



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
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- International Law and Human Rights
- Environmental and Sustainable Development Law
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The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

LEGAL SURROGACY IN INDIA

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Abstract

In this article things like legal and social perspectives have been expressed widely. The article explains wider aspects of surrogacy in India before 2021 that brought medical tourism to India. It also explains changes in law that prohibits commercial surrogacy. The research conducted is secondary research considering many viewpoints including views of Jurists, social scientists and other researchers. The motivation behind the article is to bring out the real crux regarding evolving surrogacy laws in India.

Introduction

The word “surrogate” is rooted in Latin “Subrogare” (to substitute), which means “appointed to act in the place of.” It means a substitute, especially a person deputising for another in a specific role, so the surrogate mother implies a woman who becomes pregnant and gives birth to a child with the intention of giving away this child to another person or couple, commonly referred to as the “intended” or “commissioning” parents. Surrogacy is the process in which a woman carries and delivers a baby of another couple. It is the medical process that requires a legal contract that is required for intended parents and their carrier before medical treatment begins.

The Surrogate mothers are impregnated through the use of in vitro fertilisation. The process involves creation of embryos by fertilising eggs from the intended mothers or egg donor with sperm intending father or a sperm donor.

Commercial Surrogacy in India

Pre 2021 Anand in Gujarat was the Centre of commercial surrogacy. The Surrogate mother was supposed to live in a surrogate home. In short, this is the place where you can rent a womb. They are often looked upon with bad thoughts by society. Society still does not accept this job. The surrogate mother often earns more than Rupees 3 lakhs. Most of these women belong to lower income families. They have history of domestic violence, torture and other brutal act in their families. They were hired by the couple who could have a baby of their own due to

medical circumstances.

The Commercial Surrogacy is now illegal after “The Surrogacy Regulation Act” 2021.

Life of Surrogate Mother in India

The women becoming surrogate mothers were coming from lower backgrounds. They are mostly uneducated and unable to get a good job. They were forced into this job due to their financial conditions. These women are often unaware about the pros and cons of surrogacy. After delivery they used to get emotional pain due to detachment from their babies. The emotional pain due to detachment often resulted in psychological anxiety and other problems. The surrogate homes were often providing them the knowledge or training of other skills like Art and Craft, parlour activity etc. It was also providing them with healthy food, medicines etc. They fulfil all the needs and requirements of a surrogate mother.

Surrogacy: Exploitation and it's negative effect

Surrogacy had become a job of earning money. It was a booming business in India. The safety and security was in the cloud of dust for this industry. The human being involved and emotion involved are often neglected. India was the market of surrogacy for foreigners. There were hopes and things like that for the sake of having a baby. The new technology has opened a door worldwide including India till 2021. It had brought medical tourism to India There were about 1500 surrogacy centres in India till this time. Every year more than 20,000 babies are produced by the surrogate mothers of India. Among them 12,000 estimated for western clients. According to the book “Origin of Love” by Kishwar Desai, it was an attack on those women in many ways because it was being propagated in the absence of law, there was no witness to proper care and treatment given to surrogates. There was a lack of legal framework and women were paid less.

Laws related to surrogate motherhood in India

The surrogacy laws in India completely prohibits commercial surrogacy. The punishment prescribed is 10 years jail and fine upto 10 lakhs in Rupees. According to new law, only altruistic surrogacy is permitted where no money is exchanged and surrogate mother is genetically related to those seeking a child.

Difference between Altruistic Surrogacy and Commercial Surrogacy.

Altruistic Surrogacy:

According to Section 2 (b) of the Surrogacy Regulations Act, 2021, the altruistic surrogacy refers to a surrogacy without any monetary benefits as well as surrogate mother must be related to the couple seeking a baby.

Commercial Surrogacy:

It includes buying and selling of human embryos or trading in sale and purchase of human embryos or gametes. It also includes trading the service of surrogate motherhood by way of giving payment, reward, benefits, fees, remuneration or monetary incentive in cash or kind to mother or its dependents.

Rights of Surrogate Child:

According to Section 8 of the Surrogacy Regulation Act, 2021, the child should be deemed to be the biological child of the intending couple or intending mother.

Such children have all the rights and privileges that any natural child takes. Registration of Surrogacy clinics is required under Section 11 of the act

Prohibition and regulation of surrogacy Clinic

According to the Section 3 of the Surrogacy Regulation Act, 2021, certain things are prohibited:-

- (i) no surrogacy clinic, unless registered under this Act, shall conduct or associate with, or help in any manner, in conducting activities relating to surrogacy and surrogacy procedures;
- (ii) no surrogacy clinic, paediatrician, gynaecologist, embryologist, registered medical practitioner or any person shall conduct, offer, undertake, promote or associate with or avail of commercial surrogacy in any form;
- (iii) no surrogacy clinic shall employ or cause to be employed or take services of any person, whether on honorary basis or on payment, who does not possess such qualifications as may be prescribed;
- (iv) no registered medical practitioner, gynaecologist, paediatrician, embryologist or any other person shall conduct or cause to be conducted or aided in conducting by himself or through any other person surrogacy or surrogacy procedures at a place other than a place registered under this Act.

- (v) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist or any other person shall promote, publish, canvass, propagate or advertise or cause to be promoted, published, canvassed, propagated or advertised which—
 - (a) It is aimed at inducing or is likely to induce a woman to act as a surrogate mother;
 - (b) It is aimed at promoting a surrogacy clinic for commercial surrogacy or promoting commercial surrogacy in general;
 - (c) It seeks or aimed at seeking a woman to act as a surrogate mother;
 - (d) states or implies that a woman is willing to become a surrogate mother; or
 - (e) advertises commercial surrogacy in print or electronic media or in any other form;
- (vi) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall conduct or cause abortion during the period of surrogacy without the written consent of the surrogate mother and on authorisation of the same by the appropriate authority concerned: Provided that the authorisation of the appropriate authority shall be subject to, and in compliance with, the provisions of the Medical Termination of Pregnancy Act, 1971 (34 of 1971);
- (vii) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall store a human embryo or gamete for the purpose of surrogacy:
- (viii) no surrogacy clinic, registered medical practitioner, gynaecologist, paediatrician, embryologist, intending couple or any other person shall in any form conduct or cause to be conducted sex selection for surrogacy.

National Assisted Reproductive Technology and Surrogacy Board And State Assisted Reproductive Technology and Surrogacy Board

National Assisted Reproductive Technology

The Central Government shall constitute a board in order to regulate the provisions related to surrogacy. This board shall consist of the Minister in-charge of the Ministry of Health and Family Welfare, the Chairperson, ex officio; the Secretary to the Government of India in-charge of the Department dealing with the surrogacy matter, Vice-Chairperson, ex officio; three women Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States, Members, ex officio; three Members of the Ministries of the Central Government in-charge of Women and Child Development, Legislative Department in

the Ministry of Law and Justice and the Ministry of Home Affairs, not below the rank of Joint Secretary, Members, ex officio; the Director General of Health Services of the Central Government, Member, ex officio; ten expert Members to be appointed by the Central Government in such manner as may be prescribed and two each from amongst— eminent medical geneticists or embryologists; eminent gynaecologists and obstetricians; eminent social scientists; representatives of women welfare organisations; and representatives from civil society working on women's health and child issues, possessing such qualifications and experience as may be prescribed;

Reference

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