**Surrogacy in India and other European Countries: Comparative Analysis**

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**Abstract**

Feminist in India or any other country are not found just on the basis of their work at home but the good labor i.e. the global production of the good labor are not found readymade. They are produced from their labor at different work places and their hard work. In reference to the various studies that were made in relation to the surrogacy these mothers are not just found readymade but they are produces at the surrogacy centers and the surrogacy clinics. India has become a new form source of outraging to surrogacy culture and it is not just limited to India but people from all over the world hire women workers from India to surrogate their child. On the amount fixed for surrogacy it is been hired in India and no government regulation is imposed on the same. Surrogacy laws in India are fixed and are same for all depending upon the citizenship in India and for that various bills have been asses by the Indian government which will study later in the Research. Surrogacy laws vary in all over the Europe and it is also illegal in various countries. Countries like Denmark, Ireland, Netherlands etc surrogacy is not the culture that they really follow in their country and is still illegal based on the norms decided by the European government. This study mainly focuses on the comparative analysis that is based on the culture of surrogacy held in India and other European countries. This would further state that what are the difficulties faced by the surrogacy mothers in India and other countries and what are the demands they place in front of the government for the reforms to be made. The cost that is decided in India for the matter in surrogacy it has become more famous and prevalent in the other nations. Indian surrogacy has established a name worldwide which has its prons and cons attached with the statement.

**Keywords**-: Surrogate, Labor, Mother, Feminist, India, European Countries etc

**Introduction**

[[1]](#footnote-2)Commercial surrogacy in whole is not really restricted to medical circles. Surrogate mother is another name that is given to surrogacy which is the bio-genetically mother of the baby. There are two types of surrogacy in general form Traditional Surrogacy and Gestational Surrogacy. In traditional type of surrogacy the baby is intended to both the mother who gives the birth or who provides the egg and is related to the genetically father where as in the gestational type of surrogacy the child is only related to father who provides the sperm and the mother who gives the egg and not the surrogate mother. Both types of surrogacy differ in the form of evolution of the baby. Commercial surrogacy is the type of surrogacy in which the surrogate mother is entitled who is paid for the tries to carry the baby in the womb till the time she gives birth to the baby and till the time the couple is paying her according to the cost decided in mutual.

[[2]](#footnote-3)This matter can be totally dealt into four frames of consideration in which the first clause is the right of the women to use her body in whatever way she likes and want to which do not come in between the work ethics or morals of the women. The problem of the surrogacy occurs when the matter travels in the south around the globe and the matter is clearly very new for the people living in the south. The matter is not really new in the north of the globe especially in the Europe and North America and people are really used to with the matter of surrogacy in the North. Labor and commercial surrogacy has a very keen and interesting fact together because most of the surrogate mother is labors in some way or the other and they keep the baby in the womb because it meets the needs of the living. Feminists is not just the need of the hour in the surrogacy but the parents who actually cannot give birth to a baby the matter is in relation to those parents for example- the Gay parents or the Lesbians parents cannot give birth to a baby so they have to take help of the surrogate mother to fulfill their need of becoming a parent.

[[3]](#footnote-4)Indian surrogacy is not only limited to Indians but the women of India are surrogating baby for the people living in abroad and exports them in the` form of commercial surrogacy. This concept extends to the matter of paid and unpaid criteria of business from abroad the nations and it travels across the globe in the people. Later with the mapping it was found that the couples takes or make their participation in the act of surrogacy. The idea of motherhood, domestic and contractual labor forms a unique mixture in the matter of surrogacy in India and extends in the whole part of the country and the globe. The exact need of surrogacy in the country is not really found till date researches and various theories have been laid down to bring out the motive behind the culture of surrogacy. The global market of the surrogacy is working on the discrimination of the class, status, race and other factor which create a sense of discrimination among the people. According to the data provided by WHO (World Health Organization) one tenth couples depends on the concept of surrogacy to reproduce or to have a baby of their own to raise the family. The reason behind why the couples and the women are not able to give birth to the child properly can be given to the increase in the pollution and environment degradation in the society which in turn results in degrading the fertility of women to give birth. Yet this matter is only limited to certain class or the society of the upper middle class who can afford the cost of surrogacy and not everyone can take the benefit of the culture which is benefitting or degrading the society in some way or the other.

**Surrogacy in India**

Whenever a couple of taking surrogacy in the matter across the globe the first country that comes in the mind of the couples is India from which they opt for surrogacy. India has not been just the country to think about the concept but the change that has been adopted by the India in the method of surrogacy adopts the people across the globe to try their womb and to complete their hope of becoming parents and to take the idea of gestational surrogacy in India. Rather than just to keep the concept limited to the International surrogacy it is important to know the basis of the surrogacy in India.

**Present Laws of Surrogacy**

[[4]](#footnote-5)There has been lot of change that is bought in the matter of Indian surrogacy by the legislation so that the new reforms brings the needed change and gain the level of popularity that is needed not just by Indian parents but the international Parents on the same hand. In December 2018 a new reform was made in the surrogacy laws which brought a drastic change in the gestational and traditional form of surrogacy in India. Before the made amendment in 2018 surrogacy was carried forward with the laws which were stated in 2002 by the Indian Council of Medical Research and the stated provisions. In 2010 a judgment was passes by the Supreme Court of India which stated that the commercial surrogacy was illegal in India and cannot be carried forward as it is treated as an industry and a business in the country. In 2015 the ban was raised on the parents that were coming from abroad for completing a form of international surrogacy in India and take baby from here because the concept was illegal in their country. The ban prevailed in India putting a full stop on the parents that were coming from abroad and increasing the concept of international surrogacy in India.

On 19 December 2018 the India government approves the laws that were stated by the legislation in the country which restricts the surrogacy that is intended by the domestic parents. There are few important restrictions that are made on the surrogacy in India and they are as follows-:

* Commercial surrogacy was considered to be totally illegal in the country.
* The infertile couples i.e. the couples who were not able to reproduce Altruistic surrogacy were made only available for them.
* The parents or the couple who is planning to adopt the method of surrogacy should be married for five years before opting for surrogacy and should have medical certificate with them which proves their infertility.
* The surrogacy can be only done for once by any women and she should be a close relative or a close person to the intended parents and should be married before and should have a biological child before being a surrogate.
* Surrogacy is prohibited for few categories like Homosexuals, Single parent and the living relationship cannot opt for surrogacy in India.

Important Ethical and Moral Effect of Surrogacy in India

Like many other practices that are carried in India and other countries Surrogacy has itself become a very controversial topic keeping in mind the international relations and effects. India has become an industry place or a business place in matters of surrogacy and a trade medium for many developed countries.

The biggest problem that arises with the surrogacy in India is the treatment of surrogate mother who is willing to keep the baby in the womb. Inspite of lot of financial assistance provided to them in the matter they are not able to get the proper facilities that they actually deserve. They are accompanied in the dwelling by the hospitals where all the surrogate mother lives together and they are given equal treatment like others. They do not live there because they want to live there but they are actually forced to live there with all the others.

Surrogacy in India has become a business that is carried by the big hospitals clinics of surrogacy and the medical staff. The cost of surrogacy in India was kept to the minimum when the commercial surrogacy was legal in India which was a clear invitation to all the United states parents and the other countries where the surrogacy was either illegal or the cost of that was so high that they cannot afford it at all. The surrogates were paid the amount of 4000 to 5000 for one surrogacy and rest all the beneficiary amount was kept by the surrogacy agencies and the clinics and they make the maximum amount of money out of it. All this happened because of the lack of knowledge among the surrogates and the less experience and knowledge in the matter lead to lot of exploitation in the matter and they were exploited to the maximum.

With the new amendments in the laws of surrogacy in India many new questions and the ethical questions have arise in the minds of women. What if there are women who actually want to become surrogates to meet the needs of their living? What if there are actually couples who want to become parents and are not able to because of their problem of infertility. What if there are women who want to become surrogates for the sake of Humanity etc.? Because of the link of surrogacy with the international surrogacy, no clear answer has been found for the current matter of surrogacy in India.

Those who are interested in Indian Surrogacy

Indian surrogacy is bought with many challenges that are thrown on surrogates and because it is legal in Indian, it has become a place and source for many intended United Nations parents but it is fought with many risks.

Whenever a parent wants to opt for surrogacy they find India a suitable place for it but it is then never know buy the couple of any place that whether the laws that are stated are going to be the same or not .

**[[5]](#footnote-6)Reforms in the Surrogacy in India**

It has been seen that there has been drastic change in the Asia in the matters of surrogacy. India has banned the surrogacy like Thailand and Nepal has banned the concept of surrogacy.

Our legislation has made the reforms that Indian surrogacy is banned for the international intended parents and the couples from outside India cannot expect surrogacy to be made in India. Lot of harmful practices have been resulted in the case of surrogacy in India as like other developed countries the practices that were available for the surrogates were not satisfying and were leading to harmful results by the international intendents. The facilities are very less for the women who actually want to become surrogates and they are not to get a proper place to even give birth to a baby. On the other hand, surrogates in India only receive compensation of 4000 o 5000, which was very less even to take care of their living properly in the country.

Because of the unfavorable conditions assigned to them by the Indian clinics and agencieswas considered to keep the surrogacy in the country intact and not to make it international or worldwide. They were only considered as a machine to make babies and were not given much importance like women in the case. To eliminate the struggle Indian government took necessary steps so that the women in the country were given equal weight like men. It is very important to implement the rules that are equal for everyone and are implemented without discrimination to bring the sense of equality in the country.**Surrogacy in other European Nations**

[[6]](#footnote-7)The legal aspect of surrogacy tends to rely on the particular questions based on the jurisdiction and the laws that are stated by the country.

* The first question that arises in the mind of the people is- Whether the surrogacy is the legal criteria in the country or is illegal? Whether the surrogate mother of the baby is paid is paid for the job i.e. the commercial surrogacy or is compensated for the expenses that occurred during the period of surrogacy i.e. altruistic surrogacy?
* Is there any difference between the commercial surrogacy and the altruistic surrogacy that is assigned in the country accordingly by the laws?
* Is there any law that states the legality of the intended parents either after the birth or before the birth of the baby or whether the adoption can be made after the recognition of the parents?

Law varies from the jurisdiction-to-jurisdiction and country to country that whether the law promotes the concept of surrogacy in the state. Law can also be stated on the basis of the citizenship and the residency of the citizen that on the basis of the identity he or she can surrogate the baby.

It is the stated facts that the problems whether the surrogacy should be legal or not arise in the European countries too and the problem of surrogacy is the biggest problem that arises in the country. The topic is not really limits to one country or a place but it travels around the globe. The matter until remains in the cross borders of the country remains inside and not the controversial topic. Now it’s important to figure how the European Union and the European government frame the act of surrogacy in the country.

[[7]](#footnote-8)Imagine a country which favoring the surrogacy laws like other laws. The current data of the euro news spread the current motive of Europe, which stated Australia to be the nonprofit organization and ban the act of surrogacy in their country. Italy, Spain, France and Germany are one of those countries, which totally outsource the laws that are related to surrogacy in the country. In Ireland, the Netherlands, Belgium and the Czech Republic is has been stated that the acts that were related to the surrogacy are to be considered null and void therefore enforceable in the country. In UK the altruistic form of surrogacy is somewhat legal whereas Portugal also allows the altruistic form of surrogacy to the heterosexual couples who are need of surrogacy but this law is only limited to the citizens of the country. Ukraine and Russia are the countries, which allow the matter of surrogacy to prevail in the country to benefit the couples who are in need.

Bill Houghton the founder of the consultancy group in founder stated the fact that inspite of stopping the concept it is becoming much more efficient and more running topic of the country. Sensible kind of surrogacy works in the country like UK, Italy, Ireland, France, Sweden and German etc. he further stated that 50% f the heterosexual couples in which the amount is 50% of the gay couples use the concept of surrogacy to reproduce. Norwegians were the largest group to opt for surrogacy in Europe and Spain was turned out to be the largest market. India, Thailand and Nepal have turned out to be the new recent largest spots of surrogacy in the worldwide.

**Debate**

[[8]](#footnote-9)Critics of surrogacy have given the statement that surrogacy is the type of form that is exploiting the communities and is increasing the emotions values in the life of the surrogates which creates difficulty in the child custody and parenthood of the child. When surrogacy is banned in the nations than much exploitation is created by the prostitution and the self split business than it should also be banned. Women are considered to be the factories of making babies and this business has led to the trafficking which is not right for any type of economy to expand. Laws should also be amended with the rights that are provided to the surrogate mother in which the birth certificate should be provided with the name of the mother in which it should be written that the custody rights will prevail. However, there have been people who are in for the motion with the thought or some are in against the motion with the thought and action.

[[9]](#footnote-10)**Comparison of Surrogacy Laws**

* In India after surrogacy bill 2016 only altruistic surrogacy is allowed and commercial surrogacy is prohibited which goes same for Netherlands, Greece and UK.
* In India only Medical expenses is covered of surrogate including insurance, in Netherlands the expense related to IVF and other insurance charges and adoption charges are covered for the surrogates, UK also covers the charges that are related to the delivery gestational period etc.
* In couples to opt for surrogacy, the couple should be married whereas in Netherlands, UK, and Greece the surrogacy can even be given to single parent.
* The couple getting a surrogate should have a citizenship in the country in India but in Greece they can be a domicile and payment residence in UK.
* To opt for surrogacy the age should be 25-35 years in India, in the other European countries the age is not really specifies, and can vary depending upon the place.
* The surrogate should be a close relative or a close friend to the intended parents in India and no such relation is required in the European countries in the case of surrogacy to happen in the country.
* The surrogate needs to have at least of her own to become a surrogate in India and Netherlands and not need to have in UK or Greece.
* There is no restriction on being a surrogate in European countries but in India one women can only be surrogate for once n her life.
* Imprisonment is imposed in every country on practicing the practice of commercial surrogate in one country because commercial surrogacy is strictly illegal. Imprisonment more than 10 years is imposed in India and Imprisonment more than 3 months is imposed in UK and more than 10 years in Greece.

**International Law**

The segment to divide solely lie under the private international law and the provisions stated under it. The applicability of the laws related to the surrogacy depends upon the European Union to apply the law in the country and state. In the past time is was applicable in some other sense and the laws very strictly opposite to the statement but now in the present time the applicability depends upon the law stated by ICCS and the Hague meeting on private worldwide law. The applicability of the law totally depends upon the provisions stated by European Union but it also depends upon the considerations of the United Nations about the child privileges and the child custody norms. It is sated that the Europe has also stated the laws regarding the surrogacy and its applicability in the country.

**International Commission on Civil Status**

[[10]](#footnote-11)The international commission on civil status i.e. ICCS is a intergovernmental association which made by a convention that was stated in Bern on 25th September 1950. The aim and the purpose of the organization is the state the laws that are related to the refuges, missing people and disabled people. The convention aims at maintaining relations with the states and country in the matters like marriage, divorce, birth of the child etc. which can connect the countries together for work. The ICCS has also signed the cooperation agreement between the Hague Conference and the European council to establish the motive of care for the displaced people.

The inside investigation of the convention states that this convention records all the data that work for the benefit of the poor and unprivileged in the country. The law related to the maternal filiations the surrogacy laws with ICS were drafted in the report that came out in 2003. It also gives and provides the law related to the country like France, Spain, United Kingdom and Greece.

**The UN International Convention on Children Rights**

[[11]](#footnote-12)Thirty Years ago the UN international convention on Children Rights was introduced which was a historic remark in the history of International law that provides the laws related to the Children Rights and the protection of babies in the country.

After its implementation it became a most ratifies human right in the country under which all the children were safe in the country and were provided the laws that benefit the remarks living of the children in the country.

However, with every implementation of the right the treaty the flaws and the criticism are always welcomed and under which the rights of the children were implemented but the exact law fails to get accompanied in the country like Europe.

These conventions are the type of human rights that are strictly based on the motive to provide the best facilities and living for the children in the country. With the arrangement with the UN and EU, the children are provided with the best privileges focusing on the advancement of the country and the state and keeping in mind the norms stated by the countrymen. According to the EU of the country,[[12]](#footnote-13)Article 7 is about the certain things- Providing name to the child, and right to provide the nationality belonging on the parents and the right to take care of the child by the parents. Article 6 talks about the equality right to life for every citizen in the country and Article 21 talks about the adoption and framing of the children accordingly.

**Surrogacy Laws in India**

[[13]](#footnote-14)After 228th report of the of law commission in India commercial surrogacy was totally banned in the country and altruistic surrogacy was given importance. Law Commission of India stated that commercial surrogacy is an illegal and undeserved form of surrogacy that is prevailing in India and should be banned and only the common surrogacy i.e. the altruistic surrogacy should be banned totally.

**The Surrogacy Bill-:**

[[14]](#footnote-15)The Surrogacy Bill 016 was introduced by LokSabha on 21st November 2016 and it came into force in the country by 2017 and then it was referred to the standing committee. On 10th of August the reports regarding the aim and objective of the bill were given to LokSabha and then later after taking all the necessary steps the Bill was passed by the LokSabha on 19th of December 2018.

The motive of this bill was strictly to prohibit the concept of concept of commercial surrogacy from the country and just to bring altruistic surrogacy in motion. This bill further saves the rights of the children and the surrogate and even protects both from getting exploited. The bill also aims at benefitting and no touring the couple who is infertile and does not experience the benefit of giving birth to a baby the bill help those couples. Although the surrogate does not get any benefit of monetary help from the intended parents but only the medical expenses and the expenses till the delivery of the baby.

**Surrogacy Bill 2016 passed by LokSabha-:**

[[15]](#footnote-16)Section 2- Provides the reference of the altruistic surrogacy which means that no charges or ny other monetary assistance is not provided to the surrogate but only the medical expenses and the medical facilities would be provided to the surrogate. Commercial surrogacy is the form of surrogacy in which an embryo a human life is traded in the form of the business and has become a form of earning money. It has become a commercialization business of buying and selling of embryo. This is a concept of selling human life and motherhood in the country. The intended parents are supposed to pay monetary expenses to the surrogates and commercially handle all the expenditure and even provide the remuneration to the surrogate mother and pay all the insurance.

[[16]](#footnote-17)Few Important Provision of 2016 Bill-:

Section 3 of the Bill states that-

Surrogacy taking place should be registered in the surrogacy clinics. Commercial surrogacy is highly prohibited to take place and altruistic surrogacy can also take place only in registered clinics. Any kind of surrogacy should not be socially advertised and no under qualified doctor can perform it. Abortion is the big decision to take and it cannot be taken without the consent of the original mother under pregnancy termination act, 1971. No storage of embryo is allowed for the later use purposes.

Section 4 of the Bill states that-:

It states the purpose of opting for surrogacy i.e. the infertility of the couple, for the altruistic surrogacy purposes not for the purpose of commercial surrogacy and not for the purpose of prostitution and selling of the surrogate baby out.

Section 4 (3)-: the director of the clinics states the clauses and the requirement for the issuing of the surrogacy certificate.

The infertility of the couples should be proved by the court or the doctors issuing the certificate. The insurance of the surrogate mother and the mother should be done before approving it. the surrogate order should be passed by the magistrate of the court allowing the couple to take the service.

Eligibility of becoming a Surrogate

[[17]](#footnote-18)Women should be married and should ne 25-35 years of age. She should be a close relative to the intended parents and should have given one surrogate birth in her to opt for another and there is no limit on the attempts to be made. The surrogate should be medically and psychologically fit and the fit certificate should be issued by the registered doctor of the clinic.

Eligibility of the Couple Opting for Surrogacy

[[18]](#footnote-19)Age of the women should be 23 to 50 years of age and the man should be 25 to 55 years of age. The couple should be married for at least 5 years in the time and they should obviously be the citizens of India. To opt for surrogacy the intended couple should not have any baby before otherwise it will reject the surrogacy pattern.

Section 6, Section 7 and Section 9- states that written consent of surrogate mother is necessary and she should be told regarding all the prons and cons of the birth of the baby. It is also stated that after the birth the child should not be abandoned by the intended parents and should be taken care of. It is also stated that no one with any force can ask the surrogate mother to abort the child.

Rights of Protection of Surrogate Mother

[[19]](#footnote-20)Section 35 of the Bill- States that commercial surrogacy should strictly be prohibited and the protection should be done of the unborn child in every way possible.

No one is entitled to spread the news regarding the commercial surrogacy or no one is either allowed to practice the concept of commercial surrogacy or its service. No person or the parents are abort the child in any form or no one is either allowed to exploit the surrogate mother in any form. The act like buying and selling of embryo or the import and export of embryo in business form is strictly prohibited and are punishable under the bill like offence.

Section 37- states the provision relating to the punishment of commercial surrogacy. It states that any person who is performing the act of commercial surrogacy shall be punished with the imprisonment not less than five years and the fine can even extend to the limit of 5 lacks rupees for the first offence or the subsequent offence the imprisonment can extend to 10 years and the fine too can extend to 10 lacks rupees.

Applicability of the surrogacy bill 2016-:

This bill is applicable in all the parts of the country and in all states except for the case of Jammu and Kashmir. The bill provides the exact provisions of surrogacy to the national surrogacy board or the state surrogacy board to act accordingly.

This bill is only applicable till Indian citizens and not the foreigners’ citizens at all and commercial surrogacy is strictly prohibited.

Homosexuals and the single parent are prohibited from the bill and only the infertile parent can opt for surrogacy in India.

**Evolution in Surrogacy Laws in India**

**Case Laws**

1. **[[20]](#footnote-21)Baby Manji Yamada V. Union of India 2009 SC Page 84**

Baby Manji was a baby who was surrogated in India for the Japanese couple who surrogated a baby in India. Because of some reasons the couple separated before the birth of the new born baby and because of which the baby’s future was left in dark and for the struggle. Due to some reason the legal father wanted to take the child back to Japan but there was no legal provision in India nor in Japan who would permit the cause and especially in the case of surrogacy it is highly prohibited. Later when nothing was to be done because of lack in legal system the Supreme Court of India declared that the baby was allowed to live with the grandmother and the Indian government felt the need of introducing Laws for the prevention of this type of cause and for the protection of the baby. Then after the Manji’scase international surrogacy was prohibited from India.

1. **Jan Balaz V. Anand Municipality**

[[21]](#footnote-22)This case was ruled by Gujarat High Court in which the court held that very surrogate mother who is giving birth to a baby will be provided with a birth certificate in which the name of the surrogate mother and the name of the biological mother would be written so that no confusion is created later. The surrogate mother had to give birth to baby and give the baby to the German couple for the adoption purposes etc. Government stated that the child would be given the citizenship of India and will be provided with the passport of Indian citizen.

After this case the court felt the need of introducing laws with prohibit the transfer of baby internationally. Then the bills were amended and few amendments were made in the bill which stated the ban of the surrogate mother to give birth to a baby to a couple outside the country and the ban is still active.

**Conclusion**

Women empowerment is working with a great amount of force in every country but till implementations of the women empowerment laws has not been seen in the country like India till date and women still are struggling for their rights and laws that are stated in the country. 1surrogate is not a business that big organizations and big medical clinics are making it day by day. It is a human activity, which a woman agrees to help to other women who is deprived of fertility and baby in her life and is I short a cause to earn for her living to maintain a proper living for the family.

Therefore keeping all these situations in mind surrogacy bill was generated and implemented to help women and to state provision according to which they can be a surrogate by her choice. Women were exploited by many international couples and foreign buyers who were making the surrogacy as a business in the market and making it a profit making organization. To stop this procedure of profit making and making human cause moneymaking because of which surrogacy bill was amended keeping in mind the problems that were there in the surrogacy concept.

No legal strict step was taken by the law making authorities and the government to stop the non-global cause, which was global. The act was created keeping in mind the sense of equality and its agenda to spread globally. The act did not bought any kind of discrimination on the basis of caste, color, creed and sex and it was universal for all to stop the exploitation and the bad causes that were happening with the women of the country. Women are a sole keeper of any and every country and they should be protected and promoted with all means and with all safety. Every law in the country that is made should be made keeping in mind the problems that are to be eradicated from the country.

In the European countries too law should be amended keeping in mind the problems that are there in the matter of surrogacy and should be stopped in the country or can be evenly controlled. No rights are given to the baby in those countries and it strictly depends on the surrogate how she treats the situation, rights to the baby should be given with all power and should be amended equally.

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