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**A BIOTECHNOLOGICAL WAY PARENTHOOD AND DIFFICULTIES IT  
FACES AFTER SURROGACY BILL 2016**

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**ABSTRACT**

It is no bizzare that in our society there is no place for a barren women . taking account of ancient time or of today ,we will witness that according to our society *modus vivendi* of women is to produce a child to her family and if she fails to do that then she becomes subject of derogatory remark and she is being stated as a "witch".

In our society motherhood is not just loving and caring nature of the mother but motherhood comes when or women succeed in giving birth to a child ,after birth of a child a woman is given a status of a mother, if she fails to bear a child but still holds motherly nature that is not what is accepted and appreciated by our hypocrite society .

with the passage of time when technology developed, a miracle was introduced by the veterans in the field of science and technology. this ,miracle was none other than a biotechnological way which helps childless couples to enjoy the ride of parenthood. this miracle is known as surrogacy in the field of science & law and as a blessing to the childless couples. surrogacy came into existence cause of science & technology and continue to be in existence by the law and regulations. The purpose of science to invent this step was to bring a ray of hope in the sombre and dark life of those people who are childless and whose homes are mournful without giggle of a child but with the time few people in the society exploited this invention by overtly using it and misusing it and government took certain steps and put some clauses in surrogacy bill 2016 which has a poor effect on large mass , so in this article I have tried to put forth some analysis on the biotechnological way to parenthood and the difficulties it faces after surrogacy bill 2016.

**INTRODUCTION**

It is no bizzare that in our society there is no place for a barren women . taking account of ancient time or of today ,we will witness that according to our society *modus vivendi* of a woman is to produce a child to her family and if she fails to do that then she becomes subject of derogatory remark and she is being stated as a "witch".

In our society motherhood is not just loving and caring nature of the mother but motherhood comes when or women succeed in giving birth to a child ,after birth of a child a woman is given a status of a mother, if she fails to bear a child but still holds motherly nature that is not what is accepted and appreciated by our hypocrite society .

In past there were many instances where women were deserted by their family people cause she fails to give child to her family to continue the lineage and to cease all these violence



against women a miracle was introduced .couples who fails to reproduce an offspring ,they often have to go through a lot of sympathetic but at the same time taunting advices . but it is worst for a woman individually .cause if a woman do not succeed in providing a child to her family than she is of no use and they see her as a "worthless woman" cause in the eye of society women's modus operandi is to produce a child for her family to continue the lineage and carry forward the legacy. so, if a woman do not able to get an embryo in the womb and unable to produce infant for her family she is being left in lurches by her family

with the passage of time when technology developed,a miracle was introduced by the veterans in the field of science and technology. this ,miracle was none other than a biotechnological way which helps childless couples to enjoy the ride of parenthood.this miracle is known as surrogacy in the field of science & law and as a blessing to the childless couples. surrogacy came into existence cause of science & technology and continue to be in existence by the law and regulations.

**Definition And Meaning**

this word "Surrogacy" was first introduced in the year 1603.<sup>1</sup> It is originated from the *latin* word *surrogatus*.

literal meaning : One that serves as a substitute

Medical meaning : A woman to undergo pregnancy usually by artificial insemination or surgical implantation of fertilized egg for purpose of carrying the fetus for another woman

Legal meaning : One acting in the place of another ; Esp : one standing *in loco parentis* to a child .

A standard definition of surrogacy is offered by the American Law Reports in the following manner:

“...a contractual undertaking whereby the natural or surrogate mother, for a fee, agrees to conceive a child through artificial insemination with the sperm of the natural father, to bear and deliver the child to the natural father, and to terminate all of her parental rights.

The Assisted Reproductive Technologies (Regulation) Bill, 2010 defines “surrogacy” as an agreement in which a woman agrees to a pregnancy, achieved through assisted reproductive technology, in which neither of the gametes belong to her or her husband, with the intention to carry it and hand over the child to the person or persons for whom she is acting as a surrogate.

hence,  
Surrogacy is a *modus operandi* or agreement whereby a woman shows her consent to carry

<sup>1</sup> .www. Merriamwbsite.com



a fetus for another woman /man /couples, who will be the newborn's parent(s) after birth .

### **Historical Roots**

[http://shodhganga.inflibnet.ac.in/bitstream/10603/57389/8/08\\_chapter%202.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/57389/8/08_chapter%202.pdf)

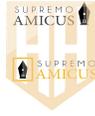
Surrogacy was known and rehearsed in antiquated circumstances. In the Mahabharata, Gandhari, spouse of Dhritarashtra, conceived yet the pregnancy continued for about two years; after which she delivered a mass (mole). Bhagwan Vyasa found that there were 101 cells that were typical in the mass. These cells were placed in a supplement medium and were developed in vitro till full term. Of these, 100 formed into male kids (Duryodhana, Duhshasana and different Kauravas) and one as a female kid called Duhshela.

There are other all around cited illustrations that allude to IVF as well as to the thought that a male can create a tyke without the assistance of female. Sage Gautama created two kids from his own semen—a child Kripa and a girl Kripi, who were both unnaturally conceived children. Similarly, Sage Bharadwaj delivered Drona, later to be the instructor of Pandavas and Kauravas. The story identifying with the introduction of Drishtadyumna and Draupadi is considerably more fascinating and reflect the extraordinary forces of the immense Rishis. Lord Draupada had animosity with Dronacharya and wanted to have a child sufficiently solid to slaughter Drona. He was given solution by Rishi and in the wake of gathering his semen, handled it and proposed that artificial insemination homologous (AIH) ought to be improved the situation his significant other who however refused . The Rishi at that point put the semen in a yajnakunda from which Dhrishtadyumna and Draupadi were produced . While the above are cited as cases of in vitro fertilization (IVF) and parthenogenesis, there is another story, which alludes to embryo transfer. As indicated by Bhagwad Gita, even Lord Krishna is comprehended to have been conceived without a sexual union. This was with respect to the seventh pregnancy of Devaki, by the will of the lord; the fetus was exchanged to the womb of Rohini, the first spouse of Vasudev, to prevent the baby being killed by Kansa<sup>2</sup>

### **MODERN HISTORY**

The issue of surrogate parenthood came to national consideration amid the 1980s, with the Baby M case. In 1984 a New Jersey couple, William Stern and Elizabeth Stern, contracted to pay Mary Beth Whitehead \$10,000 to be artificially inseminated with William Stern's sperm and convey the subsequent kid to term. Whitehead chose to keep the kid after it was conceived, declined to get the \$10,000 installment, and fled to Florida. In July 1985, the police captured Whitehead and return the kid to the Sterns. In 1987 the New Jersey Superior Court maintained the Stern-Whitehead contract. The court removed all parental and appearance rights from Whitehead and allowed the Sterns to legitimately embrace the infant, whom they named Melissa Stern. After a year, the New Jersey Supreme Court switched a lot of this choice. That court pronounced the agreement unenforceable however enabled the Sterns to hold physical custody of the kid. The court also reestablished some of Whitehead's parental rights, including visitation rights, and voided the adoption by the

<sup>2</sup>[http://shodhganga.inflibnet.ac.in/bitstream/10603/57389/8/08\\_chapter%202.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/57389/8/08_chapter%202.pdf)



Sterns. Most essential, the choice voided all surrogacy contracts on the ground that they strife with state open approach. but, the court still allowed voluntary surrogacy arrangement<sup>3</sup>

Available at: <http://imaginativeworlds.com/forum/showthreasphp?10900-Surrogate-MotherhoodPoland-quot->

### **Reasons to why people opt surrogacy**

Couples opt for surrogacy when traditional means of conceiving a child have failed, this also includes in-vitro fertilisation, or it is dangerous for the couple to get pregnant and give birth. The following medical conditions usually necessitate surrogacy<sup>4</sup>:

- > Malformation of or infection in the womb
  - > Absence or removal of womb by hysterectomy
  - > Recurring miscarriages
  - > Repeated failure of IVF
  - > Other conditions that make it impossible or risky for a woman, such as severe heart disease
- Factors affecting surrogacy
- it is important to make sure the surrogate mother is healthy and ideally between 21 and 40 years old.
- > Other than general fitness levels such as blood pressure, sugar levels, thyroid, etc., one should check for the mental health of the surrogate.
  - > It is also advisable that the surrogate should have already given birth to one healthy baby before.

### **Science of Surrogacy**

surrogacy is a big inventive step of a science which helps create life on earth and come out as a boon to those who are unfit to produce child. it is neither ignorable nor deniable that surrogacy lit up the dark path of those who want to have child but cannot bear it.

Surrogacy dawn in the field of science during the period of 1970's when the first IVF got successful and brought a hope in the life of all that sombre life which were dark and morn without a child. It spread as a ray of hope in india when the procedure become a successful practice in india with the birth if world's second and india's first IVF baby "kanupriya" alias "durga", she was born in the city of kolkata on 3rd october in the year 1978.

science of surrogacy says that surrogacy is a scientific and unnatural way of producing or creating an offspring and hence, it is known as REPRODUCTIVE TECHNOLOGY because it does not comprise of natural way but artificial way of reproduction by creating an embryo in laboratory using the sperm and the egg of the intended parents and the fertilized egg get inseminated inside the uterus of surrogate mother and this procedure is known as surrogacy.

<sup>3</sup><http://imaginativeworlds.com/forum/showthreasphp?10900-Surrogate-MotherhoodPoland-quot->

<sup>4</sup> [www.indianexpress.com](http://www.indianexpress.com)



There are primary two methods of surrogacy:

**TRADITIONAL SURROGACY** : this kind of surrogacy is less practiced though it is less costly. Reason that makes it fall under rare practice is cause it relate surrogate to offspring biologically.

In this method of surrogacy , surrogate act as both the egg donor and the surrogate , so the youngling produced out of this method is biologically related to the intended father and the surrogate mother cause in this procedure of surrogacy , sperm is collected from the intended father and subsequently injected in the uterus of surrogate so as the injected sperm get fused to the egg of surrogate and fertilized naturally

**GESTATIONAL SURROGACY**

this type of surrogacy has no biological link between embryo and the surrogate , it does not involve surrogate mother's egg and therefore the produced infant has no relation with surrogate.

using gestational surrogacy procedure the sperm of the intended father and egg of the potential mother is fused together in the laboratory using the process of IVF .prior to transferring the sperm in the uterus of surrogate , the procedure of IVF takes some 3-5 days to get egg and sperm fertilized .once the egg of potential mother and sperm of intended father get fertilized in laboratory , it is introduced to the uterus of surrogate to carry the embryo until it comes out in the world .

there are another two types of surrogacy :

**ALTRUISTIC SURROGACY** : This is the form of surrogacy where the surrogate mother receives no financial reward for her pregnancy or the relinquishment of the child (however, usually all expenses related to the pregnancy and birth are paid to her by the intended parents such as medical expenses, baby delivery expenses, her additional nutrition and other related expenses)<sup>5</sup>

**COMMERCIAL SURROGACY**

It is a form of surrogacy in which a gestational carrier (surrogate mother) is paid to carry a child of the intended parents in her womb. This procedure is legal in several countries including in India where due to excellent medical facilities, experienced IVF specialists and availability of surrogate mothers willing to carry your child, gestational surrogacy is gaining popularity.<sup>6</sup>

**Surrogacy vs Adoption**

For a couple a child is the most precious gift. Those who are unable to have this wonderful gift always feel inferior and frustrated. Thousands of couples across world are facing humiliation because of not having any child. Surrogacy is a wonderful gift that would bring

<sup>5</sup>[http://www.ivfsurrogacy.in/Surrogacy/Type\\_of\\_Surrogacy.php](http://www.ivfsurrogacy.in/Surrogacy/Type_of_Surrogacy.php)

<sup>6</sup>[http://www.ivfsurrogacy.in/Surrogacy/Type\\_of\\_Surrogacy.php](http://www.ivfsurrogacy.in/Surrogacy/Type_of_Surrogacy.php)



the big smile on their face. The development in medical science and increased social awareness and acceptance has made it popular and more and more couples are getting benefited by it every year. The number is ever increasing and countries like India are becoming a major centre for surrogacy because of easy availability of surrogate mothers and legal flexibility. While surrogacy is becoming popular nowadays, another method has been in existence from a long time and that is adoption. Although it is also one of the most popular and well accepted methods, but surrogacy certainly has few clear-cut advantages over adoption. Genetic factor is one of the major reasons to go for surrogacy. The parents are more emotionally attached because they have seen the complete process of pregnancy and childbirth. It gives them a higher level of mental peace and satisfaction.

In the past it was assumed when a couple did not conceive a child on their own, they should turn to adoption to achieve their parenthood dreams. This notion is now quite outdated as there are far more options for infertile couple as well as singles and homosexuals who want children. Now people have the option to pursue advanced infertility treatment and egg, sperm and embryo donation are no longer rare, national and international adoption is commonplace and surrogacy is becoming increasingly popular.

Both of these methods are actually having the same end objective, that is, to give the chance of enjoying one of the sweetest moments of life for a couple who has been waiting eagerly for this for a long time. Surrogacy provides an opportunity where the couple can feel the responsibility and seriousness of childbearing process and that creates more emotional bonding between the parents and child. The fact that newborn is genetically connected to at least one of the parents gives a feeling of comfort and happiness to the parents. They feel more closeness with the child because it is biologically related to them. Gestational surrogacy involves eggs and sperms of the couple and therefore it is actually their genetic offspring, developed in a different womb. This is a real feel good factor for them as compared to adoption where they are not much assured by the genetic issues. The close relationship of intended parents and surrogate mother creates a healthy relationship and the progress of pregnancy and health of the mother can be monitored easily to avoid any complications. The emotional bonding is more strong and cohesive.

Another most important factor in case of surrogacy is that the intended couple can choose the surrogate mother that is going to carry the baby. This is not possible in case of adoption where there is no chance of deciding anything about the genetic parents of the child. Although adoption is surely one of most amazing ways to create the family and giving complete unconditional love and affection to a child that does not belong to you genetically is surely not an easy task. It requires great amount of courage and openness of heart.

But there are some babies who need to be adopted. Society might make a judgement that such infertile couples would make that choice, thereby benefiting both children in need and society. Accordingly, a state might decide that it is best that infertile couples not be permitted to create another baby by contract, when at least a few of them might otherwise



decide to take on a child in need. Surrogacy advocates injure their case when they brag that as surrogacy develops, it will come to replace adoption. That would be a clear social harm. The interests of existing children in having families, and society's concern that children grow up in as secure and loving an environment as possible, should not be ignored in the decision whether to encourage surrogacy, *in vitro* fertilisation and ovum/sperm donation.

Infertile couple would argue that the chance to have a "normal" child and a child as biologically connected to them as possible, is not afforded by adoption and that although it benefits society more for them to adopt an existing child than to conceive a new one, the same is true for fertile couples, who nonetheless are permitted to reproduce without any restriction by the state. Moreover it is hypocritical to raise the needs of deprived children against surrogacy when we as a society in other respects follow policies so obviously contrary to their needs. Indeed if we provided minimally adequate welfare for poor families with children with special needs, a national daycare policy, a program to meet the housing needs of poor people, and support for battered women who would take care of their children if they could, just to name a few obvious examples, poor families would be able to stay together, and there would be many fewer children in need of families. If we provided free prenatal care to those who cannot afford it, there would be many fewer special-needs children. Society does have a responsibility towards existing children in need, and it should exercise that responsibility, but it is unfair for it to meet its obligation simply by transferring the responsibility to couples who need surrogacy to reproduce. A ban on surrogacy would not really impose an obligation upon infertile couples to care for existing children, although it would increase the likelihood that some of them will do so and that would be part of its purpose. The serious issue is whether it is fair so to preclude infertile couples and women who want to be surrogates, and that turns on a value judgment; whether the needs of existing children should be given preference or whether the needs of parties who would use surrogacy are more important.

**Surrogacy vs Baby trafficking**

Those who oppose surrogacy argue that surrogacy is nothing but 'baby selling' and is, therefore, against law. In no country baby-selling is allowed. Hence infertile couples are to be happy by adopting children from within their country or abroad.

Adoption is a state created judicial procedure through which a child's natural parents relinquish their parental rights and a new couple becomes the legal parents of the child. In the west, there is already a baby dearth and healthy babies are hardly available for adoption. Moreover, adoption procedure is too lengthy. In the developing countries, babies are available for adoption. Unfortunately, there exist a Baby-Black-Market and unscrupulous baby-brokers transfer unwanted babies to childless couples. Parents of those babies are paid for and this is baby-selling. In order to prevent this, inducements to parents who part with their babies have been held to be unlawful. Here come the legal complications in regard to compensation paid to the surrogate mother for the inconvenience borne by her



and expenses incurred for delivery. This may be treated as incentive. But there is a marked difference between surrogacy and baby-selling. In case of surrogacy, the surrogate mother carries the child on being asked by the intending parents and agrees to hand over the child beforehand. But in case of baby-selling, poor people hand over their children to brokers for financial benefits only even without knowing the fate of their children. Thus, the evils of baby-selling are not present in surrogacy and compensations paid to surrogate mother should not be viewed as inducement<sup>7</sup>

### **LEGISLATIVE JOURNEY FROM COMMERCIAL SURROGACY TO ALTRUISTIC SURROGACY**

commercial surrogacy got legal recognition in Indian territory in the year 2002 . It is a practice that has helped many stars in the Hindi film industry to enjoy the ride of parenthood.

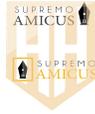
the Indian Council of Medical Research (ICMR) provided surrogacy with pro guidelines so as to protect the right of the individuals involved as a party in the surrogacy process.

1. ICMR put forth some guidelines<sup>8</sup> :-

- Surrogacy arrangement will continue to be governed by a contract amongst parties, which will contain all the terms requiring consent of the surrogate mother to bear the child, agreement of her husband and other family members for the same, medical procedures of artificial insemination, reimbursement of all reasonable expenses for carrying child to full term, willingness to hand over the child born to the commissioning parent(s) etc.
- A surrogacy arrangement should provide for financial support for the surrogate child in the event of death of the commissioning couple or individual before delivery of the child, or divorce between the intended parents and subsequent willingness of none to take delivery of the child.
- A surrogacy contract should necessarily take care of life insurance cover for surrogate mother.
- One of the intended parents should be a donor as well, because the bond of love and affection with the child primarily emanates from biological relationship. Also, the chances of various kinds of child-abuse, which have been noticed in cases of adoptions, will be reduced.
- In case the intended parent is single, he or she should be a donor to be able to have a surrogate child. Otherwise, adoption is the way to have a child, which is resorted to if biological (natural) parents and adoptive parents are different.
- Legislation itself should recognize a surrogate child to be the legitimate child of the commissioning parent(s) without any need for adoption or even declaration of guardianship.

<sup>7</sup> Nandia Adhikari, “ Surrogate Motherhood” law and medicine 167(2012)

<sup>8</sup> [www.wikipedia.com](http://www.wikipedia.com)



- The birth certificate of the surrogate child should contain the name(s) of the commissioning parent(s) only.
- Right to privacy of donor as well as surrogate mother should be protected.
- Sex-selective surrogacy should be prohibited.
- Cases of abortions should be governed by the Medical Termination of Pregnancy Act 1971 only.

However, the necessity of legal protection was enforced through the case of Baby Manji vs Union of India. A Japanese couple commissioned a surrogate mother in India but they ended in a divorce. The single male parent wasn't granted custody of the child and the mother refused to accept it. Japan gave the child humanitarian visa and allowed the grandmother to take the child on behalf of her son, given his genetic relation with the baby. During the case, however, the Supreme Court recognised that the parent of a surrogate child may be a male and recognised surrogacy as a positive practice.<sup>9</sup>

2. ART BILL 2010 was tabled in the parliament with guidelines having the legislative backing to protect the party to the contract of surrogacy from any kind of infringement and exploitation but this bill was never passed as a law, it was kept as a

Some of the features of this proposed bill are as under<sup>10</sup>:

- Constitution of an authority at National as well as State level to register and regulate the [IVF clinics](#) and ART centers.
  - Creation of a forum to file complaints for grievances against clinics and ART centers.
  - Imposing duties and responsibilities on the clinics and ART centers.
  - Regulations for sourcing, storage, handling, record keeping of Gametes, Embryos and other human reproductive materials.
  - Placing rights and duties on Surrogate and commissioning parents.
  - Imposing stringent penalties for breach of the duties and regulations under this Act.
  - The above features are still dynamic in nature, but will take a long way in making the entire surrogacy procedure transparent and fair. The chances of any exploitation of the Intended Parents and Surrogate cannot be eliminated with mere introduction of the proposed bill; better implementation across the country must be needed.
- Proposed Draft Assisted Reproductive Technologies (Regulation) Bill & Rules-2010, Ministry of Health and Family welfare and ICMR, India

3. Guidelines by **Union Home Ministry** for visas being issued to foreigners seeking child / children from surrogacy (2012)

<sup>9</sup> [www.indianexpress.com](http://www.indianexpress.com)

<sup>10</sup> Proposed Draft Assisted Reproductive Technologies (Regulation) Bill & Rules-2010, Ministry of Health and Family welfare and ICMR, India



These guidelines for foreigners planning surrogacy in India came up in July 2012 following allegations that commissioning parents from abroad were cheating the surrogate mothers. There are also few reported cases that the children were ill-treated in foreign land and that they are not treated as citizens there.<sup>11</sup>

- The Union ministry of home affairs observed that many non natives visit to india on tourist visa and their purpose was to get a surrogate to produce a child .On observing such incidents union ministry made it compulsory for those foreigners who want to get a surrogacy procedure to be conducted in india to get a medical visa before visiting india for surrogacy purpose .
- Under this order, a letter from the embassy of the foreign country in India or the Foreign Ministry of the country should be enclosed along with the visa application stating clearly that the country recognizes surrogacy and the child or children to be born to the commissioning couple through the Indian surrogate mother will be permitted entry into their country as a biological child or children of the couple commissioning surrogacy. This is particularly significant, as many babies born out of cross-border surrogacy in recent years have been trapped in legal tangles between the home country and India. A Norwegian woman, who had twins by an Indian surrogate in 2009, was stranded for over two years as Norway refused to accept her as the biological mother of her children. Many countries, like France, Germany, Italy and Norway do not recognize commercial surrogacy.
- The couple will have to furnish an undertaking that they would take care of the child or children born through surrogacy, the treatment should be done only at one of the registered Assisted Reproductive Treatment (ART) clinics recognized by Indian Council of Medical Research. Besides, the couple should produce a duly notarized agreement between the applicant couple and the prospective Indian surrogate mother. "If any of the above conditions are not fulfilled, the visa application shall be rejected," the Home Ministry said.
- The Ministry also told Indian missions abroad that before the grant of visa, the foreign couple needs to be told that before leaving India for their return journey, "exit" permission from the Foreigner Regional Registration Offices or Foreigner Registration Offices (FRRO /FRO) would be required. Before granting "exit", the FRRO/FRO will see whether the foreign couple is carrying a certificate from the ART clinic concerned regarding the fact that the child or children have been duly taken custody of by the foreigner and that the liabilities towards the Indian surrogate mother have been fully discharged as per the agreement and guidelines.

<sup>11</sup> [Overseas Citizenship of India \(OCI\); Ministry of Home Affairs HYPERLINK "http://mha.nic.in/uniquepage.asp?Id\\_Pk=553", HYPERLINK "http://mha.nic.in/uniquepage.asp?Id\\_Pk=553"](http://mha.nic.in/uniquepage.asp?Id_Pk=553) Government of India website, [Diaspora Services: Overseas Citizenship of India Scheme; The Ministry of Overseas Indian Affairs \(MOIA\) HYPERLINK "http://www.moia.gov.in/services.aspx?id1=35&id=m3&idp=35&mainid=23", HYPERLINK "http://www.moia.gov.in/services.aspx?id1=35&id=m3&idp=35&mainid=23"](http://www.moia.gov.in/services.aspx?id1=35&id=m3&idp=35&mainid=23) Government of India website 2012.



- A copy of the birth certificate(s) of the surrogate child or children will be retained by the FRRO or FRO along with photocopies of the passport and visa of the foreign parents. It may be noted that for drawing up and executing the agreement, the foreign couple can be permitted to visit India on a reconnaissance trip on tourist visa, but no samples may be given to any clinic during such preliminary visit," the order said.
- According to this new rule, gay couples and single parents living abroad will not be given an Indian medical visa if they are visiting to commission a surrogacy. Also, commissioning parents have to be heterosexual couples married for at least two years before commissioning a surrogacy, and will have to apply for a medical visa only. Apart from this, commissioning parents will now have to get documents from clinics certifying that they are heterosexual couples who cannot have children under normal conditions and need medical treatment.

#### 4. INTRODUCTION OF SURROGACY BILL 2016

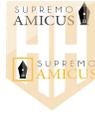
Surrogacy will not be allowed for<sup>12</sup>

- a. Single parents
  - b. Homosexual couples
  - c. Couples in live-in relationships
  - d. Couples with children
  - e. Foreigners
  - f. Attempts at commercial surrogacy
2. Couple must be married for at least 5 years.
  3. Either one of couple must have proven infertility.
  4. Only Indian citizens; NRIs are also not included
  5. Age of couple: 23-50 for females and 26-55 for males.
  6. Women can be surrogates only once and a married couple can only have one surrogate child.
  7. The couple should employ an "altruistic relative", i.e. the surrogate mother should be a relative who is sympathetic to the situation.
  8. Egg donation is banned.

#### Pitfall Of Surrogacy Bill 2016

2. the bill 2016 infringes the article 21 of indian constitution which states that right to livelihood and right to reproduce is a fundamental right of every individual . eliminating commercial surrogacy and replacing it with altruistic surrogacy has deprived many poor women working as surrogate from their "right to livelihood". surrogacy was the legal mean of earning bread for their family and helping their family to give a financial backbone and by introducing surrogacy bill government has snatched the mean of

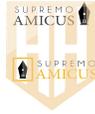
<sup>12</sup><https://feminisminindia.com/2016/08/31/critical-analysis-surrogacy-regulation-bill-2016/>



employment from the hands of mob of poor women working legally as surrogate and living a normal life of human being . Further , it has not only harm the rights of surrogate to win bread but also to those women who are infertile or unsuitable to reproduce . it infringes the right of those women who want to reproduce bt fails to and hence go for surrogacy to gain the joy of motherhood , this bill violates the right to reproduce of those single male and female, heterosexual couples but not married, homosexual couples and in fact it reduces the chances of hetrosexual couples to become parent by introducing the clauses of 25-35 should be the age of surrogate , surrogate should be a close relative ..etc . this bill has harmed both the sides .

3. it violates the "freedom of trade and profession " proposed under article 19(1)(g). It violates the right of many poor women working as surrogate to earn bread for their families and numerous clinics who gets monetary gain through this procedure and putting a blanket ban on commercial surrogacy indulge many stakeholders interest in jeopardy
4. the bill violates the Article 16 of universal declaration of human rights which states that " right to found family " is a right that every human vest in him/her since birth and by infringing" right to reproduce" this bill has violated the "right to found family " too
5. banning commercial surrogacy and introducing altruistic surrogacy will motivate the baby selling black market to sell babies to the people in need of babies without any legal contract and exploiting the life of babies without any assurance of the future
6. altruistic surrogacy can be more exploitative than commercial surrogacy cause it is so unfair and arbitrary towards those women who are close relatives and on the name of close relatives she goes through the nine months struggle of carrying pregnancy and pain in giving birth to the baby without being paid for her reproductive labour .Pregnancy is to be considered a period of nine-month labour with far reaching implications for the health, time and family of the surrogate. Altruistic arrangements do not provide any support to the surrogate.
7. the indian judiciary under the juvenile justice (care and protection )act 2015, allows foreigner, single male and women and others to adopt a child whereas when it comes to have a surrogate child with whom individual can relate to himself/herself genetically but then government put ban on it though if we ll observe then we ll notice that having a child through surrogacy will not put child into any kind of unfavourable situation with parents and adoption has lead to many child into unfavourable condition like molestation with girls in the family and involving child into child labour ,etc.
8. It violates Article 14 of indian constitution by not allowing single male and female , homosexual , heterosexual couple not married , and couples already having a child cannot go for another child through surrogacy . these restriction and ban on surrogacy has come out as a gross discrimination .
9. spreading a blanket on commercial surrogacy will lead to the parallel ilegal industry of surrogacy where middle man who cannot afford expenditure of countries like uk and usa which has legal commercial surrogacy , will choose the illegal mean of surrogacy in india .

## CONCLUSION



Government's intention were right to implement surrogacy bill 2016 but they ignored many factors into consideration and now those factors are the obstacle for many people in india to achieve parenthood goal by becoming parent to child/ children. Putting clause of age 25-35 for a woman to become surrogate , surrogate could only be a close relative and a woman can go for surrogacy pregnancy only once , these clauses come out as a obstacle and reduced the chances of even homosexual married couples to get a surrogate and achieve parenthood to enjoy ride of parenthood. introducing altruistic surrogacy and restricting a woman on clause like only one time surrogacy pregnancy and age will make it almost impossible for even couples to get a child , there are many countries in the world which practise altruistic surrogacy but those countries too does not restrict surrogacy on the ground of age and number of times a surrogate can go for pregnancy. Government has ignored many factors to take into consideration and implementation surrogacy bill 2016 which has harmed both the women working as surrogate and the women willing to get a child but is infertile and due to of restrictions and clauses in this introduced bill will make it almost impossible for that women to become mother and introducing altruistic surrogacy has made many surrogate working women unemployed . This now a high time and need of an hour for government to rethink and reform the surrogacy bill 2016 and make the biotechnological way to help people to achieve parenthood!

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