, 2020(Reported by The Select Committee).
- The Surrogacy (Regulation)Act, 2021 Section 2(b) and Section 2 (g).
- Mohan Mohnot & Richa Vinod Singh, "*surrogacy & The Law*", (Mohan Law House, new Delhi 2018)
- Dubey Bhumitra & TiwariYash (2020) Analysis the Surrogacy Regulation Bill 2020, India law journal www.indialawjournal.org
- Priyanka Kumara, "*surrogacy A critical analysis*"(Blue Rose publication, 1st edition, 2020)
- R.S. Sharma "*social, ethical, medical & legal aspects of surrogacy: an Indian scenario*". IJMR.2014 NOV. 140(Suppl 1): S13-S16
- Janavi Venkatesh, "Rise or Fall of Surrogacy Laws in India?"at available <https://www.lexology.com/library/detail.aspx=2d72fc5c-4dc5-4573-b011219cf62>
- The Surrogacy (Regulation) Act, 2021 at available <https://www.scconline.com/blog/surrogacy-regulation-act-2021> (last modified on Dec.27,2021)
- The Surrogacy (Regulation) Act, 2021(Act 47 of 2021)
 Id. at 3
- The Medical Termination of Pregnancy (Amendment) act, 2021 (act No. 8 of 2021)
- The Surrogacy (Regulation) Act, 2021(Act 47 of 2021)
 Id. at 4
 Id. at 5
 Id. at 6
 Id. at 7
 Id. at 8
- Minerva Mills Ltd. & Union of India & other, AIR 1980 SC
- Dr. Pandey J.N. "*The constitutional law of India*": 46th edition
- Vikram Cement v. UOI, AIR 2007 SC 7.
- National Legal Services Authority v. Union of India, AIR 2014 SC 1863.g)
- The Constitution of India Art. 19(1)(g) and 19 (6).
- Chintaman Rao v. State of MP, AIR 1951 SC 118.
- State of Maharashtra v. Indian Hotel and Restaurant Association, AIR 2013 SC 2582.
- The Constitution of India, Article 21.



Prabhanjan Kumar Singh, Critical Evaluation of Draft Surrogacy (Regulation) Bill, 2016, Vol. 2 Jamia Law Journal 161 (2017).

Devika Biswas v. Union of India, (2016) 10 SCC 726.

B.K. Parthasarathi v/s Government of Andhra Pradesh **2000(1) ALD 199:1999(5) ALT 715**

Justice K.S. Puttuswamy & Anr. V. Union of India & Ors., (2017) 10 SCC 1.

38 Consumer Education and Research centre and Ors v. Union of India,(1995) 42 SCC 3.

39 Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180.