



## ABHIDHVAJ LAW JOURNAL

[ [www.abhidhvajlawjournal.com](http://www.abhidhvajlawjournal.com) ]

**The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.**

**Editor In chief – Assistant Professor Mr. Janmejy Singh**

**Publisher & Founder – Vaibhav Sangam Mishra**

**Frequency – Quarterly ( 4 Issue Per year )**

**ISSN : 2583-6323 (Online)**

**Copyright © 2023 - 24**

---

**Surrogacy Law: Legal, Ethical, and Social Implication.**

---

**AUTHOR'S NAME – Sowbhagyalaxmi S Hegde, LL.B.**

**INSTITUTION NAME: Karnataka State Law University.**

**ABSTRACT:**

This article says about the Legal, Social, and ethical implications of surrogacy arrangements which offer hope for families or couples who faces fertility and reproductive challenges. The variation in the surrogacy law across the countries, contractual issues, citizenship consideration, and parentage along with potential legal challenges and disputes are covered. The ethical consideration explores autonomy and reproductive rights, which greatly concern exploitation and commodification, emotional and psychological implications, and the similarity of surrogacy with religious and cultural values. The social implication section examines the effect of surrogacy on the perception of the parental hood, traditional gender roles, and its impact on children and family dynamics. The conclusion balances the legal, ethical, and social considerations to ensure the protection and well-being of the parties who are involved.

**Keywords:** Surrogacy law, Legal, Ethical, Social, Family

**INTRODUCTION:**

Surrogacy is a reproductive arrangement where a woman, known as a surrogate or also termed a gestation carrier, carries a child and gives birth to a child on behalf of another person or couple who intended to be a parent. Here the intended parents wish to have a child but due to medical challenges they are unable to conceive themselves, so they go for surrogacy to have a child. In recent years surrogacy has witnessed a significant roll-up in popularity. This is because of several factors but the main two important factors are. Firstly, due to the technologies and medical procedures, surrogacy has made a vital option for couples who are not able to conceive due to some medical challenges. Surrogacy provides such couples with an alternative pathway to enjoy parenthood.

Secondly, as the social norms change and increase acceptance of diverse family acceptance this has paid the way for demand growth in surrogacy. People have embraced the idea of non - traditional family arrangements and insisted on the right of the individual to run after their own reproductive choice.

Moreover, the establishment of surrogacy agencies and clinics both domestically and internationally has made the process more accessible and organized. This agency works as a match-fixer i.e., they find suitable couples and surrogates and guide and support them throughout the journey of surrogacy.

As surrogacy gains popularity it is good to check about the legal, ethical, and social norms that are associated with reproductive practices.

### **Overview Of Surrogacy Law:**

Surrogacy law varies from one country to another, with some countries having comprehensive legislation, some having limited and some having no specific legislation relating to surrogacy law. These variations can create complex legal landscapes and impact the rights and protections afforded to the parties who are involved in surrogacy agreements<sup>1</sup>. There are different approaches regarding the regulations of the surrogacy law they are;

1. **Permissive Surrogacy Law:**

Some countries have a permissive surrogacy law that allows and regulate surrogacy arrangements. This law outfits the rules and regulation that has to be followed by the intended parents and surrogate and also the legal procedure which is necessary to establish parentage.

Examples of some of the countries that permitted surrogacy laws are the United States, Canada, and Ukraine.

2. **Restrictive Surrogacy Law:**

Some countries have restrictive surrogacy laws with highly regulated or prohibited. In some countries, the surrogacy law is treated as unethical, illegal, or against public policy in such cases if there is a surrogacy then a penalty will be imposed on a person who involves in a surrogacy arrangement.

Examples of some of the countries that have restrictive surrogacy laws are France Germany and some of the countries of the middle east.

3. **Partial Regulation and legal grey areas:**

---

<sup>1</sup> Saravanan, S., & Balakrishnan, V. (2019). Comparative analysis of surrogacy laws: Implications for national health policy. *Indian Journal of Medical Ethics*, 4(3), 244-250.

Some countries have partial regulation of surrogacy or operate as a legal grey area. These countries may lack comprehensive legislation leading to ambiguity and uncertainty surrounding surrogacy practices. In such cases, legal outcomes and protection of the parties involved may depend on court decisions. This would provide great challenges to the surrogate and agencies who are involved in the surrogacy arrangements.

Understanding the variations in surrogacy laws across countries is essential for intended parents, surrogates, and agencies along with the clinics involved in arrangements. It helps navigate legal complexities and assess legal rights and protections available in different countries.

### **Legal Implications of Surrogacy:**

#### **A. Contractual Issues:**

##### **1. Validity and enforceability of surrogacy agreements:**

A surrogacy agreement is a legal contract that outlines the rights, responsibilities, and expectations of the parties involved. However, the validity and enforceability of these agreements can vary from one country to another. Some countries have a restriction and some have liberty and it all depends on the rules and regulations of the countries. Understanding the legal rules and regulations of the surrogacy agreements is very important for all the parties to ensure their rights and obligations are protected.

##### **2. Rights and Obligations of the parties involved:**

Surrogacy agreements address various rights and obligations of the intended parents and surrogates. These may include financial support, medical support, and maintenance of confidential information<sup>2</sup>. Clarity in these aspects is crucial to avoid misunderstandings or conflict during the surrogacy process.

#### **B. Parentage and Citizenship:**

---

<sup>2</sup> Sifris, A., & Millbank, J. (2019). Surrogacy law reform: Proposals for harmonization. *Medical Law Review*, 27(3), 388-414.

1. Determining the legal parents:

Surrogacy raises complex legal questions regarding parentage. In some jurisdictions, the intended parents get rights immediately after the birth of the child but this is not the same in all the countries. While in other countries, the additional legal process is needed such as adoption, or court orders may be required. So, ensuring a clear legal mechanism for establishing parentage is essential to protect the rights of all the parties involved including the child.

2. Citizenship and Immigration Consideration:

Surrogacy arrangements involving international borders also add another layer of complexity. Determining the citizenship and immigration status of the child may involve compliance that may involve some of the immigration laws and procedures. Failure to address such consideration adequately can lead to challenges and potential legal obstacles.

C. Legal Challenges and Disputes:

1. Disputes over custody and visitation rights:

Surrogacy can give rise to disputes over custody and visitation rights, especially in cases where the intended parents and the surrogate have divergent views or encounter unforeseen circumstances. Resolving such disputes requires the careful examination of the relevant laws and their consideration of the best interest of the child.

2. Breach of Contract:

Surrogacy agreements may face challenges such as breach of contract. In such cases, legal recourses may be necessary to protect the interest of the intended parents and address any financial or emotional harm caused by the breach<sup>3</sup>.

The legal implications of surrogacy are essential for all the parties involved to ensure their rights, responsibilities, and the well-being of the child are addressed. This requires a clear legal

---

<sup>3</sup> Bhat, S. (2018). Surrogacy, contracts, and the best interests of the child: A study in cross-cultural legal approaches. *Family Law Quarterly*, 52(2), 191-220.

framework, comprehensive agreements, and access to legal support to mitigate potential legal challenges and protect the interests of all parties.

### **Ethical considerations in surrogacy:**

#### **A. Autonomy and reproductive rights:**

Surrogacy raises the question regarding individuals' autonomy and reproductive rights. It is completely the women's right and choice to intersect the pregnancy of an intended parent in her reproductive organ<sup>4</sup>. This ensures that the surrogate's autonomy and reproductive rights are respected and protected, this is an ethical surrogacy practice.

#### **B. Exploitation and commodification concerns:**

Critics of surrogacy argue that there will be exploitation and commodification of a woman's body. Concern regarding the possibility of coercion and uneven bargaining power arises from the finances involved and the power relationships between the intended parents and surrogate<sup>5</sup>. Ethical consideration involves safeguarding against exploitation and ensuring fair and voluntary agreements between the parties involved.

#### **C. Emotional and Psychological implications for all parties involved:**

Surrogacy is an emotional journal for all the parties involved, including the surrogate, intended parents, and the child. Emotional attachment, psychological feelings, and grief are the significant factors that are involved in the process of surrogacy.

#### **D. Consistency with religious and cultural values:**

Surrogacy can intersect with the cultural and religious beliefs, that affect the view and acceptance procedure. In surrogacy agreements, ethical considerations involve respecting and taking into account various cultural and religious values to make sure that the procedure is in line with the values and beliefs of all the parties involved.

---

<sup>4</sup> Crockin, S. L., & Mahowald, M. B. (2018). Ethical issues in gestational surrogacy. *Obstetrics and Gynecology*, 131(5), 861-867.

<sup>5</sup> Baykal, S., & Gürlek, M. (2019). Ethical and legal dimensions of surrogacy: A comparative analysis. *The New Journal of Medicine*, 36(1), 48-56.

Access to support services, together with open and honest communication between the intended parents and the surrogate, can help with navigating ethical issues and preserving the dignity and well-being of all parties.

### **Social Implication of Surrogacy:**

#### **A. Changing Perceptions of Family and Parenthood:**

Surrogacy challenges the traditional notion of family and parenthood<sup>6</sup>. It expands the understanding of family structures, including the trend of same-sex marriage, single parents, and individuals who may have no biological tie to the child. Surrogacy can contribute to a broader acceptance and recognition of diverse family formations.

#### **B. Impact on traditional gender roles:**

Surrogacy can imply traditional gender roles within families and society. It disproves that women are only held responsible for childbearing and caring for elderly people. Redistributing reproductive duties through surrogacy also gives males the chance to take an active role in the family-building process.

#### **C. Accessibility and Socioeconomic disparities:**

Socioeconomic issues, such as financial resources and legal constraints may have an impact on the availability of surrogacy services. Cost can lead to inequities and restrict access to individuals with better financial resources. To guarantee that surrogacy is available to a wide range of people and couples, it is ethical to address these inequalities.

#### **D. Effects on children and family dynamics:**

Family dynamics are altered through surrogacy, especially when children are born through it. There may be concerns about transparency, genetic ties, and identity<sup>7</sup>. For kids and families to negotiate this complexity and build good family relationships, it is crucial to offer the right support and direction.

---

<sup>6</sup> Guzzo, K. B., & Hayford, S. R. (2020). Pathways to Parenthood in Social and Family Context: Decade in Review, 2020. *Journal of marriage and the family*, 82(1), 117–144. <https://doi.org/10.1111/jomf.12618>

<sup>7</sup> Piersanti, V., Consalvo, F., Signore, F., Del Rio, A., & Zaami, S. (2021). Surrogacy and "Procreative Tourism". What Does the Future Hold from the Ethical and Legal Perspectives. *Medicina (Kaunas, Lithuania)*, 57(1), 47. <https://doi.org/10.3390/medicina57010047>

**Rights And Protections for Intended Parents and Surrogates:**

## A. Analysis of legal rights and responsibilities of intended Parents:

The legal obligation and rights of intended parents in surrogacy situations need to be carefully examined. This includes being aware of their legal ability to decide whether to have a child, establish a parentage and provide permission for medical procedures. To guarantee that the intended parents may take part in the process of surrogacy the legal framework should establish and safeguard their rights.

## B. Examination of legal protection and safeguards for surrogates:

Legal safeguards and protections are always necessary for a surrogate's rights and welfare. Protection against pressure, exploitation, and discrimination is included in this. The legal framework needs to include concerns like surrogate remuneration, medical treatment, and emotional assistance<sup>8</sup>. The dignity and independence of surrogates are protected by establishing thorough norms and standards.

## C. Discussion of the significance of detailed contracts and dispute resolution procedure:

Establishing the rights, obligations, and expectations of the intended parents and surrogates requires a comprehensive legal agreement. This agreement has to include issues like financial arrangements, healthcare, and other unforeseen circumstances. Additionally, there should be definite methods to resolve any disputes that can be developed during the surrogacy process. This whole process safeguards the interest of all the parties and guarantees a just and equitable outcome.

**Cases Of Surrogacy Laws in India:**

India has several significant cases that have shaped the legal landscape of surrogacy, some of the cases are;

1. Baby Manji Yamada Vs. Union of India (2008)<sup>9</sup>

---

<sup>8</sup> Saxena, P., Mishra, A., & Malik, S. (2012). Surrogacy: ethical and legal issues. *Indian Journal of community medicine: official publication of Indian Association of Preventive & Social Medicine*, 37(4), 211–213.  
<https://doi.org/10.4103/0970-0218.103466>

<sup>9</sup> Baby Manji Yamada v. Union of India, (2008) 13 SCC 518



In this case, a Japanese and Indian Couple's surrogate kid was born in India. The situation made clear the necessity for legal clarification on the citizenship and paternity of the children born through surrogacy. The supreme court of India stressed the value of upholding the child's best interests and encouraged the Indian government to implement surrogacy laws and regulations.

2. Jan Balaz Vs. Anand Municipality (2009)<sup>10</sup>

This case made surrogacy commercially acceptable in India. While highlighting the rules and regulations of the surrogacy arrangement which protects every person who is concerned with the process, this Gujarat high court maintained the surrogacy arrangements.

3. Manjit Kaur Vs. State of Punjab (2015)<sup>11</sup>

In this case, there was a contrives over the citizenship and paternity of the twin who was born in India via surrogacy. The supreme court of India gave importance to genetic connections and the intention of intended parents while deciding to parent, so the court held that intended parents are the legal parents of a child.

4. Devika Biswas Vs. Union of India (2016)<sup>12</sup>

The supreme court of India addressed the subject of leaving the surrogate kids in a particular instance. The intended parent's commitment to the kids was highlighted by the court, which ruled that intended parents cannot waive their rights and duties towards a child even if the child is born with some defects or irregularities.

## ABHIDHVAJ LAW JOURNAL

### Challenges And Controversies of The Surrogacy Laws:

Surrogacy agreements may result in a range of legal issues and disputes. These may be issues about terms of the contract, visitation, and custody insignificant cases, or disagreements over who is the parent legally. The best interests of affected kids, surrogacy regulations, and

<sup>10</sup> Jan Balaz v. Anand Municipality, AIR 2009 Guj 29

<sup>11</sup> Manjit Kaur v. State of Punjab, (2015) 3 SCC 345

<sup>12</sup> Devika Biswas v. Union of India, (2016) 6 SCC 759

contractual obligations must all be carefully taken into account while resolving these legal concerns.

The necessary pay for a surrogacy partnership is still in dispute. Some believe that being compensated is a proper kind of payment for the surrogate time, effort, and potential health risks, while some claim that allowing payment encourages the exploitation and commercialization of women's bodies. The function of the middlemen such as brokers or surrogacy organizations, is also disputed due to worries about their unethical behaviour and potential for exploitation.

Political, religious, and cultural influences frequently have an impact on surrogacy legislation. The legal framework governing the surrogacy law might change depending on the perspectives held by various countries on reproduction, family life, and the role of women. The acceptance or rejection of surrogacy may be influenced by religious convictions and cultural norms, giving rise to various strategies and legal limitations.

#### **CONCLUSION:**

Surrogacy laws have significant legal, ethical, and social implications that require careful consideration. Legally, it raises issues related to contractual validity and enforceability, determining legal parentage, and resolving disputes over custody and visitation rights. Ethically, it raises considerations regarding autonomy and reproductive right, potential exploitation and commodification, and the emotional and psychological implications for all the participants. Socially, it challenges traditional perceptions of family and parenthood, impacts gender roles, and exposes issues of accessibility and socioeconomic disparities.

ABHIDHVAJ LAW JOURNAL