



PROF. RANBIR SINGH LEGAL RESEARCH CENTER, INDIA

“SURROGACY IN INDIAN LEGAL CONTEXT- A BLISS OR CURSE?”

**A Research Report under the III - Online Off-Campus Internship
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DECLARATION

Exercising numerous research methods to breed my notions, conveyed in this research, the researcher has accomplished the aforementioned work.

All the concepts executed in this research report are to investigate the ‘title of my research’ in a newfangled way, so as to fetch out the fundamental basis to my propositioned hypotheses/suggestions/recommendations, I sense are obligatory to explore the subject with contemporary arrangements.

Since the research is a doctrinal one, and therefore many literatures related to my research title are reassessed systematically from numerous sources, but each of them are duly accredited by the way of footnotes or bibliography.

I, taking a true oath pronounce that no bootlegging has been engendered in any portion of my full research report.

I also affirm an all-inclusive accountability of my own, if at any time, any kind of plagiarism or copyright infringement has been found/challenged regarding my research report.

Declared by me, on the 30th day of January 2015 at Indore city in the State of Madhya Pradesh, India.

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CERTIFICATE OF APPROVAL

This is to certify that, the research report of Mr. Aditya Mishra from School of Law, Devi Ahilya Vishva Vidhyalaya, studying in B.A., LL.B. (Hons.), as per his/her declaration is found to be the result of his/her passion to fuel the title taken by the researcher.

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This research has been submitted with my approval, acknowledging my trust on the declaration of research scholar of this report.

Mentor

On At

Sonal Gupta

CEO, PRSLRC

Signature of the Scholar

ACKNOWLEDGEMENTS

Pursuing the research work for second time was a great experience in learning. It is just like climbing on the peaks of the mountains of the legal career. This period of a month was one of the hardest periods experienced in my career. While doing the research, there was a great boost in my personality and I realised that it couldn't be possible without the guidance of the people, especially of my mentor. It will not be enough to express the gratitude in words to all the persons who have helped me during this tough period but I would like to acknowledge them all.

In a worshipful manner I am grateful to

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The CEO at Prof. Ranbir Singh Legal Research Centre, Shajapur, Madhya Pradesh, who gave me the golden opportunity to do the research and accepted me as a Legal Researcher in his Legal Research Centre. He is one of the best researchers in the world in the field of law and one of the most intelligent people I know. I hope that I could get such great qualities like Hard Work, Punctuality, Perfection in every field, Enthusiastic, Energetic and many others, as my mentor. In this intern he offered me great advices, always gave me the right directions wherever it was needed with a great patience and guiding me as 'The Mentor', on my topic-

“Surrogacy in Indian Legal Context- A Bliss or Curse?”

My special thanks go to Hon'ble Prof. (Dr.) Ranbir Singh (Vice Chancellor of National Law University-Delhi). This institution may not get this name without his blessings and I could not have got this golden opportunity to pursue a very valuable research.

I extend my thankfulness to all the faculty members of School of Law, Devi Ahilya Vishva Vidhyalaya, Indore (M.P.) those who helped me in many ways.

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Aditya Mishra

*I dedicate this research to all those persons who are not blessed to have their own children.
I also dedicate this research to Almighty KRISHNA, My Mentor (Adv. Sonal Gupta),
My family and
My friends (Suryansh Soni & Dakshita Garhwal),
for their constant support, care and unconditional love.
I love you all.*

LIST OF CASES

Name of Case	Citations	Page Number
Baby Manji Yamada vs. Union of India (UOI) and Another	(2008) 13 SCC 518	12, 21, 22, 25
Jan Balaz v. Anan Municipality and Others	Special Civil Application no. 3020 of 2009; SC 31639/2009	12

LIST OF ABBREVIATIONS

Abbreviations	Full Forms
&	And
v.	verses
ART	Assisted Reproductive Technology
DNA	Deoxyribo Nucleic Acid
ICSI	Intra Cytoplasmic Sperm Injection
INA	Immigration and Nationality Act
IUI	Intra Uterine Insemination
IVF	In Vitro Fertilisation
SCC	Supreme Court Cases
UK	United Kingdom
UOI	Union of India
USA	Unites States of America

RESEARCHER’S EXPERIENCE

It was a great experience with this centre to do an internship. It provides the best in class mentor Adv. Sonal Gupta Sir, who himself is a great researcher and contributed a lot in the field of the law. The best thing about this centre is that it is headed by respected Prof. (Dr.) Ranbir Singh who is a great researcher and Vice Chancellor in National Law University, Delhi. So, this centre has provided a good platform to researcher among many students applying from all over India, to do the contribution in law apart from their regular studies they are pursuing in their respective colleges.

It has given researcher a lot of knowledge while working on my topic in depth. I also learned many things while interacting to my mentor, parents, seniors and my friends about this. By doing the research I learned many new things, like the presentation of the work, doing all the things with perfection, being punctual in time, concentrating in work etc. which helped researcher lot in my studies and in day to day life. It has further improved my level of writing with proper usage of words and proper grammar. In the research, the most important thing I learned is that to be perfect in all aspects of the field and I have the capability of doing anything that I thought, despite of all the criticism I faced by the people that in such a small age I am doing the things which are not necessary, apart from the studies. The research taught researcher that, a man can do anything if he has dreamt it and has the potential to do it.

It also helped researcher a lot in development of the personality. It gives the confidence to complete the work in the due course of time with proper management of it and by the perfection, covering all the aspects of essentials necessary in it. It will provide a great help to researcher in future, to study the topic in depth and proper drafting the documents while practising litigation in the courts of law and justice.

“Our friendship started differently,
Than most friendships I've had.
We had to search each other out,
because of something sad.
A precious child to fill your hearts,
Is what you're longing for.
Infertility has made it hard,
to open up that door.
And so a search began for you,
to find a helping heart.
So similar to my own search,
not knowing where to start.
For me, the search is special,
it requires such great care.
A couple to have a child...
the fruit my search must bare.
Now we've found each other,
so much more real it seems.
Through faith and hope and honesty,
we're moving toward your dream.
But the dream we have,
it is the same, a dream that's filled with firsts.
First smiles, first laughs, first steps, first words.
All starting with a birth.
Often times I find myself wondering what it's like,
to have to trust a stranger with such a precious life.
And though I can't imagine, all that you've been through,
I hope you know I'll do my best to bring a child to you.
Surrogacy is something not everyone can do.
But I've been so blessed in my life,
I'm drawn to helping you.
Some people call us Angels, us surro-moms to be.
But I don't feel angelic, I just feel like me.
Our journey is just starting,
and no one knows the end.
I pray it brings to you a child,
and brings to me a friend.¹”

¹ Lain. (2009). A Dream (Surrogacy Poem). Retrieved on January 11, 2015 at 14:36 from <http://www.theirbunmyoven.com/2009/02/poem.html>

Abstract

Surrogacy is that topic which is in talks from the ancient times and is been known to almost every societies of the world. Surrogacy means to carry the child for the other woman who is not capable of producing the one, due to certain complexities. The major types of surrogacy are Natural Surrogacy, Gestational Surrogacy, Commercial Surrogacy and Altruistic Surrogacy. India allowed commercial surrogacy in the year 2002, but, it has not got the legal status in the country by the legislature. But, in the year 2008, the Honourable Supreme Court of India, by giving the positive decision in the favour of surrogacy on the case *Baby Manji Yamada vs. Union of India (UOI) and Another*² which has thrown the light on the surrogacy to get the legal context in the country. Many ethics have supported the surrogacy to a greater extent by just treating it as new technology for producing the child if they do not harm anyone in this process. The motive of the researcher behind the research is to analyse the entire positive and negative aspects of the Surrogacy, to induce to make it legal and it should get legal status in the country and finally to induce that it is bliss on the society. This research focuses mainly on the bliss of the surrogacy and also on the commercial surrogacy, which is a very good alternative for the commissioning couples as well as for the surrogate mother as they both get the benefits from this. The researcher has followed the analytical approach for researching on the topic and at last the inductive method which helped to arrive at certain conclusion. Within this research the first two chapters are based on the introduction, present conditions and research methodology which has been used to create this research. The next three succeeding chapters are explaining the History, Review of Related Literatures and the present Law Reforms. Then the last ending three chapters are dealing with main analysis of the topic, verification of hypotheses, recommendations and conclusions. The study includes the comparisons of various laws of the foreign countries with the context of India. The researcher arrived to the conclusions that surrogacy should get the legal status in India, commercial surrogacy is a good alternative than other types of surrogacy, it is bliss to the society and surrogacy is more successful concept in urban areas over the other treatment available for the infertility and also the best alternative for it.

² Baby Manji Yamada vs. Union of India & Another. (2008) 13 SCC 518. Mukherjee,S. (2011). Legal and Ethical Issues of Commercial Surrogacy: An Overview. Indian Legal Aspects of Commercial Surrogacy. Retrieved on January 16, 2015 at 14:41 from http://www.academia.edu/1955503/LEGAL_AND_ETHICAL_ISSUES_OF_COMMERCIAL_SURROGACY_IN_INDIA_AN_OVERVIEW, <http://indiankanoon.org/doc/854968/> and http://jils.ac.in/wp-content/uploads/2011/12/5_Jwala-Thapa_new-style_completed1.pdf

Chapter-1

PRELIMINARY

1.1 Introduction

1.2 Researcher Interest

1.3 Domain of Surrogacy

1.4 Present Condition

1.1 Introduction

Surrogacy can be defined when other women carries the child and give birth to him when the couples want a child who are not blessed to produce him themselves. Surrogacy is also appropriate for the person who has an impossible condition or there is a very much danger situation for mother to get pregnant³. There are various types of surrogacy:-

- Natural/Traditional/Partial Surrogacy

In this type of surrogacy, there is genetic relation of embryo with surrogate and it is done with her own ovum. Commissioning father can donate the sperm and becomes the genetic father of the child. In this the sperm can also be taken from some third male person in the case of two female commissioning couples or the single women also, can commission the child. The women can get pregnant through the ways like sexual intercourse, intrauterine insemination (IUI) or In Vitro Fertilisation (IVF)⁴.

- Gestational/Full Surrogacy

In this type, surrogate acts as a carrier of embryo which is genetically not related to her. The pregnancy is obtained by the IVF and implantation of fertilised embryo is done in the surrogate's uterus. In this the embryo if fertilised by the commissioning parents or by some other anonymous persons⁵.

³ Human Fertilisation Embryology Authority. (2014). Surrogacy., What is surrogacy?., Is surrogacy for me?. Retrieved on January 01, 2015 at 21:46 from <http://www.hfea.gov.uk/fertility-treatment-options-surrogacy.html#1>

⁴ Nigam, A. (2013). Surrogacy: An Indian Perspective. Retrieved on January 04, 2015 at 13:36 from <http://www.tcog.in/articles/1/1/surrogacy-an-indian-perspective.html>

⁵ Ibid.

- Commercial Surrogacy

In this type of surrogacy, the surrogate enjoys compensation in monetary terms for her womb given on rent. This is legal in India. It is also called as ‘baby farming’ or ‘out sourced pregnancy’⁶.

- Altruistic Surrogacy

In Altruistic Surrogacy, no financial benefits are given to surrogate. There are only medical expenses given in monetary terms as compensation by commissioning parents⁷.

Surrogacy should be legalized in India so that the infertility of the women can be controlled and the couples who commission the surrogate can enjoy rights of having the child. Commercial surrogacy is considered to be the best because in this type the commissioning parents are getting the benefits of having their child and surrogate gets the compensation for what she has sacrificed for the child. It can be best done in urban areas because of the good medical treatments provided rather in the rural areas.

1.2 Researcher’s Interest

Surrogacy is a topic of debate from a very longer period of time in the fields like legal, ethical, social and many other fields. This concept is evolving around the world rapidly. It contains very paradoxical situations because some people favour it and some opposes it. The legalisation of surrogacy varies from country to country. Various countries like United Kingdom, Ireland, Denmark, Belgium, some US states, India, Russia and Ukraine allow the surrogacy in different or the other manner. In India, the legislation has not done anything on it from the point of legal context. The people who are not blessed with a child go with this concept but many other people criticize it. The people, who favour it, want to legalise it so that everyone can have the happiness of getting a child for the future development of family and nation. Researcher had gone through a lot of articles and cases and found that from history till date today some or the other person has supported Surrogacy. The question which arises is that legalisation of Surrogacy will be against the laws governed by the nature?.

⁶ Ibid.

⁷ Ibid.

Researcher is a law student perusing B.A., LL.B (Hons.) from School of Law, Devi Ahilya Vishva Vidhyalaya, Indore (M.P.), India and he got selected for “III Online off campus research programme”, under “Prof. Ranbir Singh Legal Research Centre”, Shajapur (M.P.), India. Thus, getting the chance to participate in such a precious research programme has enhanced researcher interest to solve out the above said mystery by the way of this research under the auspicious guidance and time of researcher’s mentor.

1.3 Domain of surrogacy

Researcher is mainly focusing on surrogacy so it becomes essential to know about the term ‘Surrogacy’. The domain of the topic is ‘Criminal Law’.

The word Surrogate origins from the Latin word ‘surrogatus’, past participle of ‘surrogare’, which means ‘to substitute’. In general it is the appointment of the other person to act in place of another. Thus, a surrogate mother is a mother who bears the child in her womb for the other person, which can be from her own egg or by the implantation of womb of other woman⁸.

Black’s Law dictionary defines it as carrying and handing over the child to other person after the child is born. It classifies it in two categories: Gestational and Traditional Surrogacy. In Gestational one woman provides fertilized egg and other woman gives birth to the child. In Traditional only one woman provides the egg and gives the birth to child i.e. the surrogate mother⁹.

In many countries it is prohibited and considered as a crime. Crime is violation of the public law by an act or an omission. It is a breach of duty to the public at large¹⁰.

⁸ Prakash, S. (2010). Surrogacy a problem both socially and legally. Assited Reproductive Technology and Surrogacy. Retrieved on January 16, 2015 at 16:29 from <https://www.nls.ac.in/resources/ded/classnotesforyear2010ded/N9PIISurrogacy.pdf>

⁹ Ibid.

¹⁰ Mishra, A. (2014). Whether Euthanasia should be included as a part of Article 21 (Right to Life) of constitution of India-An analysis. Unpublished Online off Campus Random Research Program. Prof. Ranbir Singh Legal Research Centre , Shajapur (India).PP 4-5. Retrieved on January 16, 2015 at 16:31

1.4 Present Conditions

At present, there are many beliefs regarding the topic surrogacy that it should receive the legal status or it should be banned. Many countries have legalized it and many till date prohibit it. Although, it is prohibited in the countries but people practices it for the benefit of the persons, who are not capable of producing a child regardless of the laws of the country, as a gift or service. Majorly, this can be seen within the families of the persons where anyone is not capable of producing the child. But, if it gets traced there are provisions of strict punishments.

Majorly, the countries which allow the surrogacy are of the Altruistic type and not of the Commercial types where it is only done for the purpose of service to other, on the monetary compensations of the medical expenses, paid by the commissioning parents.

In India, Surrogacy is been allowed since 2002 of the types Altruistic and Commercial. But, the thing is that it has not got any legal status in the country. So, it is the urgent need of the hour to get the legal status of the surrogacy because the foreigners are travelling to India for the babies as the expenses are very less when compared to the other countries, to prevent the exploitation and rights of the women.

Chapter-2

RESEARCH METHODOLOGY

2.1 Statement of Problems

2.2 Objectives of Research

2.3 Type of Research

2.4 Research Methods

2.5 Data Collection

2.6 Coverage and Scope

2.7 Hypotheses

2.1 Statement of Problems

This research is trying to analyse the various aspects of law on Surrogacy in different countries and India, whether it is bliss or a curse in Indian legal context; who are the persons who can access it; who are the persons to whom it can be done; what should be the punishments awarded if there is any violation of right/s of the person. There are several views of various people regarding the topic which includes legal scholars and legal researchers.

2.2 Objectives of Research

At the present date, the birth of the child is very important for the society in which we are living, to continue its existence in future period. There are people who are not blessed with the quality to create a new life. So, there are persons who let do this work for the others for the continuation of their families. There are many factors in which the rights can be infringed of the other person. The major concerns are:-

- The rights of surrogate.
- What if the surrogate mother changes her mind to not to give the child to the commissioning parents.
- Becoming child's legal parents (adoption or parental orders).
- Whether there can be a second legal parent?
- What will be the nationality of the child?

2.3 Type of Research

The type opted by the researcher for research making is Qualitative/Doctrinal.

Qualitative research is done to obtain the behaviour and thinking of different persons to a specific issues. These types of researches have hypotheses which are to be proven by analysing various sources of the data. When hypotheses are verified by the researcher, it is called a doctrine, and hence, a doctrinal research¹¹.

2.4 Research Methods¹²

The research method which has been adapted by researcher is analytical¹³ in which comparisons of various laws of other countries with India legal context. Induction¹⁴ method is also used for getting the final result of the research. Mainly researcher has adopted observational method to observe the data to get his results for verification of his hypotheses. The researcher will also try to compare the laws of the various countries and compare the recent conditions of India with them which will help a lot to reach to the final result and will give the better understanding of the psychologies of the people regarding the topic Surrogacy. Various important landmark cases of foreign countries and works of the persons will also be compared.

2.5 Data Collection

The data collected is through various e-data sources and are used for research study. The reviews of data has been done from websites Google Books, Law reports and various other researches of the persons, various books of library of School of Law and Central library of Devi Ahilya Vishva Vidhyalaya have been used. All the e-data sources are authentic websites

¹¹ Qualitative Research Consultants Associations. (2014). What is Qualitative Research?. Retrieved on January 04, 2015 at 13:46 from <http://www.qrca.org/?page=whatisqualresearch> and from the teachings of my mentor Adv. Sonal Gupta in the class scheduled for research methodologies on January 03, 2015 from 9:00-11:00.

¹² The idea of the research methods is been taken from the scheduled class for research methodologies by my mentor Adv. Sonal Gupta on January 03, 2015 from 9:00-11:00 and also retrieved from <http://www.ili.ac.in/Research%20Methods%20and%20Legal%20Writing.pdf> which was sent by my mentor in guidelines of II PHASE – FINAL FRAME OF SYNOPSIS.docx point number 8.

¹³ Analytical-of or relating to analysis

Analysis- Careful study of something to learn about its parts and how they are related to each other.

Supra Note 10.

¹⁴ Induction-Process or action give rise to something from certain facts
Source-Ibid.

(with the extension like .org, .in etc.) and not from any of the commercial websites (extension with .com). All the data collected is analysed as methodology is analytical. All the other resources through which the reviews have been taken are mentioned under review of literature so are not repeated here.

2.6 Coverage and Scope

The different types of cases of various countries are analysed. The landmark cases related to the Surrogacy in India are also analysed. Various researches of researchers, articles and book of various authors are also analysed. The condition of India is compared with the conditions of foreign countries. Various thoughts given by the persons on Surrogacy are also included under this research.

In this research, the researcher will mainly focus on the positive and negative aspects of the surrogacy. The researcher also included the positive and negative arguments and finally reached to the conclusion that surrogacy is bliss for the society. The best form of it is commercial surrogacy and it is a very useful concept in the urban areas for treating the infertility.

2.7 Hypotheses

- Surrogacy is bliss to society.
- Commercial surrogacy is a good alternative for commissioning parents and surrogates.
- Surrogacy is more successful in urban areas as compared to rural areas¹⁵.

¹⁵ The idea of this hypothesis making is been taken from the example given by my mentor Adv. Sonal Gupta on hypothesis making in class for Research Methodology on January 03, 2015 from 9:00-11:00.

Chapter-3

HISTORY

The history of the surrogacy dates back to the centuries. This concept of bearing of the child for the other woman takes us back to the Old Testament, Hagar the maid of the Sarah bears the child for her infertile mistress with the help of the Sarah’s husband Abraham. The agreement for the surrogacy was not arranged till 1976 in United States. Till then it was marketed as the infertility solutions. Many firms sprung like mushrooms to promote the surrogacy and started caring the surrogate mothers to make the money¹⁶.

1986, which is known to be the landmark year for the surrogacy and the surrogate mothers because of the “Baby M” case. William and Elizabeth Stern had contracted with Mary Beth Whitehead for the surrogate child. When the date of the child birth was closer Whitehead void the contract between her and Sterns also rejecting the money offered to her. For this reason Whitehead was brought to the court and the decision was made that the child will be with the Sterns and Whitehead was awarded only privilege to visit the child¹⁷.

In 1989, the American Bar Association penned the laws. These laws were the guideline provided to the states for surrogacy. Within few years nineteen states opposed the surrogacy to prevent the benefit of the third party by making money from it. The United States allows the surrogacy with some of the states banning it. The Districts of Columbia and Eleven States prohibited it completely and the six states allowed the couples to enter into the surrogacy agreements, in which, some of them only issued uncompensated agreements. All the states recognized the birth certificates of the births by surrogacy. Many criticized that surrogacy will be used only for the business purposes and the firms will make a good amount from it¹⁸.

Many countries have different views regarding the surrogacy practices. Australia and Western Europe has developed tight laws which makes very difficult for the surrogate mother to make the money from commissioning parents. In Western Europe surrogate mother can claim the child in her womb to be hers within two years unlike the Asian and Eastern European countries where there is a contract between the commissioning parents and the

¹⁶ New World Encyclopedia. (2009). Surrogacy. History. Retrieved on January 17, 2015 at 01:44 from <http://www.newworldencyclopedia.org/entry/Surrogacy#History>

¹⁷ Ibid.

¹⁸ Ibid.

surrogate mother that, the child will be of the commissioning parents after the birth from the surrogate mother¹⁹.

This is making the western countries to parade towards the countries like India where the child will be of the commissioning parents and the rates are also very low then that of the developed countries where these practices are allowed²⁰.

In India, history was created by allowing the commercial surrogacy in the year 2002. Surrogacy can be also traced back to the epics like Mahabharata, where Rohini bared the child for Devaki and Vasudev²¹.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Supra Note 4.

Chapter-4

REVIEW OF RELATED LITERATURES²²

The reviews of various e-sources, e-books have been taken to analyse the topic Surrogacy for getting the views of various people and their psychologies about it for better understanding of topic which will help to get the results of research.

Nigam (2013) gives conclusion that surrogacy is a reproductive technology and countries like India need clear guidelines from legislature. She also states that commercial surrogacy is best for all when done with a contract and rights of the born baby should be addressed in details²³.

The Iona Institute (2102) gives summary in their paper that commercial surrogacy is a very good activity and many countries are adopting it. They help the couples who are incapable of producing the child naturally. Many agencies form the databases of the women who are ready to become the surrogates and the commissioning couple can choose from them by their own that are more capable of producing their child. In developing countries like India, the rated of the commercial surrogacy are much less than those of the developed countries like California²⁴.

Teman (2001) states in her book that in 1991 the ministers of health and justice made a public committee for legislating the surrogacy in Israel. After that the ban for surrogacy was cancelled in the nation after the petitions of 25 couples who were not capable of producing the child. After that the Israel became the only country in the world to start the practice of surrogacy and helped a lot of couples to enjoy the right of the birth of child²⁵.

Tehran, Tashi, Mehran, Eskandari, Dadkhah et al (2014) concluded that the pregnancy of a surrogate is related with the experiences of emotions and they should be

²² The idea of the review of related literatures is been taken from the scheduled class for research methodologies by my mentor Adv. Sonal Gupta on January 03, 2015 from 9:00-11:00

The format of review of related literatures is been done strictly according to American Psychological Association which was taught by my respected mentor and more references have been taken from Supra Note 10.

²³ Supra Note 4.

²⁴ The Iona Institute. (2012). The Ethical Case Against Surrogate Motherhood: What We Can Learn From The Law Of Other European Countries. Retrieved on January 04, 2015 at 14:15 from <http://www.ionainstitute.ie/assets/files/Surrogacy%20final%20PDF.pdf>

²⁵ Teman, E. (2001). Women's Studies Quarterly: Women and New Technology. The Feminist Press. The city University of New York. P.11. ISSN: 0732-1562. ISBN: 1-55861-279-3. Retrieved on January 04, 2015 at 14:40 from <https://books.google.co.in> (e-book)

considered thoroughly. They also recommended that the counselling of the surrogates should be done before the pregnancy, during the period of being pregnant and after giving the birth to child to prevent any negativity of thoughts in them²⁶.

Islam, Nordin, Shamsuddin, Mohd Nor, Al-Mahmood et al (2013) concluded that, the study of surrogacy from the point of ethics in comparison of western countries with Islamic countries made the point clear that western bioethics are from the view of the moral values and in Islamic, it is from the point of five purposes of the Shariat. They also stated that the debate will continue as we are developing and judging in our own senses on the morality of the surrogate women. To make it good from the consequential part of view then we should change, evaluate the deontological position and justify its relevance to the society²⁷.

European Parliament (2013) concluded that the surrogacy agreements must be made in legal sense and all those agreements which prohibited doing the surrogacy or prevented from the point of view of ethics should be made void. It also concluded that it appears to be untenable at a large level in spite of the law enacted in the nation for prohibiting it²⁸.

Pilka, Rumpik, Koudelka, Prudil et al (2009) concluded that public has shifted its opinion and recognized that surrogacy is an appropriate measure in the cases of the infertility. It is also expected that this technique will get strength and supported by the people and will have good & favourable effects on the life of the people²⁹.

The American Congress of Obstetricians and Gynaecologists Stanford University (2008) stated that the surrogacy is a very good practice if it is done by the contract between the commissioning parents and the surrogate mother. It should contain all the points which protect the women rights. It also stated that by surrogacy there is a huge

²⁶ Tehran, A. Tashi, S. Mehran, N. Eskandari, N. Tehrani, D. (2014). Emotional experiences in surrogate mothers: A qualitative study. Retrieved on January 04, 2015 at 14:53 from

<http://www.ncbi.nlm.nih.gov/pubmed/25114669>

²⁷ Islam, S. Nordin, R. Shamsuddin, A. Nor, H. Al-Mahmood, A. (2013). Ethics of Surrogacy: A Comparative Study of Western Secular and Islamic Bioethics. Retrieved on January 04, 2015 at 15:31 from

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3708631/>

²⁸ European Parliament. (2013). Directorate-General for Internal Policies. Policy Department Citizens' Rights and Constitutional Affairs. ISBN: 978-92-823-4495-8. DOI:10.2861/2624. Retrieved on January 04, 2015 at 15:31 from [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474403/IPOL-JURI_ET\(2013\)474403_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474403/IPOL-JURI_ET(2013)474403_EN.pdf)

²⁹ Pilka, L. Rumpik, D. Pilka, R. Koudelka, M. Prudil, L. (2009). Surrogate Maternity- Literature review and Practice. Conclusion. Retrieved on January 04, 2015 at 16:44 from <http://www.ncbi.nlm.nih.gov/pubmed/19514662>

elevation in the women's status who are having the low status in the society. There are many ethics which support the Surrogacy as the new technology to overcome the infertility issues³⁰.

Mukherjee, S (2011) concluded that right to reproduce is a fundamental right and also a human right. Surrogacy is the best way to overcome both biological and social infertility. It provides to have the child of our own regardless of the marriage. He also concluded that legalization of gestational surrogacy will protect rights of surrogate mother as well as of the commissioning parents who need the child³¹.

Yale University (2014) stated that the practice of surrogacy is rapidly increasing day by day. By this technique U.S accounts for more than 2000 babies which are three times as the decade ago. Similar is the case with UK and Australia where it has been doubled in six years and tripled in three years respectively³².

By observing all the above stated review of related literatures to the topic Surrogacy, it can be concluded that surrogacy is a reproductive technology which is a fundamental and human right and in which the commercial surrogacy is best and well suited to the entire person because the surrogate get the compensation for what she sacrifices. By this type, the countries which have couples who want the babies and couldn't produce will get a lot of help from this. The feelings of the surrogate should also be taken care of so that there are no negative impacts on the child which is in the womb of the surrogate. So, proper counselling should be made to her. Many ethics support this and many not but the best way is that of the people living in the western culture which only observes the moral values of the person which help the commissioning parents to enjoy the rights of the child. There should be the legal agreement and should be legalize because in spite of being prohibited it is uncontrollable to stop it completely. The technique has bright future ahead and will have a favourable impact on the lives of the people.

³⁰ Stanford University. (2008). Surrogate Motherhood in India. Moral and ethical implications. Retrieved on January 17, 2015 at 16:23 from <https://web.stanford.edu/group/womenscourage/Surrogacy/moraethical.html> and <http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Ethics/Surrogate-Motherhood>

³¹ Mukherjee,S. (2011). Legal and Ethical Issues of Commercial Surrogacy: An Overview. Indian Legal Aspects of Commercial Surrogacy. Retrieved on January 15, 2015 at 23:52 from http://www.academia.edu/1955503/LEGAL_AND_ETHICAL_ISSUES_OF_COMMERCIAL_SURROGACY_IN_INDIA_AN_OVERVIEW

³² Yale Global Online. (2014). Surrogacy: Human Right or Reproductive Exploitation?. Retrieved on January 17 at 14:46 from <http://yaleglobal.yale.edu/content/surrogacy-human-right-or-reproductive-exploitation>

Chapter-5

LAW REFORMS

5.1 Report

5.2 Present Laws in India and Foreign countries

5.1 Report

In 228th report of Law Commission of India, many important points are recommended which are stated as follows:-

- Surrogacy should be done with a contract which should contain all the requirements like consent of the surrogate mother and of her family members that she can bear the child, the expenses for her in monetary as well as in the medical terms and the child should be finally hand over to the commissioning parents. The agreement which is done should not be for the commercial purposes.
- There should be the financial arrangements for the child who had been born by surrogacy if there occurs the death of the commissioning parents or any individual who was bearing the child or the divorce between the couples or nobody is willing to take the child.
- Contract for surrogacy should cover the life insurance of the surrogate mother.
- One of the commissioning parents should also be a donor because there will be a genetic relation between parents and child, which will be fruitful, which will further reduce the child abuse observed in many cases.
- Surrogate child should be a legal child of the commissioning parents without declaration of guardians or by adoption of him. This type of provisions should be recognized by our Legislative.
- The name of the commissioning parents should be imprinted on the birth certificate of the surrogate child.
- There should be not being any violation of Right to Privacy of the donor as well as of the surrogate mother.
- There should be prohibition of sex selective surrogacy.

- Abortion cases should be only governed by Medical Termination of Pregnancy Act, 1971³³.

5.2 Present Laws in India and Foreign countries

Due to rapid increase in the prices in European countries, access to infertility services are decreased by a great amount. This has resulted into visiting of the couples in some other countries where there are minimal rates for the surrogacy. Every country has the separate laws on the surrogacy, many allow it and many forbidden it. In the countries like Germany, Sweden, France and U.K. etc. surrogacy is banned. There is a rapid growth in international surrogacy, but there are no uniform rules or regulations which need to be adhered by all the nations regarding this matter. Some countries also demand that DNA of the surrogate child should at least match with one of the commissioning parents. In U.S.A., there are various legal formalities which need to be performed in the cases of surrogacy. This creates numerous problems and stress to the commissioning parents because of the time taking formalities³⁴.

In Belgium, Altruistic surrogacy is allowed 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 country³⁵.

In France, Article 17/6 of Civil Code makes the agreement with the third person completely void relating to the gestation. The highest court in France, Cour de Cassation, gave the judgement on a case that, giving the agreements for the foreign surrogacy will be against public policies. Conseil d’Etat, on the other hand, which is the highest administrative court, over tuned the decision of French Consulate in India whose decision was not to issue

³³ Law Commission of India. (2009). Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy. 228th Report. Ministry of Law. Retrieved on January 14, 2015 at 23:31 from <http://surrogacylawsindia.com/admin/userfiles/file/report228.pdf>

³⁴ Ukrainian Family Law. (2012). International Surrogacy Laws. Kyiv, Ukraine. Retrieved on January 15, 2015 at 23:42 from

http://www.familylaw.com.ua/index.php?option=com_content&view=article&id=69&Itemid=98&lang=en

³⁵ Ibid.

travel documents. Conseil d’Etat made a very important decision which made the overseas surrogacy possible³⁶.

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 Code³⁷.

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 country³⁸.

Sweden has banned the surrogacy but, recently it took a positive step towards it to allow the birth of a child by surrogacy. It was done by the majority of the votes by the Riksdag’s Committee on Social Affairs for the government for surrogate motherhood³⁹.

In 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 surrogacy⁴⁰.

In 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. citizenship⁴¹.

In India, Commercial Surrogacy is been legalised since 2002 and it is been an emerging country in this technology. The practices of surrogacy are relatively cheaper than the other countries. So, the people from foreign countries are invading here to have the child by this process. This has also made the clinical practices in competition and due to it the rates are increasing by the rapid growth in these practices⁴². There is a ban on surrogacy where the

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Supra Note 31.

commissioning parent/s are gay couples, single man, single woman, non married couples and all the couples from the countries where the surrogacy is prohibited/illegal⁴³.

Analysis of Case Law

Baby Manji Yamada vs. Union of India (UOI) and Another⁴⁴ (2008)

Facts:-

The petition was filed under Article 32 of the Indian Constitution. This was regarding the custody of child named Manji Yamada. The petition was filed by the grandmother of the child Emiko Yamada. Union of India through Home Ministry, State of Rajasthan through the Principle Secretary, Director General of Police, Government of Rajasthan and the Superintendent if Police, Jaipur were made the opposite parties. This case is very relevant because it brought the light on the issues of surrogacy for the first time and there were no laws regarding this matter. Thus, it can be said that this case directed for the formation of Assisted Reproductive Technologies Bill, 2010. This case is also important because it was decided on the facts which were presumed that the surrogacy is legal in Indian context. At that time, there were the guidelines of the presumption of the legality of surrogacy of the Indian Council of Medical Research, 2006 which found no place in judgement of the Supreme Court in the above mentioned case⁴⁵.

Baby Manji was born on 25th July, 2008 where the commissioning parents were from the Japan. The egg was donated by the mother, Dr. Ikufumi Yamada and was fertilised by the sperm of her father Dr. Yuki Yamada. After this there was implantation of egg in the Indian surrogate mother. The biological parents soon developed some marital problems and got separated. The mother returned to Japan. After some time the father also returned because of the expiration of the visa. Baby was under the care of her paternal grandmother. She was issued a birth certificate in the name of her biological father. According to the existing laws it

⁴³ Bhowmick,N. (2013). Why people are angry about India’s new surrogacy rules. Retrieved on January 15, 2015 at 23:58 from <http://world.time.com/2013/02/15/why-people-are-angry-about-indias-new-surrogacy-laws/>

⁴⁴ Baby Manji Yamada vs. Union of India & Another. (2008). (2008) 13 SCC 518. Mukherjee,S. (2011). Legal and Ethical Issues of Commercial Surrogacy: An Overview. Indian Legal Aspects of Commercial Surrogacy. Retrieved on January 16, 2015 at 14:41 from http://www.academia.edu/1955503/LEGAL_AND_ETHICAL_ISSUES_OF_COMMERCIAL_SURROGACY_IN_INDIA_AN_OVERVIEW, <http://indiankanoon.org/doc/854968/> and http://jils.ac.in/wp-content/uploads/2011/12/5_Jwala-Thapa_new-style_completed1.pdf

⁴⁵ Ibid.

should have been certified to the mother to adopt the baby. Because of the Gujarat riots baby was shifted to Rajasthan for the treatment of infection. The petition was filed in Rajasthan High Court which stated the illegality of the surrogacy and stressed on the need of the law on it. This was challenged by the grandmother for the sake of the baby.

Judgement:-

The Hon’ble Supreme Court held that there was no ground of filing petition in High Court as there was no interest of Public Interest Litigation was found. The court set aside the judgement of High Court. The order was made to issue the passport for the baby and visa for the extension of grandmother⁴⁶.

The Supreme Court judgement also included in its Para 9 that ““Commercial surrogacy” is a form of surrogacy in which a gestational carrier is paid to carry a child to maturity in her womb and is usually resorted to by well off infertile couples who can afford the cost involved or people who save and borrow in order to complete their dream of being parents. This medical procedure is legal in several countries including in India where due to excellent medical infrastructure, high international demand and ready availability of poor surrogates it is reaching industry proportions. Commercial surrogacy is sometimes referred to by the emotionally charged and potentially offensive terms "wombs for rent", "outsourced pregnancies" or "baby farms".⁴⁷”

Later, Baby Manji was issued an Identification Certificate instead of passport to move out of the Indian Territory.

Substantial Question of Law:-

The substantial question of law is that, whether surrogacy should be treated as legal in the country India though there are no laws made on it.

In this case, the decision went against the Baby Manji but it was appealed in the Hon’ble Supreme Court for the justice.

⁴⁶ Ibid.

⁴⁷ Ibid.

Analysis:-

These facts were also highlighted in **Jan Balaz v. Anan Municipality and Others**⁴⁸, where there were questions about the nationality of the twins which were genetically related to the father, Jan Balaz. Presently the case is pending in the apex court⁴⁹.

The most noticeable facts in Baby Manji case are that the court not only presumed the surrogacy as legal but also that it was a pro-contract. The contract between the couples and the commissioning parents was held to be valid though it was against the legislation of the country.

⁴⁸ In Jan Balaz v. Anan Municipality and Others. Special Civil Application no. 3020 of 2009; SC 31639/2009. There were German couples who entered into the contract with Marthaben Immanuel Krishti. Couples were working in the U.K. Germany didn't recognize the surrogacy but from here the Supreme Court gave the exit passes to the children and the country Germany gave them right to adapt that child and fight for their rights. Retrieved on January 21, 2015 at 16:45 from http://www.legalservicesindia.com/article/print.php?art_id=1188

⁴⁹ Ibid.

Chapter-6

MAIN ANALYSIS

6.1 Definition

6.2 Indication of Surrogacy

6.3 Process of Surrogacy

6.4 Surrogacy and Human Rights

6.5 Ethics about surrogacy

6.6 Conditions in India

6.7 Arguments in Support of Surrogacy

6.8 Arguments Opposing Surrogacy

6.1 Definition

The word surrogacy is been derived from the Latin word ‘Subrogate’ which means ‘to substitute’. Surrogate Parenting is that in which mainly the commissioning parents makes the legal agreement with a woman to give a birth to a child for them and give all the parenting rights to the intending parents. It is also called as “contract pregnancy”⁵⁰.

6.2 Indication of Surrogacy

The indications of the surrogacy can be determined when it makes the women incapable for being pregnant and give birth to a child. The majorly are like repeated abortions, failure of the In vitro fertilisation and various other medical complexions which make a women incompatible to give birth. It has been also tried on the women who has congenital absence and the women who doesn’t have the womb or the womb has been removed. The single parent or same sex couples can also take the assistance of surrogacy to have their babies⁵¹.

⁵⁰ Tong,R. (1995). Surrogate Parenting. Moral Arguments against Surrogacy vs. Moral Arguments for Surrogacy. Internet Encyclopedia of Philosophy. Retrieved on January 16, 2015 at 03:04 from <http://www.iep.utm.edu/surr-par/#H4>

⁵¹ Supra Note 4.

6.3 Process of Surrogacy

The process of Surrogacy in India starts with the legal counselling before the surrogacy of the surrogate mother and the commissioning parents. After this, there is a surrogacy agreement and the final contract. The care of the child is nurtured by the commissioning parents to the surrogate mother. All the financial aids of the surrogate mother during the period of pregnancy and after the birth of the child are done by the commissioning parents and the monetary compensation is also given to her by them which are decided in the contract between the two parties. All the different perspective like failure of pregnancy, multiple pregnancies and handicapped child etc. are well explained to the commissioning parents and to the surrogate mother⁵².

6.4 Surrogacy and Human Rights

There are many views of different people regarding the human rights in context to the surrogacy. Many people treat it in a positive way and many in the negative way and consider it as a violation of the human rights.

The reproductive rights are recent in the international laws. The very first document was approved regarding this matter in Teheran Conference on Human Rights, 1968. In this conference, it was decided that the person is free to access all these rights by his own thinking and he will be only responsible for all the consequences⁵³.

There was another conference held which was at Cairo in which it was decided that it should not be done by coercion and the government will keep all the information about these regardless of the target fixed by it. The only aim should be that it should only support the couples to have the full opportunities to have the children by their choices through any of the means⁵⁴.

The reproductive rights included all the rights of the individuals to have their freedom of the choices, to decide freely about the place, timing to have the children and to attain all the medical benefits and rights⁵⁵.

⁵² Ibid.

⁵³ Stark,B. (2012). Transnational Surrogacy and International Human Rights Law. ILSA Journal of International & Comparative Law. Volume 18:2. Retrieved on January 16, 2015 at 15:40 from hrcolumbia.org/gender/papers/stark_transnational_surrogacy.doc

⁵⁴ Ibid.

⁵⁵ Ibid.

Reproductive rights are being recognized at the international level which has the objectives to educate the people regarding this matter and explaining them right to health. It only focuses and considers the maternity as a social function. The only difficulty which lies to them in commercial surrogacy is where both the intending parents and surrogate are stranger to each other⁵⁶.

Some people have the negative views about it like the surrogacy violates the human rights of the individual. There is exploitation of both child and surrogate mother. The peoples misuse this by selling the babies and making the profits for themselves. The other type of exploitation is the forced surrogacy or surrogacies which are done under the coercion. The surrogate mothers are used for producing babies and after that they are forgotten. People also want the good looking child with high academic potential, if, these are not fulfilled then, the children are left by the commissioning parents. By this, there are violations of rights of the child. These are the major factors which exploits the humans. So, many people oppose surrogacy for these reasons only⁵⁷.

6.5 Ethics about surrogacy

The big question arises that the surrogacy is ethical or not; whether the surrogacy is ethical in developing countries or not. Majorly, Surrogacy is interpreted to just an economic transactions between the commissioning parents and surrogate mothers. But, instead of this above all lies many factors like the emotions of the women, body rights etc. which needs to be understood. The most ancient roots of this refer to infertility in the Genesis, when Jacob’s wife similarly to the other Biblical peers was unable to bear a child in their wombs. She prayed to God and after requesting her husband she gets the child by adopting him from her maid. Similarly, Sara sent the Abraham to her maid and adopted the child from her⁵⁸.

It is very difficult to associate the women’s reproductive system by different religious and cultural backgrounds. Further, it has been found that in Jewish laws that the couples who are suffering from these types of problems, they are helped in every possible ways as long as nobody is harmed while doing this⁵⁹.

⁵⁶ Ibid.

⁵⁷ European Centre for Law and Justice. (2012). Surrogate Motherhood: A Violation of Human Rights. Retrieved on January 16, 2015 at 15:40 from <http://www.ieb-eib.org/en/pdf/surrogacy-motherhood-icjl.pdf>

⁵⁸Supra Note 30.

⁵⁹ Ibid.

The catholic churches do not favour the assisted reproductive technologies but favours all the treatments given to the women for the infertility. Baptist, Methodist, Lutheran, Mormon, Presbyterian, Episcopal, United Church of Christ, Christian Science, Jehovah’s Witness, and Mennonite religion, these all have liberalisation towards the treatments of in fertilisation. In Islamic Laws, there is all freedom for the cure of infertility. It also extends to the use of In Vitro Fertilisation in which only husband and wife are involved⁶⁰.

In Hinduism this topic is not very seriously in debate as that of others. They never debated on the Assisted Reproductive Technology because they always believe in the Karmas of the person which actually starts after the birth of the child. They never opposed the Assisted Reproduction rather considered as the treatment and not the violation of the religious beliefs⁶¹.

6.6 Conditions in India

The India is now becoming the ‘Baby industry’ which is booming day by day and has no proper legislation and rules/guideline which need to followed uniformly nationwide. If there is violation of the contract between the surrogate mother and the commissioning parents then there exist no stipulations for it. Law commission of India in its 228th report on Assisted Reproductive Procedures made very relevant observations on surrogacy. It suggested that surrogate mother should have the life insurance and there should be the financial aids given to the child if there is nobody to accept child. It also stated that all the abortions should be governed by the Medical Termination of Pregnancy Act, 1971⁶².

The surrogate agrees to sacrifice herself for the baby and will always prevent the baby from the risks due to the behaviour of her like taking the drugs which are not suitable to body/non prescribed drugs, smoking and taking alcohol etc. Her husband also has to abstain himself from practicing sex without prescription of doctor. The surrogate also gives up all the parental rights of the surrogate child in writing⁶³.

Both the parties have to provide the affidavits to the courts then only the contract between the two can be made. The surrogate mother has to register herself in her name as the patient. The birth certificate of the child is issued on the name of the commissioning parents

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Supra Note 4.

⁶³ Ibid.

not on the name of the surrogate mother. The commissioning couple are bound legally to take the custody of the child whatever the anomalies the child may have⁶⁴.

The right of the embryo donation is that area till now which is not explored yet. Besides this there are more issues which need more exploration like of frozen embryo, disposal of it and donation of the tissues for the purpose of the research in medical field⁶⁵.

The Assisted Reproductive Technologies Bill (2010) has been drafted by the Health and Family Welfare Ministry. This bill proposes that the surrogate mother should be of age between 21 to 35 years and she should not have given the births to more than 5 children successfully. She should be tested for all the deadly diseases which can be dangerous to child like sexually transmitted diseases and other communicable diseases. She should also give in writing that she has not received any blood or blood products in past 6 months into her body. She should be of the generation of the commissioning mother. The bill also prohibits the commissioning couple to have the babies from more than one surrogate mother simultaneously. For the foreigners, it has guidelines that they should give in writing that their country permits the surrogacy and the child will be able to enter the country as the genetic child of them. If the country doesn't accept the child, then, there will be responsibility of the local guardian⁶⁶.

If this Bill is passed there will be a stronger legislation in India regarding the surrogacy and fairer practices will be ensured regarding this matter⁶⁷.

Now, the primary condition which is necessary for the surrogacy is that there should be the genetic connection of the intending parents with the surrogate child otherwise it is not allowed. If the child is not connected biologically to commissioning parents i.e. the donors are third person, then, the donor and the surrogate mother has to surrender all the parental rights in writing⁶⁸.

The Assisted Reproductive Technology (ART) Bill (2010) proposed by the Government of India protects all the rights of the surrogate mother and the commissioning parents. If there found any violations regarding this, then, it will be treated as cognizable offence and the person will be awarded severe punishments⁶⁹.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

6.7 Arguments in Support of Surrogacy

Arguments which are in support for the proper legalisation of surrogacy by the legislatures are of the great importance. The most powerful argument for Surrogacy is that it fulfils one's dreams. Surrogacy can allow the couples to have the child when they are unable to produce by the gifts of nature due to come incapability or medical complexities of not achieving the pregnancy of the commissioning mother. They can have their child by the method of the adoption but then there will not be any genetic/biological connection or relation between the parents and child which surrogacy provides easily. Surrogacy is good option for them as they can have a genetic linkage between their child and also where there is scarcity of the adoption of the children⁷⁰.

Surrogacy provides the reproductive liberty to the persons. In country like United States, there is a great freedom, which is highly valued and protected, to bear a child at the right time. Some people had argued that the commissioning parents and the surrogate mothers cooperate for the medical facilities which are needed for the proper and the healthy birth of the child. This is all done for the child, which is the work of great moral values⁷¹.

Many women in the world participate willingly in the surrogacy to help the couples to have their own child which is genetically connected to them, who are not capable of producing the child themselves. They experience a lot of satisfaction in helping the intending parents. Also, many women like the Altruistic type of surrogacy who believes this as a service to the couples for their joy⁷².

Commercial surrogacy helps the poor, single or minority women as it provides the money for their womb taken on rent by the commissioning parents for their child. They also open the door of happiness to the families and adoptions of the child for establishment of their complete family⁷³. The money which is provided to the surrogate mother can be used for the education of their real children, for the home making etc. which will help a lot to up bring their status in the society⁷⁴.

⁷⁰ The American Congress of Obstetricians and Gynecologists. (2008). Surrogate Motherhood. Major Arguments for and Against Surrogacy Arrangements. Retrieved on January 16, 2015 at 02:17 from <http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Ethics/Surrogate-Motherhood>

⁷¹ Ibid.

⁷² Ibid.

⁷³ Supra Note 50.

⁷⁴ Supra Note 30.

One more argument which supports the surrogacy is that it makes the couples who are gay, lesbian or single man or woman, they can have their child by this method and can complete the family or theirs and there can also be the existence of the biological relationship between the child and intending parent/s.

6.8 Arguments Opposing Surrogacy

The arguments which are opposing the views of legalizing the Surrogacy and the Surrogate Motherhood primarily are based on harms. There are thoughts of producing harms to the child which is born from the womb of the surrogate mother, harms to the surrogate mother herself by the repetitive births of the children from her womb. If she has her real genetic children then it will also affect them all by this act of their mother and hence, it will provide the harm to the society as a whole. If there emerges any dispute regarding the child then it would surely affect the child. If there are any anomalies or the child who is born is abnormal and both parties i.e. the commissioning parents and the surrogate mother refuses to accept the child then, it will surely affect the child because of this behaviour of the parties. The child will also get harmed if there is high level of stress during the pregnancy of the surrogate mother. The harm can also be extended to the reputation of the women by giving her tags like vehicle for genetic perpetuations for others. This will affect the status of the women in the society. It will also affect the traditional values of the families because of the new concepts of motherhood in the society. As children are more vulnerable when compared to the adults, so, there should not be any harm which makes them to suffer a lot⁷⁵.

It has been observed that the doctors and nurses do not help those people who are generally not suffering from any kind of diseases. Whenever, in these type of cases the doctors/nurses refuses to help the couples who are gay, lesbian or single who want to have their own child. This may constitute into a great discrimination for the public at general⁷⁶.

The women who give their womb on rent for the commercial purpose to make money for themselves, if, they are poor then they also can be pressurised for Altruistic Surrogacy than Commercial Surrogacy to donate the child to intending parents as a gift or service. In this way it will harm the society to a very large extent⁷⁷.

⁷⁵ Supra Note 70.

⁷⁶ Supra Note 50.

⁷⁷ Ibid.

The opponents of the surrogacy also believes that the surrogacy is much more similar to the prostitution where the women are hired and given the compensation in monetary terms for the work they do for others, sacrificing themselves. This only makes them a ‘breeder machine’ because then they avoid the bond with the child in the womb and only concentrate on the money which they are getting by this⁷⁸.

The women also can be coerced by their family to bring the money to them by these types of practices which violates the personal freedom and liberty of the women⁷⁹.

⁷⁸ Supra Note 30.

⁷⁹ Ibid.

Chapter-7

VERIFICATION OF HYPOTHESES

Hypothesis Number 01:- Surrogacy is bliss to society.

The India, which is considered to be the largest democratic country in the world, guarantees each and every citizen, the Fundamental Rights. Fundamental Rights also includes the Human Rights. So, every citizen of India enjoys the Human Rights and Fundamental Rights whether the person is of upper class or backward class, whether a women or children.

Reproductive Rights including the Surrogacy now has been included in the International Human Rights. Reproductive rights include all the rights of the person like freedom of choice when they want to have child, also including all the benefits of medication which a person should get⁸⁰.

If Surrogacy has been included in the Human Rights and in India all the person enjoys the human rights then it very beneficial to the society because there will be no violation of the rights of the people in this matter.

Surrogacy further provides Right to Life under Article 21 of the Indian Constitution. After the birth of the child, he is handed to the commissioning parents as there exist genetic relation between them and the child. Surrogate mother only acts as a contractor. This is all done for the happiness of the commissioning parents because they are not capable of producing the child by their own due to some medical complexities⁸¹.

In famous Indian landmark case *Baby Manji Yamada vs. Union of India (UOI) and Another*⁸² the court presumed surrogacy to be legal for the child who need to moved out of the territory of India. From this, it can be concluded that the Supreme Court also considered the surrogacy just as a treatment and the blessing on the commissioning parents.

In India, to legalize the Surrogacy, a bill named Assisted Reproductive Technology (ART) Bill, 2008, is produced which contains all guidelines so that, there cannot be any violation of the rights and the couples with surrogate mother can enjoy their rights happily⁸³.

⁸⁰ Stark,B. (2012). Transnational Surrogacy and International Human Rights Law. ILSA Journal of International & Comaparitive Law. Volume 18:2. Retrieved on January 16, 2015 at 22:33 from hrcolumbia.org/gender/papers/stark_transnational_surrogacy.doc

⁸¹ Supra Note 31.

⁸² Supra Note 44.

⁸³ Ibid.

Surrogacy is mainly a treatment, which many ethics have considered. It is only having the child through the other means, if, one is unable to produce. Jewish Laws always supports it and Hinduism has not got any problem with it because it has beliefs only in Karmas which start after birth. Especially, the Hinduism ethics has considered it to be treatment by which the happiness can be given⁸⁴.

This type of technology is not less than a blessing to the intended parents to have a child. For this, the surrogate mother should be highly praised for sacrificing herself for the happiness of the others because they give the beginning of the families. This is a great solution for all the people who could not complete their families without the miracles of the assisted reproductive technology⁸⁵.

Hence, by the above thoughts we can conclude that Surrogacy is bliss to the society and after the decision of the Hon’ble Supreme Court and the report on Assisted Reproductive techniques gives a stronger support to the stated hypothesis.

Hypothesis Number 02:- Commercial surrogacy is a good alternative for commissioning parents and surrogates.

India became the first country to allow the commercial surrogacy in the year 2002. India is one of those countries which recognize the intended/commissioning parents to be the legal parents of the surrogate child. In fact, the birth certificate is issued in the name of the commissioning parents. Hon’ble Supreme Court of India gave the decision on the case named ***Baby Manji Yamada vs. Union of India (UOI) and Another***⁸⁶ which included commercial surrogacy in its judgement. After this, there is a huge rise in commercial surrogacy. The estimated value of reproductive tourism industry is around 25,000 crore INR. For the foreigners, India has become one of the most favoured destinations for the commercial surrogacy. In the study by Confederation of Indian Industry, it has been found that around 10,000 couples from foreign countries visit India for this purpose yearly. Out of this, near about 30% are single or homosexuals. The cost for the surrogacy in India is relatively halved

⁸⁴ Supra Note 30.

⁸⁵ Steiner, L. (2013). *The Baby Chase: How Surrogacy is Transforming the American Family*. St. Martin’s Press, 175 Fifth Avenue, New York, N.Y. 10010. United States of America. (ed-I). ISBN: 978-1-4668-3468-2. Retrieved on January 17, 2015 at 00:19 from https://books.google.co.in/books?id=7ZoPAAAAQBAJ&pg=PA272&lpg=PA272&dq=surrogacy+is+a+bliss+to+society&source=bl&ots=j8hEHfYuK3&sig=2OWcTxalGnzRdX-7MdFzsnq2Gso&hl=en&sa=X&ei=qEu5VI_nHci2uATQuoCIBw&ved=0CDcO6AEwBO#v=onepage&q=surrogacy%20is%20a%20bliss%20to%20society&f=false (e-book)

⁸⁶ Supra Note 44.

when compared to the other countries. Generally, the costs range from 10-15 Lakhs. In India, there is availability of good medications, easily available surrogate mothers, well developed infrastructure and the most important thing is that the law in this country doesn't ban the singles, unmarried or homosexuals by using this form of Assisted Reproduction. By this, India has found the new heights in the field of surrogacy at the international level⁸⁷.

By the above stated facts and figures, we can conclude that commercial surrogacy is mostly preferred in India. The reasons behind is the backward status of the women in country. By commercial surrogacy these women are benefitted the most because by getting the compensation from the commissioning parents uplifts their status in the society. The money can be used for the quality education of their real children and also will improve their quality of living.

The surrogate mother sacrifices and bears all the suffering just for the sake of the happiness of other persons i.e. commissioning parent/s. For the sake of the humanity she should be awarded the monetary compensation for all the sacrifices she has done to give birth to the child. So, commissioning parents should give the appropriate money for it.

Hence, it can be said that commercial surrogacy is good alternative over the other types of surrogacy for both commissioning parents as well as for surrogate mothers.

Hypothesis Number 03:- Surrogacy is more successful in urban areas as compared to rural areas.

Infertility in today's world is increasing day by day. Not only is it found in the women but also to the men. Experts say that around 20% to 30% men are responsible for the infertility⁸⁸.

International Institute of Population Sciences gave report that infertility is growing in the metros at an alarming rate. Globally, it has been estimated to around 60-80 millions couple suffering from the problems of the infertility in which there are about 15-20 millions in India itself⁸⁹.

Many experts have suggested that this can be overcome by medication, surgery, intrauterine insemination (IUI) and in vitriol fertilisation (IVF). Experts have also figured that in the period of last five years, IVF treatment has rose in the younger age group. The figure is

⁸⁷ Supra Note 4.

⁸⁸ Isalkar, U. (2012). Lifestyle-related infertility on the rise. Retrieved on January 17,2015 at 13:52 from <http://timesofindia.indiatimes.com/city/pune/Lifestyle-related-infertility-on-the-rise/articleshow/16427376.cms>

⁸⁹ Ibid.

around of 70%. This is all due to the tubal disease, ovulatory dysfunction, endometriosis, immunological factors, congenital abnormalities and sexual dysfunction. The new techniques like IVF, embryo transfer and Intra Cytoplasmic Sperm Injections (ICSI) has overtaken the older techniques. In some cases these techniques provided a very good backup option when all the other techniques failed. The surrogacy is mainly done by these techniques⁹⁰.

By the advances coming in the technology, the success rates of the Assisted Reproductive Technology has been increased in the recent years. Today, success rate is around 35%-40% and the cumulative pregnancy after four attempts is between 60%-70%⁹¹.

By this, we can conclude that, Surrogacy is a very successful attempt in urban areas as compared to rural areas, as rural areas have more fertile rates than the people living in the urban areas.

⁹⁰ Ibid.

⁹¹ Ibid.

Chapter-8

SUGGESTIONS AND CONCLUSIONS

8.1 *Pros of Surrogacy*

- It fulfils the wish for the couples to complete their family.
- It is the good alternate for the women who have infertilities due to certain reasons. It is the latest tool for the fight against the infertility.
- It possesses the genes of the intending parents so there is genetic relation between the commissioning parents and the surrogate child.
- It is better than adoptions because it takes time, a huge paper work, the psychology of the child with the couples. It can take to some years to complete all the formalities to adopt the child.
- Women have the positive experience by helping the peoples to have their own child.
- In commercial surrogacy the poor women are greatly helped by getting the money to meet their need and also can be used for the future purposes for their own child/children or for their families.
- Any person can have the privilege of having the child whether they are couples, lesbian, gay or single person.
- The birth and the death ratio of the country improve.

8.2 *Cons of Surrogacy*

- Surrogacy may be treated like the prostitution.
- There can be exploitations of the women regarding the surrogacy for the money.
- Women can be treated as a labour which provides the facilities for the birth of the child.
- If both the commissioning parents and surrogate mother refuses to keep the child, then there will be the violation of rights of the child.
- Only the wealthy people can afford it.

Suggestions

- The rights of the surrogate mother should be protected in every possible manner.
- There should be a proper contract done to avoid the anomalies between the commissioning parents & the surrogate mother and also to protect the rights of the child. The contract should also contain that, there also will be the second legal parent if some problems arises with the first parent.
- The commissioning parents should be the legal parents of the child.
- The nationality of the child should be same as that of the commissioning parents.

CONCLUSIONS

Surrogacy can be defined as, when the other woman carries the child of the couples who are not capable of producing themselves. It is very beneficial to those who have some disorder of being a pregnant woman. It gives the happiness to the couples to complete their families.

Surrogacy is practised from many years. It dates back to the epics like Mahabharata and Bible, in which it is greatly supported. Surrogacy is allowed in many countries while other bans it or allows it partially. In countries like Germany, Sweden and France etc. it is banned. In Belgium and many other countries only altruistic surrogacy is allowed. Some countries consider it as against the ethical values and some believes only in moral values and allows it. In India, Surrogacy is allowed in its all forms since 2002. But, it has not got any legal status. But in 2008, Hon’ble Supreme Court of India presumed it to be legal and then gave its judgement in the favour of the Baby Manji in *Baby Manji Yamada vs. Union of India (UOI) and Another*⁹² which opens the door for legal status of the surrogacy in the country. Law Ministry also has proposed the Assisted Reproductive Technology Bill in which there is guidelines to do surrogacy and protect the rights of the people regarding this matter.

So, the most important organ of the government of the country i.e. judiciary who are also regarded as the guardians of the constitution has allowed the surrogacy to help the people, then definitely it may be taken into account that it is a bliss for the society and it should definitely get the legal status in the country.

Commercial surrogacy is beneficial for both commissioning parents and surrogate mothers because the surrogate mother gets the benefits of the sacrifices she makes to give birth to the child and there will be no liabilities on the commissioning parents that they were only concentrating on the baby for their own happiness, not for the surrogate mother.

The infertility rate is increasing day by day in the urban areas of the country. So, this new Assisted Reproduction Method is very useful in overcoming the problems of in fertilisation in the urban areas. The technique is very useful than the other methods and provide a great back support for the people if, there is not any way remaining for the fertilisation.

⁹² Supra Note 44.

To conclude, as there are many advantages of surrogacy over the disadvantages of it, so it can be considered as bliss to the society of getting a child through other means when natural means have no such existence or they may have some medical complexities. Therefore, it should definitely get the legal status in the India for the sake of people.

BIBLIOGRAPHY⁹³

- Bhowmick, N. (2013). Why people are angry about India’s new surrogacy rules from <http://world.time.com/2013/02/15/why-people-are-angry-about-indias-new-surrogacy-laws/>
- European Centre for Law and Justice. (2012). Surrogate Motherhood: A Violation of Human Rights from <http://www.ieb-eib.org/en/pdf/surrogacy-motherhood-icjl.pdf>
- European Parliament. (2013). Directorate-General for Internal Policies. Policy Department Citizens’ Rights and Constitutional Affairs. ISBN: 978-92-823-4495-8. DOI:10.2861/2624 from [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474403/IPOL-JURI_ET\(2013\)474403_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474403/IPOL-JURI_ET(2013)474403_EN.pdf)
- Human Fertilisation Embryology Authority. (2014). Surrogacy., What is surrogacy?., Is surrogacy for me? from <http://www.hfea.gov.uk/fertility-treatment-options-surrogacy.html#1>
- Isalkar, U. (2012). Lifestyle-related infertility on the rise from <http://timesofindia.indiatimes.com/city/pune/Lifestyle-related-infertility-on-the-rise/articleshow/16427376.cms>
- Islam, S. Nordin, R. Shamsuddin, A. Nor, H. Al-Mahmood, A. (2013). Ethics of Surrogacy: A Comparative Study of Western Secular and Islamic Bioethics from <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3708631/>
- Lain. (2009). A Dream (Surrogacy Poem) from <http://www.theirbunmyoven.com/2009/02/poem.html>

⁹³ The style of Bibliography is APA style. Retrieved on January 23, 2015 at 00:46 from <http://www.apastyle.org/learn/faqs/format-bibliography.aspx>
APA stands for American Psychological Association.

Law Commission of India. (2009). Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy. 228th Report. Ministry of Law from

<http://surrogacylawsindia.com/admin/userfiles/file/report228.pdf>

Mishra, A. (2014). Whether Euthanasia should be included as a part of Article 21 (Right to Life) of constitution of India-An analysis. Unpublished Online off Campus Random Research Program. Prof. Ranbir Singh Legal Research Centre , Shajapur (India).PP 4-5.

Mukherjee,S. (2011). Legal and Ethical Issues of Commercial Surrogacy: An Overview.

Indian Legal Aspects of Commercial Surrogacy from

http://www.academia.edu/1955503/LEGAL_AND_ETHICAL_ISSUES_OF_COMMERCIAL_SURROGACY_IN_INDIA_AN_OVERVIEW

New World Encyclopedia. (2009). Surrogacy. History from

<http://www.newworldencyclopedia.org/entry/Surrogacy#History>

Nigam, A. (2013). Surrogacy: An Indian Perspective from

<http://www.tcog.in/articles/1/1/surrogacy-an-indian-perspective.html>

Pilka, L. Rumpik, D. Pilka,R. Koudelka, M. Prudil, L. (2009). Surrogate Maternity- Literature review and Practice.Conclusion from

<http://www.ncbi.nlm.nih.gov/pubmed/19514662>

Prakash, S. (2010). Surrogacy a problem both socially and legally. Assited Reproductive Technology and Surrogacy from

<https://www.nls.ac.in/resources/ded/classnotesforyear2010ded/N9PIISurrogacy.pdf>

Qualitative Research Consultants Associations. (2014). What is Qualitative Research? from

<http://www.qrca.org/?page=whatisqualresearch>

Stanford University. (2008). Surrogate Motherhood in India. Moral and ethical implications

from <https://web.stanford.edu/group/womenscourage/Surrogacy/moraletical.html>

Stark,B. (2012). Transnational Surrogacy and International Human Rights Law. ILSA Journal of International & Comparative Law. Volume 18:2 from hrcolumbia.org/gender/papers/stark_transnational_surrogacy.doc

Steiner, L. (2013). The Baby Chase: How Surrogacy is Transforming the American Family. St. Martin's Press, 175 Fifth Avenue, New York, N.Y. 10010. United States of America. (ed-I). ISBN: 978-1-4668-3468-2 from <https://books.google.co.in>

Teman, E. (2001). Women's Studies Quarterly: Women and New Technology. The Feminist Press. The city University of New York. P.11. ISSN: 0732-1562. ISBN: 1-55861-279-3.

Tehran, A. Tashi,S. Mehran,N. Eskandari,N. Tehrani,D. (2014). Emotional experiences in surrogate mothers: A qualitative study from <http://www.ncbi.nlm.nih.gov/pubmed/25114669>

The American Congress of Obstetricians and Gynecologists. (2008). Surrogate Motherhood. Major Arguments for and Against Surrogacy Arrangements from <http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Ethics/Surrogate-Motherhood>

The Iona Institute. (2012). THE ETHICAL CASE AGAINST SURROGATE MOTHERHOOD: WHAT WE CAN LEARN FROM THE LAW OF OTHER EUROPEAN COUNTRIES from <http://www.ionainstitute.ie/assets/files/Surrogacy%20final%20PDF.pdf>

Tong,R. (1995). Surrogate Parenting. Moral Arguments against Surrogacy vs. Moral Arguments for Surrogacy. Internet Encyclopedia of Philosophy from <http://www.iep.utm.edu/surr-par/#H4>

Ukrainian Family Law. (2012). International Surrogacy Laws. Kyiv, Ukraine from http://www.familylaw.com.ua/index.php?option=com_content&view=article&id=69&Itemid=98&lang=en

SPLITTING DIVERSE SOURCES (SDI)⁹⁴

Articles (Digital Sources)

European Centre for Law and Justice. (2012). Surrogate Motherhood: A Violation of Human Rights from <http://www.ieb-eib.org/en/pdf/surrogacy-motherhood-icjl.pdf>

European Parliament. (2013). Directorate-General for Internal Policies. Policy Department Citizens' Rights and Constitutional Affairs. ISBN: 978-92-823-4495-8.

DOI:10.2861/2624 from

[http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474403/IPOL-JURI_ET\(2013\)474403_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2013/474403/IPOL-JURI_ET(2013)474403_EN.pdf)

Human Fertilisation Embryology Authority. (2014). Surrogacy., What is surrogacy?., Is surrogacy for me? from <http://www.hfea.gov.uk/fertility-treatment-options-surrogacy.html#1>

New World Encyclopedia. (2009). Surrogacy. History from

<http://www.newworldencyclopedia.org/entry/Surrogacy#History>

Qualitative Research Consultants Associations. (2014). What is Qualitative Research? from <http://www.qrca.org/?page=whatisqualresearch>

Stanford University. (2008). Surrogate Motherhood in India. Moral and ethical implications from <https://web.stanford.edu/group/womenscourage/Surrogacy/moralethical.html>

The American Congress of Obstetricians and Gynecologists. (2008). Surrogate Motherhood. Major Arguments for and Against Surrogacy Arrangements from <http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Ethics/Surrogate-Motherhood>

⁹⁴ The information regarding the SDI was gathered by the researcher from mobile call made to the respected mentor Adv. Sonal Gupta on January 23, 2015 at 16:31.

The Iona Institute. (2012). The Ethical Case Against Surrogate Motherhood: What We Can Learn From The Law Of Other European Countries from
<http://www.ionainstitute.ie/assets/files/Surrogacy%20final%20PDF.pdf>

Ukrainian Family Law. (2012). International Surrogacy Laws. Kyiv, Ukraine from
http://www.familylaw.com.ua/index.php?option=com_content&view=article&id=69&Itemid=98&lang=en

Poem (Digital Source)

Lain. (2009). A Dream (Surrogacy Poem) from
<http://www.theirbunmyoven.com/2009/02/poem.html>

Report (Digital Source)

Law Commission of India. (2009). Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy. 228th Report. Ministry of Law from
<http://surrogacylawsindia.com/admin/userfiles/file/report228.pdf>

Researches (Digital Sources)

Bhowmick, N. (2013). Why people are angry about India’s new surrogacy rules from
<http://world.time.com/2013/02/15/why-people-are-angry-about-indias-new-surrogacy-laws/>

Isalkar, U. (2012). Lifestyle-related infertility on the rise from
<http://timesofindia.indiatimes.com/city/pune/Lifestyle-related-infertility-on-the-rise/articleshow/16427376.cms>

Islam, S. Nordin, R. Shamsuddin, A. Nor, H. Al-Mahmood, A. (2013). Ethics of Surrogacy: A Comparative Study of Western Secular and Islamic Bioethics from
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3708631/>

Mishra, A. (2014). Whether Euthanasia should be included as a part of Article 21 (Right to Life) of constitution of India-An analysis. Unpublished Online off Campus Random Research Program. Prof. Ranbir Singh Legal Research Centre, Shajapur (India).PP 4-5.

- Mukherjee,S. (2011). Legal and Ethical Issues of Commercial Surrogacy: An Overview. Indian Legal Aspects of Commercial Surrogacy from http://www.academia.edu/1955503/LEGAL_AND_ETHICAL_ISSUES_OF_COMMERCIAL_SURROGACY_IN_INDIA_AN_OVERVIEW
- Nigam, A. (2013). Surrogacy: An Indian Perspective from <http://www.tcog.in/articles/1/1/surrogacy-an-indian-perspective.html>
- Pilka, L. Rumpik, D. Pilka,R. Koudelka, M. Prudil, L. (2009). Surrogate Maternity- Literature review and Practice.Conclusion from <http://www.ncbi.nlm.nih.gov/pubmed/19514662>
- Prakash, S. (2010). Surrogacy a problem both socially and legally. Assisted Reproductive Technology and Surrogacy from <https://www.nls.ac.in/resources/ded/classnotesforyear2010ded/N9PIISurrogacy.pdf>
- Stark,B. (2012). Transnational Surrogacy and International Human Rights Law. ILSA Journal of International & Comparative Law. Volume 18:2 from hrcolumbia.org/gender/papers/stark_transnational_surrogacy.doc
- Steiner, L. (2013). The Baby Chase: How Surrogacy is Transforming the American Family. St. Martin's Press, 175 Fifth Avenue, New York, N.Y. 10010. United States of America. (ed. I). ISBN: 978-1-4668-3468-2 from <https://books.google.co.in>
- Teman, E. (2001). Women's Studies Quarterly: Women and New Technology. The Feminist Press. The city University of New York. P. 11. ISSN: 0732-1562. ISBN: 1-55861-279-3.
- Tehran,A. Tashi,S. Mehran,N. Eskandari,N. Tehrani,D. (2014). Emotional experiences in surrogate mothers: A qualitative study from <http://www.ncbi.nlm.nih.gov/pubmed/25114669>

Tong,R. (1995). Surrogate Parenting. Moral Arguments against Surrogacy vs. Moral Arguments for Surrogacy. Internet Encyclopedia of Philosophy from <http://www.iep.utm.edu/surr-par/#H4>