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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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SURROGACY LAWS IN INDIA: **EXPLORING THE NEXUS OF LAW, ECONOMY, &** **SOCIETY**

AUTHORED BY - PRAPTI DASGUPTA

ABSTRACT

The complex relationships between India's surrogacy laws, economy, and society are examined in this research article. It explores how surrogacy regulations have changed over an extended period, starting with the Surrogacy (Regulation) Bill and ending with the outlawing of commercial surrogacy. In this review, the effects of these rules on different stakeholders- such as intended parents and surrogate mothers- are examined. Beyond that examined are, the surrogacy's economic ramifications as well as the practice's impact from society norms and values. The article in question attempts to shed light on the controversies and intricacies through critical analysis and real-world case studies.

INTRODUCTION

A woman who becomes a surrogate bears a pregnancy and gives birth to a child on behalf of another individual or couple. Over the years, surrogacy has been becoming increasingly trendy and well-known in India. Because surrogate females are readily available as well surrogacy expenses are considerably lower, the nation has become a favourite destination for intended parents from other countries who are seeking surrogacy services.

In the beginning of the millennium, surrogacy services became widely available through fertility clinics in India, which led to a significant increase in the surrogacy industry. It is worth mentioning, although, the fact that there have been notable modifications to India's surrogacy legislation in the past few years. Only charitable surrogacy for Indian citizens is now permitted under rules that the Indian Government adopted in 2015. Commercial surrogacy was outlawed. This implies that only close relatives may use surrogacy, and financial compensation is not permitted.

There are several reasons why surrogacy is becoming more and more commonplace throughout the world. Surrogacy provides a means of overcoming infertility or medical issues that prohibit an individual or couple from becoming pregnant. Some may decide on surrogacy due to concerns about genetics or same-sex motherhood. Global access to surrogacy has also been facilitated by developments in reproductive technologies and the globalisation of fertility services.

It is intriguing that surrogacy continues to remain an emotive matter in many parts of the world. Several different perspectives and conversations emanate from the various legal frameworks and policies that govern surrogacy in nations around the world. Research, discussion, and policy issues surrounding the ethical, legal, and societal ramifications of surrogacy are still currently underway.

EVOLUTION OF SURROGACY LAWS IN INDIA

The regulations pertaining to surrogacy in India have experienced notable changes. India gained popularity as a commercial surrogacy destination in the early 2000s because of its surrogate mother availability and price. However, rules were introduced because of worries about the moral and legal implications of commercial surrogacy.

The Indian government banned commercial surrogacy in 2015, which was a significant move. This implies that paying for surrogacy services with money is no longer allowed. This restriction was put in place to safeguard children's rights and stop the exploitation of surrogate mothers.

In addition, the Surrogacy (Regulation) Bill had been introduced by the Indian Government in 2016. The ultimate objective of this bill was to stronger and more extensively regulate surrogacy practices in India. It strove to create a legal structure that put the child's and surrogate mother's general well-being first. The bill suggested legalising altruistic surrogacy; in which only close relatives could potentially act as surrogates and there would be no payment.

In order to supervise and control surrogacy agreements, the Surrogacy (Regulation) Bill additionally suggested the creation of National and State Surrogacy Boards. These boards will offer a legal framework for surrogacy procedures in India, guarantee compliance with norms and regulations, and safeguard the rights of all parties concerned.

It is critically important to take into account that the Surrogacy (Regulation) Bill is still pending passage into law. It does, however, represent the continued efforts to deal with the difficulties associated with surrogacy and guarantee that it is done in a legal and morally right way.

ALTRUISTIC SURROGACY

Whilst a surrogate mother chooses an altruistic surrogacy plan, she agrees to bear the kid without receiving any payment. Rather, she consents to bear the child out of kindness and a wish to support a different individual or couple in becoming parents.

There are many possible consequences of altruistic surrogacy for Indian couples. To begin with all, it gives couples who are unable to conceive naturally or bring a pregnancy to term an alternate option. Through altruistic surrogacy, they can achieve their goal of becoming parents by enlisting the aid of a surrogate mother who generously provides her support.

It might be challenging for some couples to find a willing close relative surrogate, particularly if they don't have any qualified family members willing or able to fill the job. This restriction might affect Indian couples' ability to use selfless surrogacy.

All things considered, altruistic surrogacy prioritizes the intentions and well-being of all individuals involved, providing a more moral and regulated approach to surrogacy. It solves issues with exploitation and commodification while giving Indian couples a way to follow their aspirations of becoming parents.

THE SURROGACY (REGULATION) BILL

A vital aspect of Legislation that seeks to control surrogacy procedures in India is the Surrogacy (Regulation) Bill, 2020. It introduces a number of laws that affect regulatory board establishment, couple eligibility requirements, and surrogacy activities in general.

Altruistic Surrogacy is limited to available to Indian heterosexual couples who have been married for five years or more, according to the bill. The measure prohibits foreign couples, same-sex couples,

and single people from pursuing surrogacy in India. The primary objective of this qualifying requirement is to prevent surrogacy from being abused or taken advantage of.

In order to supervise and control surrogacy agreements, the bill also creates National and State Surrogacy Boards. These Boards will be in charge of licensing surrogacy centres, approving and disapproving licenses, making sure surrogacy agreements adhere to the law and ethics, and keeping track of intended parents and surrogate mothers in a database.

The Surrogacy (Regulation) Bill has two effects on the surrogacy industry in India. On the one hand, by outlawing commercial surrogacy and only permitting altruistic surrogacy, it seeks to safeguard the rights and welfare of surrogate mothers. This change attempts to guarantee that surrogacy is motivated by compassion rather than profit and to stop the exploitation of women.

LEGAL ASPECTS OF SURROGACY

Surrogacy in India is subject to a number of laws and rules. To ensure that all parties fulfil their obligations and rights, contract enforcement is essential. An agreement outlining the terms and conditions of the relationship is usually signed by the prospective parents and the surrogate mother. This agreement is enforceable by law, and the courts will help to uphold it.

The Surrogacy (Regulation) Bill, 2020 suggests that the intended parents of a child born via surrogacy will be acknowledged as the child's legal parents in terms of parental rights. This guarantees them all the rights and obligations that come with being a parent. It's crucial to remember that the measure is still being considered and might change before it is signed into law.

Courts have the responsibility to settle disputes and ensure that all parties are treated fairly. Courts have the authority to step in and interpret the surrogacy agreement, uphold its provisions, and handle any legal questions that come up throughout the surrogacy procedure. Their main goals are to safeguard the child's best interests and guarantee that everyone's rights are upheld.

It's important to note that there have been continuous talks and arguments concerning different facets of surrogacy, and that the legal environment surrounding it in India is changing. In order to preserve

the interests of the intended parents, the child, and the surrogate mother, a balance must be struck.

ECONOMIC FACTORS AND SURROGACY

The cost of surrogacy can have a big impact on intended parents. The cost of the surrogacy procedure might differ based on a number of variables, including the surrogate mother's salary, agency fees, legal fees, and medical costs. In certain nations, like as India, where surrogacy has gained popularity, the expense of surrogacy may be less than in other nations. It's crucial to remember that the price can still be high and that some potential parents may find it difficult to afford.

Conversely, surrogate moms may be motivated by financial considerations. In order to support themselves and their families, many surrogate moms decide to sign up for surrogacy agreements. The amount of money paid to surrogate mothers varies based on a number of variables, such as the nation and the terms of the deal. Surrogate moms may occasionally additionally be eligible for further financial assistance to cover related expenditures such as medical bills.

It's critical to understand that surrogacy's financial implications can be intricate and multidimensional. Financial resources, remuneration, and the possible financial advantages for intended parents and surrogate moms are all taken into account.

SOCIETAL VALUES AND NORMS

The perception and acceptance of surrogacy are significantly shaped by societal values and cultural norms in India.

Indian traditional cultural norms place a strong emphasis on the significance of kinship, family, and the mothering role of women. These ideals may consider surrogacy as a deviation from the normal course of conception and birthing and frequently place a higher priority on biological motherhood. Consequently, there can be differences in how surrogacy is viewed and understood in Indian society.

There are also ethical and religious considerations. Regarding the use of assisted reproductive technology and the involvement of a third party in the reproductive process, certain religious beliefs

and cultural norms may have particular opinions. These elements may have an impact on support or opposition to surrogacy.

It's crucial to remember, though, that opinions on surrogacy differ across the nation. Different perspectives might result from exposure to different global influences, individual views, the urban-rural divide, and education. Surrogacy is accepted and encouraged by certain people and communities in India, who see it as a good solution for singles and couples who are having trouble conceiving.

The Indian government has also passed laws over time to solve issues and guarantee moral surrogacy procedures. For instance, the Surrogacy (Regulation) Bill, 2020 seeks to safeguard the rights of all parties concerned and regulate surrogacy in India.

All things considered, the subject of how society values and cultural norms affect how surrogacy is viewed and accepted in India is complicated and always changing. It entails striking a careful balance between customary values, religious convictions, moral principles, and personal viewpoints.

POWER DYNAMICS AND SOCIAL INEQUALITIES

The varying perspectives of intended parents and surrogate moms might lead to power conflicts in surrogacy. The terms and circumstances of the surrogacy agreement may be influenced by the intended parents' greater financial and decision-making authority. The autonomy and agency of surrogate mothers may be jeopardised under certain circumstances due to this power disparity.

One major worry with surrogacy is exploitation. Some contend that the financial rewards provided to surrogate mothers could take advantage of their precarious socioeconomic situation. This calls into question whether surrogacy turns women into inanimate reproductive machines and concerns the commoditization of women's bodies. It's critical to make sure that surrogacy agreements are founded on the surrogate mother's physical and mental wellbeing being protected, equitable pay, and informed consent.

Furthermore, as access to services provided by surrogacy may be restricted to those with financial resources, surrogacy and socioeconomic inequality are related. This has the potential to exacerbate

already-existing socioeconomic divides and limit the options surrogacy presents for women from underrepresented groups to generate income.

Comprehensive legal frameworks that safeguard the interests and rights of all parties concerned are necessary to address these concerns. Regulations that protect surrogate mothers' agency and autonomy while also honouring the needs and preferences of intended parents are crucial. Open communication and continuous discussions are essential to shaping moral practices and regulations in the surrogacy industry.

REAL-WORLD CASE STUDIES

The following are some actual case studies that demonstrate how India's surrogacy regulations, business dealings, and social factors interact.

1. *The Baby Manji Yamada Case:*¹

Here, Dr. Ikufumi Yamada and his spouse travelled to India in order to use surrogacy to produce a child. They are a Japanese couple. Then, in Gujarat, the birthplace of this technique, they employed an Indian woman to raise their child as a surrogate mother. The couple had separated as a result of certain marital problems. However, the father desired custody of the child, and a single father is not allowed to adopt a girl child in India. The girl child's grandmother is granted custodial rights in this case by Justices Arijit Pasayat and Mukundakan Sharma of the Supreme Court. Thus, it was determined from the analysis that the nation needs surrogacy regulations.

2. *Jan Balaz v. Anand Municipality:*²

Marthaben Immanuel Khrishti, a surrogate mother who gave birth to two twins, was employed by a German couple in this particular situation. These two German twins need an Indian passport to travel; the couple worked in the UK. The passport authorities refused to provide passports to the twins since they were not citizens due to the legal process of suing in court. Surrogacy was also unregulated in German law. The German government allowed them to adopt the children and fight for their rights, but

¹ <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ijlmhs12&div=252&id=&p age=>

² <https://www.researchgate.net/profile/Senthil-Kumaran->

[7/publication/346714993_Surrogacy_in_India_Ethical_and_Legal_Aspect/links/5fcf3bcb92851c00f85bb4b9/Surrogacy-in-India-Ethical-and-Legal-Aspect.pdf](https://www.researchgate.net/publication/346714993_Surrogacy_in_India_Ethical_and_Legal_Aspect/links/5fcf3bcb92851c00f85bb4b9/Surrogacy-in-India-Ethical-and-Legal-Aspect.pdf)

the Supreme Court did not offer the youngsters a passport. Instead, it gave them an exit permission.

3. *Suchita Srivastava v. Chandigarh Administration:*³

In this instance, the court determined that Article 21 of the Constitution guaranteed women's personal liberty, which includes the right to make reproductive choices. In addition, the article guarantees women's right to privacy, dignity, and bodily integrity, as well as the right to bear a pregnancy to term and give birth.

4. *Justice K.S Puttaswamy and Anr. Vs. Union of India:*⁴

The District Medical Board's certificate of infertility is a requirement of the legal system; therefore, the court held that this basic right must be safeguarded. It is also against the moral and ethical views of society to obtain and display such a certificate.

5. *The Gammy Case:*⁵

The "gammy case" involved an Australian couple that arranged a surrogacy in Thailand in 2014. After the intended parents only brought one of the twins—who had down syndrome—back to Australia, the surrogate mother gave birth to twins. Concerns regarding the abuse of surrogate mothers and the requirement for global laws were brought up by this case.

The intricate and varied nature of India's surrogacy regulations, business dealings, and social dynamics are thus shown through these case studies. They show how important it is to have strong legal frameworks, to think ethically, and to be conscious of everyone's rights and interests.

³ <https://heinonline.org/HOL/LandingPage?handle=hein.journals/nalsul6&div=10&id=&page=>

⁴ <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/justice-ks-puttaswamy-rettd-and-anr-v-union-of-india-and-ors/ED631B8F922039BEC5400086C8E34338>

⁵ https://d1wqtxts1xzle7.cloudfront.net/55457301/Surrogacy_LAW_in_Thailand.pdf?1515202874=&response-content-disposition=inline%3B+filename%3DSURROGACY_LAW_IN_THAILAND.pdf&Expires=1708712435&Signature=bZ7Gbotr29doH1kUIMZgfS-HmGjBYrAdxE1CIckiRdZ-bHDHqmxcksOJ6XZndl6Vq-zJ~JKksett-NbkpjxBQ03fnO00sGcoqu3Ws-hvPTkUfMZx~Eprz-8~bfIoljK~FtyTJO-gaK0CVwh4VQmKFzsOtkXhmd3eh2vzHxDUNwcecp-z3L1mWZRfBfvcWcLEE4qGA7~xf-f9vUObF7V2ETluFYdTgRYumivIM~d~ApzQoW5AMxY~~Jc4qUEz7Zrrg7nMGRLeeTbiYLrEa1P xnpRgP2vuYK-zk0lyWP38V2nwOFpL7bxNS5RxcCo0yRfIJm4Lnn0xNAMb9MoqrZZkA&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA

CRITIQUES AND DEBATES

India's surrogacy laws have garnered diverse viewpoints and discussions on issues such as women's rights, ethics, and the necessity of complete regulation. Let us examine each of these facets in more detail.

1. **Ethical Concerns:** The possible exploitation of surrogate mothers is one of the main ethical issues. The bodies of women may become commodities as a result of surrogacy agreements, according to critics, who see them as nothing more than reproductive machines. Given that they can be subject to financial pressure or not have enough legal protection, there are questions regarding the autonomy and consent of surrogate mothers.
2. **Women's Rights:** The rights and welfare of surrogate mothers have been called into question by India's surrogacy legislation. Women's rights activists contend that appropriate legislation is required to safeguard the mental and physical well-being of surrogate mothers as well as their entitlements to just recompense, educated consent, and post-surrogacy assistance. Maintaining the rights of all parties involved while preserving reproductive autonomy must be balanced.
3. **Extensive Regulation:** One of the main points of contention is the necessity of extensive regulation. India's comparatively low expenses and lax laws have led to a boom in commercial surrogacy. But this has also given rise to worries over unclear rules, possible exploitation, and the involvement of dishonest agents. Many contend that in order to solve these problems and guarantee the protection of all parties—intended parents, surrogate moms, and the children born through surrogacy—comprehensive legislation is required.
4. **Legal Parentage and Citizenship:** Legal parentage and citizenship is a topic of discussion in the Indian surrogacy issue. Sometimes, getting legal acknowledgment of one's fatherhood or acquiring citizenship for one's offspring presents difficulties for intending parents, especially those who are travelling abroad. The rights and welfare of the children born through surrogacy have been threatened, prompting calls for more precise rules and procedures.
5. **Foreign Surrogacy:** Talks have also been triggered by the use of international surrogacy. Concerns surface when transnational surrogacy is involved because different nations may have differing ethical and legal requirements. The necessity for international collaboration and regulation is highlighted by the problems this presents regarding the rights and safeguards provided to intended parents, surrogate mothers, and the children involved.

India's surrogacy regulations are intricate and multidimensional, as these viewpoints and discussions demonstrate. Important measures to guarantee the moral and responsible practice of surrogacy include striking a balance between ethical considerations, defending women's rights, and enacting thorough rules.

THE CONCLUSION

Finally, let us conclude the research paper with a summary of the main conclusions and an emphasis on the need of researching the relationship between surrogacy laws, the Indian economy, and Indian society:

To sum up, an examination of India's surrogacy legislation demonstrates the complex relationship that exists between the legal system, the economy, and social factors. The development of surrogacy regulations, which includes the Surrogacy (Regulation) Bill and the prohibition on commercial surrogacy, demonstrates the continuous efforts to control and handle the complexity of surrogacy operations. The influence of legal frameworks on economic activities—like surrogacy contracts, property rights, and market competition—becomes apparent. Additionally, the acceptance and perception of surrogacy in Indian society are greatly influenced by societal norms and values. In order to safeguard the rights and welfare of all parties concerned, extensive regulation is necessary, as demonstrated by the analysis of power dynamics and social inequality. The practical effects of surrogacy legislation on intended parents and surrogate mothers are best understood via the use of real-world case studies. In light of surrogacy, this research paper highlights the significance of comprehending the complex interplay among law, economy, and society. This understanding will facilitate thoughtful deliberations, critical evaluations, and future policy decisions.