



Adoption Vs. Surrogacy: A Comparative Analysis In Indian Context

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ABSTRACT: Life persists due to the clout of procreation and having children has always been significant for the continuity of the family unit. However, inability to procreate has regrettably become a stern issue. With the progression of science and legal system, adoption and surrogacy provides as an option to the infertile married couples or single unmarried person who actively chooses to be parent alone. Both surrogacy and adoption are wonderful options that provide prospective parents with the opportunity to complete their families. Each one has its own unique process, benefits and challenges, and it is up to each growing family to consider all of the factors as they decide which path to parenthood is right for them. In surrogacy, the surrogate gives birth to the child for an intending couple whereas in adoption, the birth mother is the biological mother of her child. Nevertheless, both these procedures are advantageous i.e. both the procedures allow the intended parent/parents to beget a child, yet there are also disadvantages when comparing adoption and surrogacy. By bringing these two reproductive methods together, this article sets out to discuss the characteristics and its practice as well as to address the difference along with the advantages as well as the disadvantages of surrogacy and adoption in Indian scenario. The article examines the dynamics of both adoption and surrogacy methods of reproduction in Indian context and to substantiate in depth numerous controversies and the malpractices in light of adoption and surrogacy.

KEYWORDS: adoption, exploitation, gay, lesbian, single parent, surrogacy

I. INTRODUCTION

Children are considered as the brightest treasures of the world, thereby, making the birth of

children as a joyous occasion. Giving birth to a child is a key substance of stateliness of a woman. In Indian society, having children has always been considered as a major significant factor for continuation of a family which may be accomplished through the social institution of marriage and family. However, inability to procreate has regrettably become a stern issue. There are numerous instances where the infertile couple experience grave strain in their interpersonal relationships leading to personal anguish and periods of existential crisis. The childless couple experience stern damage in their interpersonal relationships which habitually paves way to personal torment and aggravation, resentment or remorse on being diagnosed with infertility which often leads to divorce. However, due to various reasons, a large number of individual are incapable to procreate of which one of the key factor of childlessness is infertility. The infertile couples would embark on performing an assortment of sacraments like offering prayers, fasting, visiting religious places etc to appease the almighty God to beget a genetically related child.

Infertility is a problem since time perpetually. As per broad classification infertility can be of two types i.e. biological and social. Biological infertility refers to a condition in which a couple or individual is unable to reproduce owing to physiological reasons, whereas social infertility refers to situations in which society does not allow certain groups to become parents. According to the Assisted Reproductive Technology (Regulation) Bill, 2010, in the world around 15 percent couples are found infertile (The Assisted Reproductive Technology (Regulation) Bill, 2010). The World Health Organization (WHO) has declared infertility as a disease and reported that, India has an estimated 19-20 million infertile couples (Vaishnavi & Takkar, 2015). The World Health Organization



(WHO) describes it as a reproductive system disorder characterized by the inability to obtain a clinical pregnancy following a period of more than 12 months or more of regular unprotected sexual intercourse. In order to recognize social infertility, the WHO expanded its definition of infertility to include lesbian, homosexual, bisexual, and transgender couples, as well as single people. Lesbian, gay, and bisexual couples, as well as single individuals, are all infertile in the sense that they are unable to procreate sexually through intercourse. Some authors in the bioethics literature have used the term "social infertility" to describe people who are unable to procreate due to issues related to their spouse. Individuals in same-sex couples who are incapable to engage in intercourse, as well as individuals who do not have a partner and hence are incapable to engage in intercourse, fall into this group. The new WHO definition is a step in the right way in recognizing social infertility as well as the fact that lesbian, gay, bisexual, and transgender couples, as well as single people, can have physiological infertility in addition to social infertility (Engelstein, 2016).

In addition to infertility, 'single fathers by choice' are heterosexual or gay males who intentionally prefer to parent alone through adoption or, increasingly, surrogacy and egg donation (Golombok, 2015) –(Carone, Baiocco, Lingi, & Barone, 2020). Similarly, a single parent might be heterosexual, gay, or lesbian men or women who consciously want to parent alone through adoption or, increasingly, surrogacy and egg donation (Medicine, 2013) (Wert, et al., 2014). According to a number of studies, single mothers who take the assistance of donor insemination are highly educated, financially comfortable, and work full-time (Leiblum, Palmer, & Spector, 1995) (Klock, Jacob, & Maier, 1996) (Murray & Golombok, 2010) (Hertz, 2006) (Graham, 2014), and the majority having previously been in a long-term relationship (Jadva, Badger, Morrissette, & Golombok, 2009). According to a survey of single mothers who adopted or used sperm donation, the key reason behind having a child were their desire to be a mother, their sense of ageing, and their sense of having attained job and financial security (Jadva V. , 2016) (Lingiardi and Carone, 2016).

Mankind has worked tirelessly to find a solution to the problem of childlessness, resulting in massive experiments and research in the field of human reproduction, which has resulted in the advancement of numerous approaches. With the advancement of society and legal institutions, the adoption process was devised to allow childless

couples to have a child. Adoption provided an opportunity to have a child and fulfill the desire of an individual to raise a child; however it failed to fulfill the natural innate desire of individuals to have a child genetically related to them. Additionally, there is no Uniform Civil Code to regulate the practice of adoption and the adoption laws are different for each specific religion. While some of them allow adoption, the others do not recognize adoption but allow other forms of the same like foster care, guardianship etc. The Hindu Adoption and Maintenance Act, 1956, is an attempt by the Indian government to eliminate some of the complications involved with adoption and surrogacy, Guardians and Wards Act, 1890, Juvenile Justice Act, (Care and Protection of Children) Act, 2000. Though Central Adoption Resource Authority provides for specific and precise guidelines for adoption the sad reality is that it is not followed in most cases, making adoption a difficult, intricate and time consuming process (Satyan, 2015). Thus, the difficulties in the process of adoption and the desire to beget a genetically related child led to various experiments and research in the field of human reproduction and resulted in development of various techniques like surrogacy (Satyan, 2015).

In surrogacy, a child is given birth by a woman and hands over the child to the intending couple (Sagar, 2017). It also serves as an aid to the socially infertile individuals like singles, gay or lesbian couple or singles to beget a child related to them genetically. Surrogate parenting agreements have become a hot topic for public discussion since the highly publicized case of Baby M. While the events that led to the Baby M case (Baby M) began in 1985, there has been a surge in surrogate parenting. Surrogacy has grown in popularity as a way to have a genetically related child in India, owing to the easy availability of poor surrogates, the lack of codification, and the relatively low cost of the surrogacy procedure; as a result, foreigners from all over the world flock to India to pursue surrogacy. Thus, surrogacy has doled out as a substitute to have a genetically child with the expansion of science, society and legal systems leading to human trafficking and labour exploitation (Qadeer, 2010).

Surrogacy is a very multifaceted issue in India due to dearth of codification of regulations on the subject. Nevertheless, effort has been made to regulate the practice of surrogacy with the introduced of Surrogacy (Regulation) Bill, 2020 as well as the Artificial Reproductive Technology (Regulation) Bill, 2020, yet it fails to address various issues such as Surrogacy (Regulation) Bill, 2020 fails to address the constitutional rights of



women as citizens who have the right to decide their occupation and thus, the right to enjoy the benefits of scientific progress, and the right to enjoy these benefits progress and its applications are incorporated in various international and regional instruments (Dixon-Mueller, 1993). Moreover, it is pertinent to be mentioned herein that the Bill does not provide for single parents as well as for the LGBTQ community. Therefore, the practice of surrogacy should be legally regulated in order to thwart persecution of both the surrogate and intended commissioning parents by evading conscious miscarriage of justice.

As seen, though, both adoption and surrogacy are helpful in practicality, yet both bring along their own set of problems. Invoking the concept of surrogacy and adoption, the discussion under this study is expected to put forward the advantages as well as the disadvantages of both adoption and surrogacy. The aim of this research paper is to give the reader an inside view of an adoption scandal and to explain how the system deals with the scandal. It is also aims to provide recommendations and suggestions for reducing such gaps that exist between the existing laws on paper and the real picture by clearly laying down the lacunae in the procedure and laws and necessary changes to be implemented with respect to the same.

II. MATERIALS AND METHODS

The focal point of this research is an assessment of the concept of adoption and surrogacy and, therefore, to swot up the topic under consideration, doctrinal method has been adopted. Under this, the lacunae of the proposed legislation relating to the provision of adoption and surrogacy in India are touched upon. With regard to the subject under consideration, the provisions enshrined under National Guidelines for Accreditation, Supervision and Regulation of Assisted Reproductive Technology Clinics 2005, and the 228th Report of Law Commission of India, the 102nd Report on Surrogacy Regulation Bill, 2016, as well as 129th Report on the Assisted Reproductive Technology (Regulation) Bill, 2020 is catalyzed with the help of a few decided reported cases.

III. FINDINGS AND DISCUSSION

ADOPTION AND SURROGACY: AN INROAD

Adoption is not a new occurrence. It is the process through which a child is permanently separated from his biological parents and becomes the legitimate

child of his adoptive parents, with all of the associated rights, advantages, and responsibilities. Thus, it is referred to as child transplantation from one family to another, which is a procedure of permanently incorporating a child into a family with all the rights of a natural child, in which he was not born (Rao, 2021). According to Georg Buhler, the ancient legal codes have deliberated on the merits of adopting sons (Bharadwaj, 2003). While ancient legal rules recognized adopted children who were completely unrelated, they saw such relationships as less desirable. It was suggested that putting the weight of adoption on the infertile was unfair because the procedure is frowned upon in Indian society and exacerbates the shame of infertility (Bharadwaj, 2003). There is no standard common stature that controls the laws of adoption in India. Though Central Adoption Resource Authority provides for specific and precise guidelines for adoption the sad reality is that it is not followed in most cases, making adoption a difficult, intricate and time consuming process that has lead to emergence of other methods like surrogacy etc.

There are some who claim that the idea of surrogate motherhood has been known for ages and it has been the same practice, which now has appeared in new form. The instances that are commonly used to illustrate this assertion come from Biblical and ancient times when infertile ladies (like Biblical Sarai) surrendered their slaves or handmaidens (like Hagar) to their husbands (like Abram) so that they might have children (like Ishmael – Abram and Hagar's son) with them (Carroll & Prickett, 2008). Surrogacy is a productive method for people who want children of their own but unable to conceive or do not have children of own due to other personal reasons. The practice of surrogacy facilitates as an aid to the couple or individual who is medically diagnosed as infertile or in whom Artificial Insemination and In-Vitro Fertilization are not successful. The term "surrogate" is derived from the Latin word "surrogatus," which means "replacement or substitution, (Garner, 2009)" referring to a person assigned to act in the place of another (Kusum, 2013). The surrogate mother may be called the gestational carrier. The Warnock Report (1984), or the Report of the Committee of Inquiry into Human Fertilization and Embryology, defines surrogacy as the practice of one woman carrying a child for another with the intention of handing the child over after birth (India, 2009). The commissioning parents' genetic materials are implanted in the womb of the surrogate woman, who carries the foetus to full term, delivers the child, and finally hands over



the child to the intending parents, relinquishing all parental rights over the child. The individual or couple who plans to raise the child after its birth is referred to as the intended parent(s).

The use of surrogates has provided new opportunities for women who are unable to gestate and deliver on their own. It has also proved to be beneficial to people who are not eligible for adoption due to their age, marital status, etc (Taylor, 2019). The initial plan was to utilize a surrogate to help the couple have a kid who is genetically connected to the father, but as ART progressed, it became possible to employ a surrogate to help the couple create a child who is genetically related to both of them (Soniewicka, 2019).

The foundation of the first instance of surrogacy in India was laid down on the birth of Kanupriya alias Durga in Calcutta on 03 October 1978 (Kumar, 2004). She was born two months after Louise Brown, the world's first IVF baby. The enormous expansion in the field of technology has led to a brisk development in the practice of surrogacy (Borah, Hazarika, & Kalita, 2020). India is currently renowned as a popular surrogacy destination for international couples looking for low-cost infertility treatment (Kotiswaran, 2018). With the tremendous advancement in technology and the desire to have a genetically related child, the practice of surrogacy is gaining esteem, with an annual turnover of approximately USD 2.5 billion, and thousands of foreign couples flock to India to take advantage of the low-cost surrogacy services (Reddy, 2020).

In 2008, the Supreme Court of India has legalized commercial surrogacy in the Manji's case (Baby Manji Yamada vs Union Of India & Anr) also known as Japanese Baby case. With the tremendous advancement in technology and the desire to have a genetically related child, surrogacy is attaining esteem with an annual turnover of approximately USD 2.5 billion wherein thousands of foreign couples flock to India to avail the inexpensive surrogacy services (Reddy, 2020). Surrogacy has become a source of worry, with reports of human trafficking and labour exploitation. Surrogates are paid between INR 50,000 and INR 500,000, while clinics are paid in dollars (Qadeer, 2010) (Ganapathy, 2019). Additionally, due to the growing demand for surrogacy, a large number of women have made themselves available to act as surrogate mothers, thereby leading to societal discrimination and abuse. Surrogacy has turned out to be the easiest way to earn money which has leads to exploitation of women in many different ways. The surrogacy clinics are involved in both illegal

and detrimental practice of surrogacy and often act as brokers implicated in women and child trafficking (Pande, Wombs in Labor: Transnational Commercial Surrogacy in India, 2014). Furthermore, the rights of marginalized groups such as transgender individuals and surrogates are frequently disregarded in legislation draughts (Rwabihama, et al., 2020). Debates about their rights have frequently dominated the topic of parliamentary debates, but to a little result (Watson, 2016).

Such unimpeded escalation has led to the introduction of several legislations by the government to regulate and control the practice of surrogacy. However, these legislations are yet not passed as an Act. The draft Surrogacy (Regulation) Bill, 2016 was introduced in the Parliament by banning commercial surrogacy in India and permitting solely altruistic surrogacy with no monetary reward to surrogate mothers other than healthcare expenses (The Surrogacy (Regulation) Bill, 2019).

ADOPTION: AS AN OPTION

Children that are given up for adoption are born in a variety of conditions, including teen pregnancies, orphanages, families who are incapable to care for them, and so on. However, a large number of these children are born out of marriage vows and are almost always regarded as the result of an illicit sexual connection. According to one survey (Bharat, 1993), the majority of children given up for adoption were abandoned by their biological mothers because they were born out of pre-marital or extra-marital relationships. Adopted children are exploited in a variety of ways. They are compelled to undertake household duties and are exploited in a number of ways. Adoptive parents are occasionally part of a vast child trafficking ring, and as a result, many children are sexually and physically mistreated, particularly females (Satyan, 2015).

Apart from exploitation and trafficking, when a child is adopted, he or she becomes a publicly visible member of the family with no bodily connection to the family unit, making the child and the couple subject to social scorn and humiliation that is seen to be worse than being labelled infertile. Adoption reluctance is understandable, as is grudging acceptance as a last resort. Dr. Mankar, an IVF practitioner, believes that in Indian scenario, it is a matter of male ego; they would not mind having an insemination done with the assistance of a donor without anybody else knowing, apart from the couple, because the other



choice is to adopt a child, which everyone would know (Bharadwaj, 2003).

The broader concern of the adoptive parents' is about the "quality" of a child's invisible background. This worry is shown by calling the adoptive child's genetic credentials into question. Such apprehension is consistent with concerns about an adoptee's unknown bloodline, clan, and caste origins. The first of these is how an adopted child may not easily integrate into their familial surroundings. Though clearly attributable to a biological incongruity between the adoptive and the family, the basis of this worry is at least as much in the dread of social condemnation. In such an environment, an adopted child's flaws and accomplishments run the risk of being explained away as a result of its unknown paternity. Additionally, people prefer to adopt a child at a young age. One obvious reason for this could be a sense that it is much easier to mould a younger child to fit into the fabric of its new family. Furthermore, the adoptive parents are afraid that the biological mother may return and demand custody of their child.

There is no standard common stature that controls the laws of adoption in India. As a result, the numerous personal laws include distinct provisions for adoption. The Hindus adhere to the Hindu Adoption and Maintenance Act, 1956, which has numerous intricate provisions. Though these were designed to protect adopted children from exploitation, they actually make adoption more difficult. However, the personal laws of Christians and Parsis do not accept adoption. In this scenario, however, an adoption from an orphanage might take place by gaining approval from the court under the Guardians and Wards Act of 1890. As Christians do not have an adoption statute, they can only adopt a child under the stated Act through foster care. Contrarily, foster care, would differ from adoption in certain ways. When a child in foster care reaches the age of majority, he is free to cut all ties. Furthermore, such a child has no legal right to inherit. As a result, these communities adhere to the provisions of the Guardians and Wards Act of 1890 (Agarwal, 2003). Adoption is not permitted in Islam. This does not presuppose that they cannot adopt in any way. This simply means that there is no procedure comparable to adoption acknowledged in the Hindu System (Mohammed Egnancies Allahabad Khan v. Mohammad Ismail). Adoption from an orphanage is permitted in Muslims with authorization from the court under the Guardians and Wards Act of 1890. This has resulted in a considerable increase in public concern over

concerns such as "baby selling," leading to demands for expediting adoption procedures, which eventually culminated in a series of Supreme Court rulings. In the lack of a unified adoption statute, the decisions specified detailed guidelines and processes for completing adoptions under the Guardians and Wards Act, 1890. The Supreme Court's intervention resulted in the establishment of a Central Adoption Resource Agency (CARA) as an autonomous organization of the Ministry of Social Justice and Empowerment with the stated responsibility to control in-country adoption and to regulate and facilitate overseas adoption (Bharat, 1993). Between 1995 and 1999, CARA placed 5951 children in overseas homes (Government of India, 2001). These procedural obstacles, together with a variety of other variables, result in the emergence of alternative approaches such as surrogacy.

SURROGACY: CHALLENGES FACED

Over time, the use of ART and surrogacy stretched over to many different reasons, such as circumstances that make pregnancy dangerous for a woman's health, medical treatment or advanced age. As a result, women who are unable to have their own children or who are socially infertile employ surrogates (Krimmel, 1983). Despite the fact that surrogacy is far more complicated than adoption and has far less government laws and regulations governing it, individuals use surrogacy to have a genetically related child. With the advancement of science and technology, Assisted Human Reproductive Technologies acts as a support to the childless couple or person that can be done with the assistance of a surrogate. The Supreme Court has given a broad scope to the word 'personal liberty' (Maneka Gandhi v. Union of India) and stated that where a wide range of rights were included within the ambit of personal liberty that is found under Article 21 of the Constitution of India (Sehgal, 1995)(Bakshi, 2016).

Due to the increasing stipulation in the practice of surrogacy, enormous women have made themselves available to be surrogates that have resulted in illegal and detrimental practice of surrogacy along with involvement of brokers indulged in women and child trafficking (Pande, 2014) thereby leading to societal discrimination. Surrogacy has become a controversial matter as the practice of commercial surrogacy has taken the turn of more than a business (Sharma, 2007) in addition to instinctive impacts on women. In recent times, surrogacy has switched on to be the effortless way to make money which has led to an unconstrained acceleration in the practice of surrogacy that has



exponentially boosted the quandaries that are faced by them as well as exploitation of women in many different ways (Pande, 2015).

Some believe that surrogacy is a kind of female oppression and exploitation. Others assert that it is the form of their empowerment and expression of their liberation (Mostowik, 2019). The potential harm to women (surrogates) may result from the fact that they bear all the physical and health burden of pregnancy, which is connected with health (and even death) risks (Melo-Martin, 2016). What is more, they may suffer from side effects of ART (in particular IVF procedures if they are also egg donors). Last but not least, they may also suffer anxiety and emotional distress after the birth of the child which they feel connected to and have to give away. It may also be apprehended that, like organ sales, surrogacy contracts may result in the abuse of economically underprivileged women who will offer themselves as surrogates for affluent individuals so as to sustain. This would result in a new type of slavery or the development of a fiscal underclass of women who would sell their bodies and reproductive abilities to the upper class in exchange for child. Some opponents of surrogacy object to the instrumental treatment of women who are reduced as surrogates to "baby creating machines," "foetal containers," "living laboratories," "incidental incubators," "reproductive conduits," and so on (Robertson, 1983).

Cross-border surrogacy causes issues with citizenship, nationality, motherhood, parenthood, and child rights (Saxena, Mishra, & Malik, 2012). There are instances where infants are denied the nationality of their intended parents, resulting in either a lengthy legal fight, as in the example of the Israeli homosexual couple who had to undergo DNA testing to confirm parenthood, or a dismal future in an orphanage for the child (Rajadhyaksha, 2008). In the instance of the Israeli homosexual couple, Yonathan and Omer were unable to adopt a child or use a surrogate in Israel. In the end, they travelled to Mumbai and chose surrogacy to have a kid. Yonathan provided his sperm and they chose a surrogate. Baby Evyatar was born as a result of the surrogacy agreement, and the homosexual couple relocated to Israel with their child. Before the passport of the child and other paperwork could be issued, the Israeli government ordered them to undergo a DNA test to establish their fatherhood.

There have also been cases where a child born through a surrogacy agreement is shunned by the intended parent and is forced to spend his childhood in an orphanage (Saxena, Mishra, & Malik, 2012). In Baby Manji's case (Baby Manji

Yamada vs. Union of India and Another), a child Manji Yamada was delivered by a surrogate mother in Anand, Gujarat by virtue of a surrogacy arrangement entered into with her by Dr Yuki Yamada and Dr Ikufumi Yamada of Japan. The sperm came from Dr. Ikufumi Yamada, but the egg came from a donor, not Dr. Yuki Yamada. Later, marital conflict developed between the commissioning parents. Dr. Ikufumi Yamada, the genetic father of the child, wanted to assume custody, but he had to return to Japan since his visa had expired. The Anand Municipality issued a birth certificate that included the particulars of the biological father. The kid was born on July 25, 2008, and was transferred to Arya Hospital in Jaipur on August 3, 2008, due to a law and order crisis in Gujarat. The child received much-needed care, including breast-feeding by a woman. Ms. Emiko Yamada, the grandmother of Manji, travelled from Japan and filed a petition in the Supreme Court under article 32 of the Constitution. The Court referred her to the National Commission for the Protection of Child Rights, which was established under the Commissions for the Protection of Child Rights Act of 2005. Manji was eventually sent to Japan with biological father and grandmother.

Paying inequitable attention to surrogates, forcible C-section births, pregnancy problems, and commercialization of women and children are some of the other major issues surrounding surrogacy that are leading in surrogate maltreatment and, in some cases, death (Anderson, 2000) (Dhillon, 2012). It has been observed that women are pushed by their in-laws to engage in surrogacy so as to earn money. For example, Ranjeeta Lal, a surrogate mother from Hazaribagh, was fiercely made the surrogate of her sister-in-law by her husband. The surrogate passed away out of a heart attack while delivering in Ranchi, Jharkhand (Jaipurian, 2014). In 2009, in Coimbatore, Tamil Nadu, a surrogate mother named Easwari, around 30 years old, died after delivering a surrogate baby owing to severe bleeding (Kusum, 2018). Furthermore, surrogacy clinics use two or more surrogates by implanting embryos with the goal of earning money and avoiding the chance of failure, which might result in several women being pregnant. As a result, the fetuses of other ladies are discreetly terminated by the clinics, who blame them for their carelessness and refuse to compensate them (Mahardani, Putra, Syahdan, Ismail, & Burhanuddin, 2020). Another example of malpractice pertaining to surrogacy is the delivery of twins by an Indian surrogate mother for an Australian couple (Rajan, 2014). As the couple applied for only one child, one of the children was



abandoned while returning on the basis of the choice of the couple for a certain gender. Since this instance, the Indian government has recognized the need for adequate regulations to regulate and control the practice of commercial surrogacy.

As a result, the Indian government saw the necessity for suitable regulations to tighten the practice of commercial surrogacy. Furthermore, the Law Commission of India stated in its 228th Report the necessity for strong laws to govern the use of surrogacy, which resulted in the introduction of The Assisted Reproductive Technology (Regulation) Bill in 2008 (India, 2009). Later, the Bill was superseded by the Surrogacy (Regulation) Bill, 2016, which completely prohibits the practice of commercial surrogacy and only allows the practice of altruistic surrogacy, in which surrogate mothers receive no monetary compensation other than healthcare expenses (The Surrogacy (Regulation) Bill, 2016). The Bill was redrafted and passed by the Lok Sabha on December 19, 2018, after being proposed by Dr. Harsh Vardhan, who had served as Minister of Health and Family Welfare in the Lok Sabha till August 5, 2019. It was later referred to the Select Committee, which presented its final report on February 5, 2020. According to the article, the Surrogacy (Regulation) Bill, 2020 was redrafted and approved by the Union Cabinet on February 26th, 2020, and is now awaiting Rajya Sabha approval before getting presidential assent and performing its purpose. The 18th Law Commission was established on October 16, 2006, and issued its 228th Report in 2009, emphasizing the importance of active legislative action to encourage proper use of digital technologies such as Artificial Reproductive Technology, as well as the legalization and regulation of the surrogacy practice. Based on the recommendations of the 228th Report of the Law Commission of India, The Assisted Reproductive Technology (Regulation) Bill, 2020 was passed in the Lok Sabha on September 14, 2020 with an aim to restrict the practice of commercial surrogacy. On March 17, 2021, the Committee debated on the draft Report and approved it (129th Report, 2020).

IV. CONCLUSION

Therefore, it is the need of the time for the Indian Parliament to endow with a comprehensive legislation including the rules and regulations for skirmishing and controlling the exercise and exploitation of the practice both adoption and surrogacy. As putting the responsibility of adoption on the infertile is unjust because the procedure is frowned upon in Indian society and exacerbates the shame of infertility.

The only way to de-stigmatize adoption and make it acceptable in society as a family-building choice was to urge the fertile couple to take the initiative and encourage them to publicly adopt children while also producing their own children (Bharadwaj, 2003). The problem is not to ascertain whether adoption surrogacy is right or wrong and whether adoption is better than surrogacy or vice versa, but rather how both adoption and surrogacy should be regulated, so that benefits would outweigh costs and harm would be prevented (Purdy, 2018).

REFERENCES

- [1]. Agarwal, R. (2003). *Legal Service India*. Retrieved from https://www.legalserviceindia.com/articles/hmcp_adopt.htm
- [2]. Anderson, E. S. (2000). Why Commercial Surrogate Motherhood Unethically Commodifies Women and Children: Reply to McLachlan and Swales. *Health Care Analysis*, 8, 19-26.
- [3]. Baby M, 217 N.J. Super 313, (1987).
- [4]. Baby Manji Yamada vs. Union of India and Another, (2008) 13 SCC 518.
- [5]. Bakshi, P. M. (2016). *The Constitution of India*. New Delhi: Universal Law Publishing.
- [6]. Bharadwaj, A. (2003). Why adoption is not an option in India: the visibility of infertility, the secrecy of donor insemination, and other cultural complexities. *Social Science & Medicine*, 56(9), 1867-1880. [https://doi.org/10.1016/S0277-9536\(02\)00210-1](https://doi.org/10.1016/S0277-9536(02)00210-1)
- [7]. Bharat, S. (1993). *Child Adoption in India: Trends and Emerging Issues (A Study of Adoption Agencies)* (1st Edition ed.). Tata Institute of Social Sciences.
- [8]. Borah, M., Hazarika, A. K., & Kalita, U. (2020). Right to be a Surrogate: Biological, Constitutional and Economic Perspectives. *Space and Culture, India*, 8 (1), 78-90.
- [9]. Carone, N., Baiocco, R., & Linguardi, V. (2017). Italian gay fathers' experiences of transnational surrogacy and their relationship with the surrogate pre- and post-birth. *Reproductive BioMedicine Online*, 34(2), 181-190. <https://doi.org/10.1016/j.rbmo.2016.10.010>
- [10]. Carone, N., Baiocco, R., & Linguardi, V. (2017). Single fathers by choice using surrogacy: why men decide to have a child as a single parent. *Human Reproduction*, 1-9.
- [11]. Carone, N., Baiocco, R., Lingi, V., & Barone, L. B. (2020). Gay and Heterosexual



- Single Father Families Created by Surrogacy: Father–Child Relationships, Parenting Quality, and Children’s Psychological Adjustment. *Sexuality Research and Social Policy* , 17, 711–728. <https://doi.org/10.1007/s13178-019-00428-7>
- [12]. Carroll, R., & Prickett, S. (Eds.). (2008). *The Holy Bible: King James Version*. Oxford University Press.
- [13]. Department-Related Parliamentary Standing Committee on Health and Family Welfare. Report No. 129 on The Artificial Reproductive Technology (Regulation) Bill, 2020. (2021). Rajya Sabha, Parliament of India, New Delhi. Retrieved on 26 May 2020 from, [https://prsindia.org/files/bill_track/2020-09-13/SCR%20The%20Assisted%20Reproductive%20Technology%20\(Regulation\)%20Bill,%202020.pdf](https://prsindia.org/files/bill_track/2020-09-13/SCR%20The%20Assisted%20Reproductive%20Technology%20(Regulation)%20Bill,%202020.pdf)
- [14]. Dhillon, A. (2012, September 07). *The Sydney Morning Herald*. Retrieved September 21, 2021, from <http://www.thelizlibrary.org/surrogacy/120907-mothers-for-hire.pdf>
- [15]. Dixon-Mueller, R. (1993). *Population Policy & Women's Rights: Transforming Reproductive Choice*. ABC-CLIO.
- [16]. Engelstein, L. C. (2016, November 03). *Why we should recognize social infertility: the exclusion of lesbian and gay couples and single individuals from definitions of infertility*. Retrieved 08 20, 2021, from Albany Medical College: <https://www.amc.edu/BioethicsBlog/post.cfm/why-we-should-recognize-social-infertility-the-exclusion-of-lesbian-and-gay-couples-and-single-individuals-from-definitions-of-infertility>
- [17]. Ganapathy, N. (2019, August 19). *The Straits Times*. Retrieved from <https://www.straitstimes.com/asia/south-asia/indias-move-to-ban-commercial-surrogacy-sends-industry-into-panic>
- [18]. Garner, B. A. (Ed.). (2009). *Black's Law Dictionary* (Standard Edition ed.).
- [19]. Golombok, S. (2015). *Modern Families: Parents and Children in New Family Forms*. Cambridge University Press.
- [20]. Government of India, Press Information Bureau (2001). <http://pib.nic.in/>.
- [21]. Graham, S. (2014). Stories of an absent ‘father’ - Single women negotiating relatedness through. *Relatedness in Assisted Reproduction*, 212–231. <https://doi.org/10.1017/CBO9781139814737.015>
- [22]. Hertz, R. (2006). *Single by Choice, Mothers by Choice: How Women are Choosing Parenthood Without Marriage and Creating the New American family* (1st Edition ed.). Oxford University Press.
- [23]. India, L. C. (2009). *Report No. 228 - Need for Legislation to regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy*.
- [24]. Jadv, V. (2016). Surrogacy : Issues, concerns and complexities. *Regulating Reproductive Donation* , 126–139. doi:10.1017/cbo9781316117446.007
- [25]. Jadv, V., Badger, S., Morrisette, M., & Golombok, S. (2009). ‘Mom by choice, single by life's circumstance...’ Findings from a large scale survey of the experiences of single mothers by choice. *Human Fertility* , 12 (4), 175-184.
- [26]. Jaipurian, V. (2014). Womb rental ends in death. *The Telegraph*, India. Retrieved on 30 May 2020 from, <https://www.telegraphindia.com/states/jharkh and/womb-rental-ends-in-death/cid/164231>
- [27]. Klock, S. C., Jacob, M. C., & Maier, D. (1996). Psychology: A comparison of single and married recipients of donor insemination. *Human Reproduction* , 11 (11), 2554–2557. <https://doi.org/10.1093/oxfordjournals.humrep.a019159>
- [28]. Kotiswaran, P. (2018). Law’s Paradoxes: Governing Surrogacy in India. *Cross-Cultural Comparisons on Surrogacy and Egg Donation* , 127-151.
- [29]. Krimmel, H. T. (1983). The Case against Surrogate Parenting. *The Hastings Center Report* , 13 (5), 35-39.
- [30]. Kumar, T. C. (2004). In vitro fertilization in India. *Current Science* , 86 (2), 254-256.
- [31]. Kusum, S. (2013). Commercial Surrogacy and Feminist Perspectives. *Karnataka Law Journal*, 1(13). Retrieved on 7 June 2020 from, <https://writingsonsurrogacy.wordpress.com/2016/10/18/commercial-surrogacy-feminist-perspectives/>
- [32]. Kusum, S. (2018, 24 April). What If the Surrogate Mother Dies ? *The Economic Times*, India. Retrieved on 25 April 2020 from, <https://health.economictimes.indiatimes.com/news/industry/what-if-the-surrogate-mother-dies-sonali-kusum/63897209>



- [33]. Leiblum, S. R., Palmer, M. G., & Spector, I. P. (1995). Non-traditional mothers: single heterosexual/lesbian women and lesbian couples electing motherhood via donor insemination. *Journal of Psychosomatic Obstetrics & Gynecology* , 16 (1), 11-20. <https://doi.org/10.3109/01674829509025652>
- [34]. Mahardani, N. P., Putra, B. A., Syahdan, P., Ismail, S., & Burhanuddin, A. (2020). Process and problems of the international adoption in surrogacy cross-border practices in India. *Enfermería Clínica* , 30 (Suppliment 2), 115-118. <https://doi.org/10.1016/j.enfcli.2019.07.058>
- [35]. Maneka Gandhi v. Union of India, AIR 1978 SC 597.
- [36]. Medicine, T. E. (2013). Access to fertility treatment by gays, lesbians, and unmarried persons: a committee opinion. *Fertility and Sterility*, 100(6), 1524–1527. <https://doi.org/10.1016/j.fertnstert.2013.08.042>
- [37]. Melo-Martin, I. d. (2016). *Rethinking Reprogenetics: Enhancing Ethical Analyses of Reproductive Technologies*. Oxford University Press.
- [38]. Mohammed Egnancies Allahabad Khan v. Mohammad Ismail, (1886) ILR 8 All 234 .
- [39]. Mostowik, P. (Ed.). (2019). *Fundamental legal problems of surrogate motherhood: Global perspective*.
- [40]. Murray, C., & Golombok, S. (2010). Going It Alone: Solo Mothers and Their Infants Conceived by Donor Insemination. *American Journal of Orthopsychiatry*, 75 (2). <https://doi.org/10.1037/0002-9432.75.2.242>
- [41]. Pande, A. (2014). *Wombs in Labor: Transnational Commercial Surrogacy in India*. Columbia University Press.
- [42]. Pande, A. (2015). Blood, Sweat and Dummy Tummies: Kin Labour and Transnational Surrogacy in India. *Anthropologica* , 57 (1), 53-62.
- [43]. Purdy, L. M. (2018). Surrogate Mothering: Exploitation or Empowerment? *Reproducing Persons* , 182-197.
- [44]. Qadeer, I. (2010). Benefits and threats of international trade in health: A case of surrogacy in India. *Global Social Policy* , 10 (3), 303-305. <https://doi.org/10.1177/14680181100100030206>
- [45]. Rajadhyaksha, M. (2008, November 18). *The Times of India*. Retrieved from <https://timesofindia.indiatimes.com/india/israeli-gay-couple-gets-a-son-in-india/articleshow/3724754.cms>. <https://doi.org/10.1016/j.pec.2020.01.020>
- [46]. Rajan, S. (2014). Resolving Statelessness Arising out of Surrogacy in India: A Legal Analysis. *International Human and Refugee Law* .
- [47]. Rao, G. S. (2021). *Family Law In India* (10th Edition ed.). Narender Gogia & Publisher.
- [48]. Reddy, J. (2020). Indian Surrogacy: Ending Cheap Labor. *Santa Clara Journal of International Law* , 18.
- [49]. Robertson, J. A. (1983). Surrogate Mothers: Not So Novel after All. *The Hastings Center Report*, 13(5), 28-34. <https://doi.org/10.2307/3560576>
- [50]. Rwabihama, J. P., Belmin, J., Rakotoarisoa, D. R., Hagege, M., Audureau, E., Benzengli, H., et al. (2020). Promoting patients' rights at the end of life in a geriatric setting in France: The healthcare professionals' level of knowledge about surrogate decision-makers and advance directives. *Patient Education and Counselling* , 103 (7), 1390-1398.
- [51]. Sagar, S. (2017). Indian law and policy on surrogacy: A socio-legal study with special reference to Bareilly and Moradabad. Unpublished Doctoral thesis, Dr. BR Ambedkar University, India.
- [52]. Satyan, K. (2015). Adoption v. Surrogacy - An Indian Comparative Legal Analysis. *SSRN Electronic Journal* . doi:10.2139/ssrn.2625608
- [53]. Saxena, P., Mishra, A., & Malik, S. (2012). Surrogacy: Ethical and Legal Issues. *Indian Journal of Community Medicine* , 37 (4), 211–213. doi: 10.4103/0970-0218.103466
- [54]. Sehgal, B. P. (1995). *Human Rights in India: Problems and Perspectives*. Deep and Deep Publications.
- [55]. Sharma, R. (2007). An International, Moral & Legal Perspective: The Call for Legalization of Surrogacy in India. *SSRN Electronic Journal* .
- [56]. Soniewicka, M. (2019). Ethical and philosophical issues arising from surrogate motherhood. In P. Mostowik (Ed.), *Fundamental legal problems of Surrogate Motherhood - Global Perspective* (pp. 23-75). Warszawa.
- [57]. Taylor, R. B. (2019, September 6). *WebMD*. Retrieved from <https://www.webmd.com/infertility-and-reproduction/guide/using-surrogate-mother#1>



- [58]. The Assisted Reproductive Technologies (Regulation) Bill, 2010 (pending). Retrieved on 10, June 2020 from, <https://main.icmr.nic.in/sites/default/files/guidelines/ART%20REGULATION%20Draft%20Bill1.pdf>
- [59]. The Surrogacy (Regulation) Bill, 2016 (passed by Lok Sabha, 19/12/2018). Retrieved on 9 June 2020 from, <https://www.prsindia.org/billtrack/surrogacy-regulation-bill-2016>
- [60]. The Surrogacy (Regulation) Bill, 2019 (passed by Lok Sabha, 05/08/2019). Retrieved on 15 March 2020 from, <http://www.cnlu.ac.in/2016/Notices/MOOTS/SILC%20Format.pdf>
- [61]. Vaishnavi, G., & Takkar, N. (2015). *Surrogacy: Medicolegal Issues*. New Delhi: Jaypee Brothers.
- [62]. Watson, C. (2016). Womb Rentals and Baby-Selling: Does Surrogacy Undermine the Human Dignity and Rights of the Surrogate Mother and Child? *The New Bioethics*, 22(3), 212-228. <https://doi.org/10.1080/20502877.2016.1238582>
- [63]. Wert, G. D., Dondorp, W., Shenfield, F., Barri, P., Devroey, P., Diedrich, K., et al. (2014). ESHRE Task Force on Ethics and Law 23: medically assisted reproduction in singles, lesbian and gay couples, and transsexual people. *Human Reproduction*, 29(9), 1859–1865. <https://doi.org/10.1093/humrep/deu183>