



**ASSISTED REPRODUCTIVE  
TECHNOLOGIES AND CURRENT  
PERSPECTIVES OF SURROGACY LAWS  
IN INDIA]**

*By Bhagavatula Naga Sai Sriram  
From School of Law, Sastra University*

**ABSTRACT**

This paper is centred on Assisted Reproductive Technologies and present perspectives of Surrogacy laws in India. The paper examines about the definition of Assisted Reproductive Technologies (ART)'s, different kinds of ART's and various risks involved when using ART's. This paper gives a comprehensive analysis of meaning and concept of surrogacy, definitions of surrogacy, Indian history of surrogacy. The main features of THE SURROGACY (REGULATION) BILL, 2019 and transparency of ART in that bill will be examined in this paper. The author discusses various types of Surrogacy and arguments in favour and against surrogacy, Surrogacy and Human Rights, pros and cons of Surrogacy. This paper inspects present laws relating to surrogacy in India and compares with the laws of other countries. Moral, Ethical, and Legal issues of Surrogacy and along with this Judicial Response to Surrogacy in India will be discussed in this paper. Various case laws relating to ART and Surrogacy will be dealt during the course of discussion. Subsequent to this analysis, the conclusion will be drawn based on the observations and suggestions will be presented.

**Key words:** Assisted Reproductive Technologies (ART), Surrogacy, The Surrogacy (Regulation) Bill, 2019, Moral Legal and Ethical issues of Surrogacy and Cases relating to ART and Surrogacy.

**ASSISTED REPRODUCTIVE  
TECHNOLOGIES: (ART'S)**

Assisted reproductive technologies (ART's) are the medical techniques which are used to treat infertility. In the past many types of infertility are considered untreatable. They have solutions today by way of Assisted Reproductive Technologies (ART) which rescues the infertile individuals by giving them various options to beget a naturally related child. Through the advancement in medical science particularly in the field of Assisted Reproductive Technologies (ART) numerous solutions for childless couples to get a child other than Adoption were provided.

ART involves a technique in which semen is infused into the vagina or uterus by medical means for the sake of inducing pregnancy<sup>1</sup>. ART is also known as Cervical Fertilization or Intra-uterine Impregnation.

**KINDS OF ART:**

Various kinds of Assisted Reproductive Technologies (ART) can be detailed as follows:

1. **Intra-Cervical Insemination:** This technique comprises placing of "unprocessed semen" into cervix mucus and then placing a cervical cap or specifically designed vaginal tampon to hold the semen against the cervix<sup>2</sup>.
2. **Intra-Uterine Insemination:** Intra-Uterine Insemination can be described as the

<sup>1</sup> BROMLEY (ed.), FAMILY LAW 260 (Butterworth & Co., London 8th ed. 1992).

<sup>2</sup> Guidelines for ART clinics in India available at <https://www.scribd.com/document/28694677/Guidelines-for-ART-Clinics-in-India>



procedure involving placing of maximum number of sperms in close proximity to the egg.

3. **Intra-Tubal Insemination:** Intra-Tubal Insemination can be explained as the procedure involving processing of semen to maximise its fertility and then it is placed through the cervix, by the usage of specially designed catheter in to the uterine cavity and then in to the uterine hole of the fallopian tube.
4. **Artificial Insemination Mixed:** Artificial Insemination is one kind of ART in which the infertile husband's semen is mixed with the donor's semen and it is used to fertilize the wife of the husband.
5. **Homologous Artificial Insemination (AIH):** Homologous Artificial Insemination is one method of ART in which the woman is injected with her husband's sperms only. In such cases there is no question of legitimacy of children as the activity involves the task of husband and wife only.
6. **Heterogeneous Artificial Insemination:** In this method of ART the wife is not injected with the sperms of her husband but with that of a stranger. In this method a lot of questions regarding the legitimacy of the child arises as the sperms which are injected to the woman belong to a stranger. In India there is no law as such which provides for the laws and rights of the child born through this method.
7. **In Vitro Fertilization:** In Vitro Fertilization (IVF) is the procedure involving the unification of male and female gametes (sperm and egg) to form a Zygote outside the female body. IVF practices generally include:
  - a) **Transvaginal Ovum Retrieval:** The process in which a small needle is incorporated in order to make a hole in the rear area of the vagina and directed through ultrasound into

the ovarian follicles to gather together the fluid that has within the eggs.

- b) **Embryo- Transfer:** This procedure involves the process of putting one or two embryos in to a particular position in the uterus of the female with an injection to set up a pregnancy.

### RISKS INVOLVED WHEN USING ART'S:

Numerous risks are involved when using ART's. Some of them can be elucidated as m follows:

- **Infection:** when using a fine needle to take off the eggs from a woman may be a risk because it might bring contamination in to the woman's body. Addition to this Sperm donation may pass diseases like Human Immunodeficiency Virus (HIV).
- **Ovarian Hyper Stimulation Syndrome (OHSS):** This results in painful and enlarged ovaries which causes abdominal discomfort. Symptoms of this disease may include shortness of breath, fluid retaining in the abdominal cavity. Drugs which are used to stimulate the ovaries during In Vitro Fertilization (IVF) process can lead to this disease.
- **Multiple Pregnancy:** ART particularly IVF rises the chance of having multiple pregnancy like twins or triplets which may cause health risks for both mother and children.
- **Genetic disorders:** Genetic disorders such as low birth weight and preterm birth weight are connected with several health problems like cerebral palsy and visual impairment.
- **Other risks:** Many other risks such as membrane damage which may bring a bad impression by increasing the membrane fusion proteins may arise when using ART's.



### MEANING AND CONCEPT OF SURROGACY:

Surrogacy can be explained as one of the most effective technique to overcome biological infertility. Surrogacy is the process of reproduction with the usage of womb of one woman to reproduce the children for another woman. Generally Surrogacy can be explicated as the manner in which a woman carries a child for another woman who cannot give birth to the children naturally. The practice of surrogacy turned out to be an attractive alternative for the individuals and couples who wish to have biologically related children and for those people who are unable to reproduce through ART (Assisted Reproductive Technologies) and other artificial reproductive technologies such as in vitro fertilization.

### DEFINITIONS OF SURROGACY:

The expression “Surrogate” originated from the Latin word “Surrogatus” which means that the one who is “appointed to act in the place of another”. Some important definitions of Surrogacy are stated below:

- **Merriam Webster Dictionary:** This dictionary defines surrogacy as ‘the practice by which a woman (called a surrogate mother) becomes pregnant and gives birth to a baby in order to give it to someone who cannot have children’<sup>3</sup>
- **Black’s Law Dictionary:** This dictionary expresses surrogacy as ‘an agreement wherein a woman agrees to be artificially

inseminated with the semen of another woman’s husband.’<sup>4</sup>

- **The New Encyclopaedia Britannica:** In this “Surrogate Motherhood” is described as the practice in which a woman bears a child for the couple to produce children in the usual way.<sup>5</sup>
- **The Surrogacy (Regulation) Bill 2019:** This bill termed Surrogacy in Section 2 (zc). It states that “surrogacy” means a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after the birth.<sup>6</sup>

### INDIAN HISTORY OF SURROGACY:

Hindu mythology gives quite a lot of instances of surrogacy. Some important illustrations related to the concept of surrogacy in the Hindu tradition are mentioned below:

- **Bhagavata Purana:** In this purana it is stated that Vasude’s prayers imploring Kansa not to kill all sons being born were heard by Vishnu and transferred an embryo from the Devaki’s womb to the womb of Rohini, the second wife of Vasudev. Rohini gave birth to that baby named Balaram, who is the brother of Krishna. Rohini secretly raised the child (Balaram) while Kansa was informed by Vasudev and Devaki that the child born was dead.<sup>7</sup>
- **Mahabharata:** In Mahabharata several instances signify Surrogacy. Some of them are:

<sup>3</sup> Merriam Webster Dictionary definition for Surrogacy.

<sup>4</sup> Black’s Law Dictionary definition for surrogacy.

<sup>5</sup> The New Encyclopaedia Britannica definition for surrogate motherhood.

<sup>6</sup> The Surrogacy (Regulation) Bill 2019, Section 2 (ZC)

<sup>7</sup> Jasdeep Kaur, “Surrogacy: A Paradox regarding Motherhood rights with Special Reference to India”:, Vol. IINo.1, 2012 The Legal Analyst (113 to 121) at 114.



1. Gandhari delivered a semi solid material rather than delivering a natural child. That semi solid material was divided by Maharishi Vyas in to 100 pieces and he placed those 100 pieces in different pans and as a result 100 Kauravas were born.
  2. Maharishi Bharathwaj saw a godly nymph coming out of water after having a bath and after seeing such a divine woman he felt discern and deposited his semen in a pot used for yagna called as ‘ Darona’ and that is source of Dronacharya’s birth who was named after the vessel.
- **Jain Mythology:** Thousands of years after the theological events in 599 AD Mahavira the 24<sup>th</sup> Thirthankar was born after an embryo has been transferred from Devananda wife of a Brahmin named Rishabdeva to the womb of Trishala by the gods ingeniously.

### **“THE SURROGACY (REGULATION) BILL 2019”:**

Important features of ‘The Surrogacy Regulation Bill 2019’ are mentioned below:

- a) **For whom:** This bill states that the Indian couples who are legally married for at least for 5 years of age can opt for surrogacy.
- b) **Type of surrogacy:** The bill clearly states that the infertile intending couple who are opting Surrogacy can be allowed only to “Altruistic Surrogacy”.
- c) **Age limit:** According to this bill the age criteria for males who are opting surrogacy is 26 to 55 years and for females it is 23 to 50 years.
- d) **Essential certificates:** Two certificates are compulsory for the couple who are intending to go for surrogacy. They are Certificate of Essentiality and Certificate of Eligibility which must be obtained from the proper authority concerned. (change)
- e) **Requisites for the surrogate mother:** This bill noticeably mentions certain eligibility

criteria for the surrogate mother i.e. the woman who wants to become a surrogate mother should not have a child of her own and she must be the close relative to the intending couple and essentially the woman should be of the age 25 to 55 years.

- f) The bill also mentions that the woman who is coming forward for taking the surrogacy must not have a surrogate earlier and the bill clearly declares that the woman is eligible for surrogacy only if she possesses a Certificate regarding Physical and Mental health from the respective authority concerned.
- g) The bill states that under any circumstances or conditions the child who is born by way of surrogacy should not be abandoned by the intended couple.

- h) **Legal status of the surrogate child:** The bill clearly states that the intending couple must accept the child born through surrogacy as their natural child and the surrogate child is qualified to have all legal rights and privileges that are available to the natural child.

- i) **Establishment of surrogacy boards:** This Surrogacy Regulation Bill makes an adequate preparation for the establishment of the National Surrogacy Boards and the State Surrogacy Boards at the state levels.

- j) **Surrogacy clinics:** The bill undoubtedly seeks to control the functioning of the surrogacy clinics by means of strong rules and regulations. The bill mentions that the medical clinics which are undertaking surrogacy procedures must be registered by the appropriate authority.

### **TYPES OF SURROGACY:**

Depending up on the method in which the surrogacy is done, it is divided in to different types and various types of surrogacy are mentioned below:



- ❖ **Traditional surrogacy:** Natural surrogacy is the other name for this type of surrogacy. In this kind of surrogacy, the surrogate mother is artificially fertilized with the sperm of the male partner of an infertile couple and the child born through this type of surrogacy relates to the genetics between the male partner and the surrogate mother and not to the genes of the female partner of the intending couple.
- ❖ **Gestational surrogacy:** In this type of surrogacy the ovum of the wife of the infertile couple is fertilized in vitro of the husband's sperms of the infertile couple by In Vitro Fertilization (IVF) or Intra Cytoplasmic Sperm Injection (ICSI) procedure, and then the embryo is shifted in to the uterus of the surrogate mother and the surrogate mother carries that embryo for nine months. Here the surrogate mother becomes pregnant only by way of embryo transfer and she is not the biological mother of the child who is born by way of surrogacy. Thus this type surrogacy is also known as 'Host Motherhood'.
- ❖ **Commercial surrogacy:** Commercial surrogacy is one kind of surrogacy where the whole surrogacy process will be done by way of agreement between both the parties i.e. intending couple and the surrogate mother and the agreement is for the exchange of the child born through surrogacy for some means of payment (generally a sum of money which is significantly greater than the medical costs sustained and the income lost by the surrogate mother due to her pregnancy and for bearing the child) which is given by the intending couple to the surrogate mother. The Surrogacy (Regulation) Bill 2019 bans this type of commercial surrogacy in India.
- ❖ **Altruistic surrogacy:** Altruistic surrogacy is a type of surrogacy where no financial reward or payment is given to the surrogate mother for her pregnancy. This type of surrogacy

agreements refer that the surrogate mother will not receive any monetary compensation for gestational carrying from the couple and for sacrificing the child. The Surrogacy (Regulation) Bill 2019 states that the intending couple must only select Altruistic Surrogacy.

### ARGUMENTS IN SUPPORT OF SURROGACY:

Some arguments of the general public who support surrogacy are stated below:

- Surrogacy is one of the best alternatives for the couples who cannot produce their children naturally due to medical complexities or physical incapability, which creates biological linkage between the child born through the surrogacy process and the intended infertile couple.
- Altruistic surrogacy is one type of surrogacy where no financial reward is given to the surrogate mothers. In fact many women in the world participate willingly in such type of surrogacy to help the infertile couples and in return surrogate mother will experience a lot of satisfaction by way of helping the infertile couples.
- Commercial surrogacy is one type of surrogacy where in a financial reward is given to the surrogate mothers for carrying the child for the intending couples. In fact this commercial surrogacy not only help the poor and minority women in making money by renting their womb which is useful for their household expenses, education of their own children etc. but also helps the infertile couples by giving them genetically related children and making them a complete family.
- Through this surrogacy process even a single man, gay and lesbian can have their genetically related children in spite of their physical incapability or medical complication.



## ARGUMENTS AGAINST SURROGACY:

- The concept of surrogacy motherhood is predominantly based on harms because firstly it harms the surrogate mother's health if she is going for repetitive births of the children from her womb, secondly if the surrogate mother has real children then the her acts will affect the children and as a result it creates a change in the mind-set of the children and it is a great harm to the society.
- Secondly if there are any abnormalities in the child who is born through surrogacy, both the surrogate mother and the intended parents refuses to accept the child and finally it will affect the attitude of the child.
- Surrogacy process destroys the traditional values of the families due to the new concepts of the motherhood in the society.
- In many cases it has been observed that the medical practitioners like doctors and nurses are not helping the persons and couples like gay, lesbian or single who wants to have their own children even though they are not suffering from any hazardous diseases. As a result this might constitute in to a great discrimination for the public in general.

## SURROGACY AND HUMAN RIGHTS:

Regarding the concept of human rights in the context of surrogacy there are different views in the people. Most of the people consider this surrogacy in a positive manner and some people consider it in a negative way and as a violation of human rights.

**Positive way:** Many people argue that in Article 21<sup>8</sup> of the Indian Constitution, the Right to life and personal liberty is given as a fundamental right. Similarly they consider that the reproductive rights must be included

with Article 21 of the Indian Constitution and they must have their freedom to decide about the time and place to have children and to take freedom of choices.

**Negative way:** Most of the people consider that surrogacy violates the human rights of both the surrogate mother and the child because there is one sort of violation as the people are misusing by selling the babies and making the profits and the other kind of violation is that surrogate mothers are forced to take the pregnancy under coercion and after that the surrogate mothers are forgotten.

## PROS AND CONS OF SURROGACY:

### Pros of surrogacy:

1. It fulfills the wish for the couples as well as individuals including gay, lesbian and single person to complete their family.
2. Surrogacy is one of the latest and best tools to fight against infertility because through this surrogacy there is a genetic relation between the intending couple and the surrogate child.
3. Surrogacy is better than adoptions because adoption procedure will consume a lot of time to complete all procedure and it will take many years to understand the psychology of the adopted child.
4. Surrogate mothers will have a positive experience by helping the people to have their own child.
5. Through this surrogacy process the birth and death ratio of the country will improve.

### Cons of surrogacy:

1. There is a high probability that Commercial Surrogacy can be treated as prostitution.
2. Women can be treated as labour in providing the facilities for the birth of the child.
3. If the child born through surrogacy is abnormal, then both commissioning parents

<sup>8</sup> Constitution of India, Article 21



as well as the surrogate mother refuses to keep the child and as a result the Rights of the child will be violated.

### CURRENT LAWS RELATED TO SURROGACY IN OTHER COUNTRIES:

Even though there is a rapid growth in the international surrogacy, there are no uniform rules and regulations adhered by all the nations. As of now every country has separate laws on surrogacy. Many countries allowed surrogacy and some countries banned it. Present scenarios of laws in various countries are mentioned below:

- ✓ **Belgium:** In Belgium, Altruistic surrogacy is permitted but commercial surrogacy is banned. Although Altruistic surrogacy is allowed but there is only one hospital which takes in the couples, but, there to with the strict rules. So, the people generally prefer to have treatment outside the country.<sup>9</sup>
- ✓ **Germany:** In Germany, courts held this to violation of its Article 1 of the Constitution, which means that the human cannot be subjected to a contract including the use of the body of the third person for the reproduction of new life. It is also not permissible under German Civil Code.<sup>10</sup>
- ✓ **Netherlands:** Netherlands allows the Altruistic surrogacy, but not the commercial surrogacy. This country has the same conditions like Belgium where few hospitals take the couples which have strict rules. So, maximum persons seek for the treatment outside their country.<sup>11</sup>
- ✓ **United Kingdom:** United Kingdom, Commercial surrogacy is illegal and is

prohibited by the Surrogacy Arrangements Act, 1985. The agreements on surrogacy are not legally enforceable and the child belongs to the surrogate mother only. The child becomes the legally of the commissioning parents only after the adoption or parental order is made. This approach makes very difficult for the persons to get into the commercial surrogacy.<sup>12</sup>

- ✓ **United States:** United States, citizenship of the child is governed by Immigration and Nationality Act (INA) Section 301 and 309. The citizenship depends on the genetic connections of the child with the commissioning parents. Furthermore the child should have the genetic relationship with the father in order to acquire the U.S. citizenship.<sup>13</sup>

- ✓ **India:** In India even though commercial surrogacy is legalised since 2002 it is banned now through The Surrogacy (Regulation) Bill 2019 and the latest bill allows only Altruistic surrogacy in India with certain rules and regulations.

### MORAL AND ETHICAL ISSUES RELATED TO SURROGACY:

The main idea behind the concept of surrogacy particularly altruistic surrogacy is based on the principle of doing good to others. In general terms it can be explained as the process of one woman helping another infertile woman or couple for getting genetically related children. Some of the moral and ethical issues of surrogacy are mentioned below:

1. **Harm to the Surrogate mother:** Surrogacy can harm the surrogate mother because most of the women are accepting pregnancy by

<sup>9</sup> International surrogacy laws, available at [http://www.familylaw.com.ua/index.php?option=com\\_content&view=article&id=69&Itemid=98&lang=en](http://www.familylaw.com.ua/index.php?option=com_content&view=article&id=69&Itemid=98&lang=en)

<sup>10</sup> Ibid

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Ibid



renting their womb due to the poverty or economic necessities and they are unaware of pregnancy risks. If there is any sort of situation where in harm is caused to the surrogate mother and neither medical staff nor the intended couple are taking the responsibility and liability then there will be one to indemnify the loss suffered by the surrogate mother.

2. **Interest of the child:** Generally commercial surrogacy involves the exchange of the child born through surrogacy for payment of money to the surrogate mother. If there are any abnormalities in the child born then neither party will accept the child then the declaration of the parentage of such surrogate children will be a contentious issue.
3. **Dignity of the woman will be degraded:** Surrogacy mainly involves the use of a woman's body for producing a baby which must be handed over to the intended infertile couple. During the pregnancy the surrogate mother must abide by the terms laid down in the surrogacy contract and she loses her rights to take any decision affecting her body. It is argued by many people that surrogacy is similar to the prostitution as the surrogate mother has no choice and must abide all terms in the contract irrespective of the circumstances and also she is in the control of the person who is paying money for her pregnancy.
4. **Attachment with the Gestational mother:** In surrogacy the woman who carries the baby for the intended infertile couple is known as the Gestational mother. Generally the Gestational mother must not have any relationship with the child born through surrogacy even though the gestational mother is both physically and mentally connected with the child and at last she must detach herself from the baby.

### LEGAL ISSUES RELATED TO SURROGACY:

1. **Access to Surrogacy:** Right to procreation i.e. the right to have children is one of the basic fundamental rights. Usually surrogacy is considered as the option for procuring a child by the infertile couples. Now the legal questions like whether the said surrogacy can be considered and also used as a right? Who can avail this right? Can surrogacy be used by persons like divorced, widowed, single and same sex couples etc.? If surrogacy is used by the aged and disabled persons, who will take care of the children in the aspects of the maintenance and welfare? Is an important legal issue which is to be considered.
2. **Surrogacy contracts and their validity:** The legitimacy of the surrogacy contracts is uncertain in India because most of the people argue that surrogacy contracts are opposed to public policy because those contracts generally involve use of a woman's womb for begetting a child and finally which is to be handed over to the other party i.e. intended couple for the payment of money. So people consider that these agreements will come under the preview of The Indian Contract Act, 1872 and according to The Indian Contract Act the agreements or contracts which are opposed to the public policy are void. Hence the validity of surrogacy contracts is uncertain.
3. **Child's right- Right to know his origin:** According to Article 7(1) of the Convention on the Rights of the Child (CRC), a child has the right to know about his or her origin. Generally the genetic information is necessary to cure and diagnosing certain diseases and also to avoid incest marriages. In case of surrogacy the disclosure of any such genetic information may lead to adverse consequences. The consequences will have



an impact on the child, surrogate mother and also the commissioning parents.

### **JUDICIAL RESPONSE TO SURROGACY IN INDIA:**

#### **Baby Manaji Yamanda case:**

The Supreme Court of India formally legalised commercial surrogacy in this case and the court defined the commercial surrogacy as the form of surrogacy in which a gestational carrier carry's a child to maturity in her womb and for that she will be compensated in terms of money.<sup>14</sup> In this case the substantial issue of surrogate arrangement was presented before the Supreme Court and the court dealt with related aspects of surrogacy like surrogacy agreements and the parties who may enter in to that surrogacy agreement.

#### **Jan Blaze v. Anand Municipality<sup>15</sup>**

This case is famously known as the German Couple case. In this case a childless German couple had twins through a surrogate mother in India. German laws do not recognise surrogacy as a means of parenthood so to avoid the foreseeable legal hurdle of the immigration process, the German couple approached the Gujarat High Court and the court held that "In the absence of any legislation to the contrary the court is inclined to recognise the gestational surrogate who has given birth to the child as the natural mother and anonymous egg donor cannot be recognised as the natural mother. Considering the intended mother the court held that she is just the wife of the biological father who has neither donated ova nor delivered he babies so in the absence of the

legislation she cannot be treated as legal mother and the natural mother.

Both of these judgements aimed for the passing of a legislation regarding Surrogacy in India.

Commercial surrogacy has posed the challenge of whether maternity benefits should be allowed in organisations for the surrogate mothers also. In recent times, various Indian courts pronounced judgements regarding this issue by using several approaches and some of them are mentioned below:

**1<sup>st</sup> Approach:** According to Article 21 of the Indian Constitution i.e. Right to life is one of the prominent fundamental rights. Motherhood forms an integral part of Right to Life so the maternity benefits should be awarded in all kinds of motherhood including surrogate motherhood.

**2<sup>nd</sup> Approach:** Maternity benefits are meant against both physical and psychological hardships. Surrogate motherhood also contains emotional turmoil's and psychological hardships. As a result maternity benefits must be extended to surrogate motherhood.

**3<sup>rd</sup> Approach:** The maternity benefits given to surrogate mothers cannot be the same as the benefits given to the natural motherhood as the surrogate motherhood doesn't include gestational period and physical hardships. So the benefits given to the surrogate mothers can be limited.

The organisations who are employing women must consider all these approaches given by

<sup>14</sup> Baby Manaji Yamanda v. Union of India, (2008) 13 SCC 518.

<sup>15</sup> AIR 2010 , Gujarat 21



the courts and must be empathetic towards the surrogate motherhood.

### **CONCLUSION:**

According to me the motherhood is the basic right and it must be available to each and every woman. Through these developments in the field of science and technologies particularly in the field of Assisted Reproductive Technologies (ART's) motherhood has been expanded to include children born even through IVF and surrogacy. The Surrogacy (Regulation) Bill, 2019 was drafted in order to protect the woman particularly poor from exploitation and victimisation in the present commercial surrogacy ecosystem. However there are many drawbacks in the surrogacy regulation bill. They are mentioned below:

### **DRAWBACKS OF THE SURROGACY (REGULATION) BILL 2019:**

In my opinion:

- The bill violates Article 14<sup>16</sup> of the Indian Constitution i.e. Right to Equality which is one of the basic fundamental right by not allowing single people, homosexuals, widows and couples already having children to go for surrogacy.
- This bill tries to interfere with the woman's Right to reproductive autonomy which includes procreation and parenthood.
- This bill states that the Altruistic form of surrogacy must only be followed and it must be done by the close relatives of the intended infertile couple. If there are no close relatives to the intended couple, there will be a difficulty in the surrogacy process because no one will be willing to become a surrogate.
- The Surrogacy regulation bill 2019 instead of regulating the commercial surrogacy it bans

it which may cause this vast medical tourism industry to go underground and the exploitation will become much easier.

### **SUGGESTIONS/ RECOMMENDATIONS:**

- Even homosexuals, widows and single persons must be allowed to surrogacy method to have their genetically related children. As a result there will not be any violation of Article 14 i.e. Right to Equality
- Disclosure of the surrogate relationship must be limited in order to avoid unfavourable circumstances.
- It is recommended that a provision must be there to provide intensive care and medical check-ups for the surrogate mother during the 3 months after her pregnancy.
- The rights of the surrogate mother should be protected in every possible manner.
- Laws must be framed to cover the grey areas so that the rights of the women and surrogate children will be protected.

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<sup>16</sup> Constitution of India, Article 14