

How to Cite:

Mudhol, S. S., & Dwivedi, R. (2022). An intersection of right to privacy and surrogacy law: Experiences from other countries. *International Journal of Health Sciences*, 6(S4), 11886–11898. <https://doi.org/10.53730/ijhs.v6nS4.11420>

An intersection of right to privacy and surrogacy law: Experiences from other countries

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Abstract---Privacy is an essential component of human existence, and is now a fundamental right of every individual. It is realised that this fundamental right to maintain one's secrecy and solitude according to one's whims requires a definitive meaning and strict practical application to ensure citizens autonomy. The necessity for privacy regulations and civil rights of privacy for every individual, regardless of sexual choice, sparked the privacy debate in the twenty-first century. However, because privacy is not an absolute right, every invasion must be justified by law and must be founded on legality, need, and proportionality in order to protect this prized right. One such on-going instance is the relationship between the Surrogacy Bill and the Right to Privacy. The Bill is heavily criticised for being discriminatory, prejudicial, and invasive of the fundamental right to privacy. In the paper, the author traces out how the Right to Privacy pertains to one's body with regard to the Surrogacy Bill. Issues of bodily autonomy, consent, information sharing, and so on are thoroughly discussed in the paper. The author has traced the jurisprudence of the Right to Privacy and its jurisprudential development as a Fundamental right, the intersection between Right to Privacy and surrogacy law, the laws and experiences of the other countries. Unfortunately, even in today's world, there are occasions when one's right to privacy about their own bodies is questioned.

Keywords---article 21, bodily autonomy, constitution, privacy, reproductive rights, surrogacy.

Introduction

The human body is considered to be one of the most magical machine, the biological purpose of which, is to give birth. The ability to procreate and bring a new life into the world is one of the many blessings of life. It is only because women desire to experience this ability that women adopt ARTs (Artificial Reproductive Technologies) when they are unable to bring or do not choose to bring a life into this world. Couples may now have children thanks to the rapid advancements in science and technology, and surrogacy is one method by which this is aided. Surrogacy is also one of the artificial reproductive technologies that is used to give birth to a child, wherein another woman bears the child for others to be a parent. The woman who bears the child is said to be a surrogate and the couple who would raise the child are generally referred to as an intending couple. With the rapid advancements in science and technology, the infertile couples are now able to bear and raise a child. There are various artificial reproductive technologies (ART) that are used for the same, such as In-Vitro Fertilisation (IVF), Intra-Uterine Injections (IUI), donor insemination, transfer of embryos, and so on. Surrogacy is characterised by the Artificial Reproductive Technique (ART) Guidelines as “arrangement in which a woman agrees to a pregnancy, achieved through assisted reproductive technology, in which neither of the gametes belong to her or her husband, with the intention of carrying it to term and handing over the child to the person or persons for whom she is acting as surrogate; and a ‘surrogate mother’ is a woman who agrees to have an embryo generated from the sperm of a man who is not her husband, and the oocyte for another woman implanted in her to carry the pregnancy to full term and deliver the child to its biological parents(s)”.¹ One of these methods through which a couple becomes a parent is surrogacy. Surrogacy is where a woman bears a child for others to raise. So basically, the term surrogate translates to mean substitute.² The World Health Organisation (WHO) has concluded with an estimate on the fertility rate of a couple, that only eight to twelve percentile, which approximately amounts to fifty to eighty million people of the entire globe as a couple, face infertility issues.³ Further, these figures are also supported by the National Family Health Survey (NFHS) and the Indian Council of Medical Research (ICMR).⁴ Surrogacy has different legal standing in different nations and areas. Some nations outright prohibit it, while others only permit altruistic surrogacy in exchange for payment of ‘reasonable expenses’ to the surrogate. A few nations, on the other hand, allow both altruistic and commercial surrogacy. Finally, the legal position of surrogacy in many nations is unclear: it is neither officially outlawed nor authorised.

This “womb for rent” has resulted in a sort of commercial surrogacy. India has become a place for ethical dumping and due to the rampant globalization that is taking place, the surrogacy business is surging. This has led to a lot of ethical and legal issues and thus, children and women are exploited. This paper intends to talk of the intersection of an artificial reproductive technology of surrogacy with

¹ The Assisted Reproductive Technologies (Regulation) Bill, 2010, (India) S.2 (aa),.

² Malini Karkal, *Surrogacy from a feminist perspective*, IJME, (1997).

³ Sexual and Reproductive Health Research, WHO, (2021).

⁴ The ICMR National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India (2005).

that of the women's right. The government ought to act on this gray area and enact a stringent law relating to surrogacy in order to guide and regulate the same. It is only due to the lack of regulation on the same that this problem has arisen. The government, although has made certain initiatives in this regard. It has introduced various guidelines through ICMR for regulating the same, and there are Bills that are yet to be ratified, but it is only due to the lack of provisions of law in this regard that the surrogate mothers and child are at a risk and their interests are not protected. There have been instances wherein due to these issues, even the commissioning couple are unable to take the child as the citizenship and nationality of the child comes into question. For the very same reason, it becomes imperative that there is a good legal framework on this area. The restrictions placed on the rights of the parties ought to be just and reasonable, and not in violation of their right to privacy.

In order to protect the needs of the populace and stop further exploitation, these problems must be resolved. This paper seeks to analyse the implications of the Surrogacy Bill upon the Right to Privacy. The research paper seeks to answer the following questions:

- a. What is India's right to privacy's scope and extent?
- b. What is the legal status of surrogacy across the globe?
- c. Whether the surrogacy bill has an impact on an individual's right to privacy.

Right to privacy in India: Scope and extent

The right to life and personal liberty is guaranteed by Article 21 of the Indian Constitution, while Article 19 protects the freedom of speech and expression, which includes the right to privacy.⁵ "Right to Privacy directly & specifically means control of an individual over the collection, use, disclosure of personal information." The apex court of the country in the famous *Puttaswamy case*⁶ has regarded Right to Privacy as a fundamental right. The first instance of Right to Privacy being brought before the court was in the case of *M.P. Sharma and others v. Satish Chandra, District Magistrate, Delhi*⁷ wherein the court did not recognise Right to Privacy as a fundamental right. In *Kharak Singh v. State of Uttar Pradesh*⁸, the Supreme Court held that the mode of surveillance by visiting the house of the accused at night was held to be in contravention of the accused's right to life and personal liberty. The court did not go into the question of Right to Privacy stating that there is no express provision for it and therefore, it could not be considered as a fundamental right. The minority opinion *A.K Gopalan*⁹ recognised Right to Privacy as a part and parcel of Article 21. Subsequently, in cases like *Maneka Gandhi vs. UOI*¹⁰, *Gobind v. State of M.P.*¹¹; *R. Rajgopal v. State*

⁵ Ibid.

⁶ Justice K.S. Puttaswamy Vs. Union Of India, (2017) 10 SCC 1.

⁷ M.P. Sharma and others v. Satish Chandra, District Magistrate, Delhi, (1954) SCR 1077.

⁸ Kharak Singh v. State of Uttar Pradesh, (1954) 1 SCR 344.

⁹ A. K. Gopalan v. State of Madras, (1950) SCR 88.

¹⁰ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

¹¹ Gobind v. State of Madhya Pradesh (1975) 2 SCC 148.

of *Tamil Nadu*¹²; *PUCL v. UOI*¹³ have upheld Right to Privacy as an implicit facet of right to life and personal liberty and laid down that the restrictions ought to conform with the 'just, fair and reasonable' test and the 'compelling state interest' test. Therefore, the restrictions cannot be fanciful or arbitrary and must be in accordance with just law. The Court has brought about a differentiation between the two kinds of remedies that can be claimed for the infringement of right to privacy, namely, a tortious claim or a constitutional challenge under Article 21. As the Right to Privacy is not absolute, and there can be reasonable restrictions that can be imposed upon the same. There is no standard or test laid down to determine whether privacy is infringed. The approach of the courts of India in respect of the Right to Privacy depends on the facts and circumstances of each case. Collection of various kinds of data such as the biometric and demographic data was carried out throughout the country. The judgment overruled *M.P. Sharma v. Satish Chandra*¹⁴ and *Kharak Singh*¹⁵ to the extent wherein it was held that Right to Privacy is not protected by the Constitution and the previous judgements which recognised Right to Privacy as a facet of right to life and personal liberty were upheld. It stated that "The Right to Privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution".¹⁶

India, on the other hand, exhibits progressive thinking. In 2018, the LGBTQ+ community's rights were greatly increased. The Apex Court, led by then Chief Justice of India Dipak Misra, decriminalised gay encounters of a consensual nature by striking down a section of Section 377 of the Indian Constitution in the case of *Navtej Singh Johar v. Union of India*¹⁷ (2018). As a result, members of the aforementioned group have the legal right to marry and/or have consensual relationships, regardless of gender, sex, orientation, or identity. In another instance, Venkata Subbaiah filed a plea with film actress T. Sareetha for restitution of conjugal rights under the Hindu Marriage Act, 1955, wherein the decision is linked privacy to one's body. T. Sareetha's mind and body would be violated if her conjugal rights were restored without her consent, according to the ruling. As a result, her right to privacy has been violated.¹⁸ Supreme Court has clearly stated that the "right to privacy" or the right to be left alone is protected by Art. 21 of the constitution in *R. Rajagopal v. State of T.N.*¹⁹, often known as the "Autoshanker case" A person has the right to protect his or her own private, as well as the privacy of his or her family, marriage, procreation, motherhood, childbirth, and education.

The *K.S. Puttaswamy (Retd.) v. UOP*²⁰, also known as the Aadhar judgement has dealt with the Right to Privacy comprehensively. The decision demonstrates a

¹² *R. Rajgopal v. State of Tamil Nadu* (1994) 6 SCC 632.

¹³ *PUCL v. Union of India*, (1997) 1 SCC 301.

¹⁴ *M. P. Sharma v. Satish Chandra*, (1954) AIR 300.

¹⁵ *Kharak Singh v. State of Uttar Pradesh*, (1963) AIR 1295.

¹⁶ *Supra* 2.

¹⁷ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321

¹⁸ *T. Sareetha v. T. Venkata Subbaiah*, AIR 1938 AP 356

¹⁹ *R. Rajgopal v. State of Tamil Nadu*, 1995 AIR 264

²⁰ *Supra* 2.

constitutional perspective of where liberty positions a person in the social order. Because the fundamental rights are not to be viewed in isolation, every infringement of fundamental rights must pass the Constitution's basic criteria of Articles 21 and 14. The court laid down certain tests that need to be met with in order to curtail the said right of an individual. It includes the need of having a law; that the legislation should not be made in an arbitrary manner; and that the legislation that infringes on a person's right should be proportionate to the goal of attaining a valid governmental goal. In paragraph 3 (H) of the conclusion, the Lead Judgement mentions the standards for justifiable constraints on the right to privacy. It states that any regulation that infringes on the right to privacy must "pass the test of permitted limits on basic rights." Any violation of privacy must be governed by a legislation that is "fair, just, and reasonable." The following would be the three requirements for such an infringement: "(i) *legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate state aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them*".²¹ In paragraph 45 of his decision, Justice Chelameshwar stated that, in addition to fulfilling the 'fair, just, and reasonable' criterion under Article 21 as held in the *Maneka Gandhi v. Union of India*²², there should be a need for 'compelling state interest'. Justice Nariman noted that if it is determined that the social or public interest and the reasonableness of the limits outweigh the particular feature of privacy sought, privacy will prevail. Justice Sapre noted that the right to privacy is subject to reasonable constraints "in view of the social, moral, and compelling public interest that the state is permitted to impose by law". Justice Kaul noted that the right to privacy would be subject to reasonable limits on the grounds of national security, public interest, and the grounds stated in the provisos to Article 19 of the Constitution.

The inter-section between right to privacy and the surrogacy bill

There are now two types of surrogacy that are used: "conventional" and "gestational." Traditional surrogacy involves using a woman's own egg and another man's sperm, which is accomplished by artificial insemination. In vitro fertilisation (IVF) is used for gestational surrogacy, where prepared eggs from a different woman are implanted in the uterus of the replacement. The most important and early decision a replacement and the expecting parent should make is choosing the course to pursue.

The Assisted Reproductive Technology Bill²³ and the Surrogacy Bill²⁴ were both initially a consolidated legislation. Considering the pressures put on by the society and the need for a bodily autonomy of women, The Surrogacy (Regulation) Bill of 2020 was enacted on the twenty fifth of December after receiving the presidential assent. The Bill seeks to prohibit commercial surrogacy in order to bring the exploitation of women and children to a stand-still. The Bill although, does allow altruistic surrogacy, but commercial surrogacy, which alludes to the demonstration of surrogacy for monetary advantages and includes remuneration

²¹ Ibid.

²² *Maneka Gandhi v. Union of India* AIR 1978 SC 597.

²³ The Assisted Reproductive Technology (Regulation) Bill, 2021, (India).

²⁴ The Surrogacy (Regulation) Bill, 2020, (India).

past clinical costs and protections during pregnancy, is banned via this regulation. The said Bill also pushes for establishment of a National, State and Union Territory Surrogacy Boards, and appropriate authorities to regulate the surrogacy activities. The Bill has additionally been blamed for being prejudicial towards individuals from the LGBTQ+ people group and unmarried couples, with BJD's Dr Amar Patnaik and Bhuyan explaining that the regulation repudiates the 'right to conceptive decisions' under Article 21 by barring a few segments of the general public. The Bill lists down several offences which involves penalties that include imprisonment up to ten years or a fine of Rs. Ten lakh.²⁵

When a lady signs up to be a surrogate mother, she is signing up the control of the next nine months of her life, wherein she cannot decide her appetite, her sexual partners, the medical tests she needs to undergo, and let's not cast aside the possibility of an abortion or even a fatal consequence. No amount of agony brought about by infertility, or the extraordinary craving to have one's 'own' hereditary kid, nothing on the planet can at any point legitimize putting the assemblages of two other people the substitute mother and the egg 'contributor'-in danger of short and long haul medical conditions that can be brought about by IVF strategies as well as pregnancy and birth difficulties. In order to safeguard the rights to health of the women, mandates are put in place such as a woman must be under the age of forty-five and cannot be a surrogate if she has had three live births, and so on.²⁶

The measure intends to outlaw all forms of commercial surrogacy. It depicts a paternalistic viewpoint in which the government chooses what is good and bad for citizens by restricting their freedom. It turns surrogacy into a moral and ethical issue when it isn't. The measure ignores a woman's inherent right to produce children as well as her constitutional right to work and make money. The Bill's proposed restrictions might compel the company to go underground. In such a rigorous regulation, the chances of unethical behaviour and corruption would be significant. It overlooks the changing realities of modern life, including the possibility of single parents. It lacks vision due to gender discrimination by denying same-sex spouses this privilege. Furthermore, all people are equal before the law under Article 14 of the Indian Constitution. The government has violated the equality that the Constitution grants to single parents and gays by restricting the right to have a surrogate child to heterosexual couples alone. In accordance with a Supreme Court decision, long-term live-in relationships and marriage are equal, and children born to them are legitimate. The government is diminishing the importance of live-in relationships and setting a negative precedent by only allowing surrogacy for legally wed couples. A close relative may be compelled to become a surrogate mother for an impotent marriage in the family by the family. Further, the stigma associated with surrogacy would also discourage anybody (even family) from applying to be surrogate mothers. This might limit the number of options for finding surrogate mothers. Since the process is long and arduous, adoption also might not be the solution. Furthermore, the bloodline problem prevents people from switching from surrogacy to adoption. It looks strange that people are participating in surrogacy while over twelve million Indian children are

²⁵ Supra, 7.

²⁶ Ankiet Vashisht, Surrogacy and women's right in India, Law Times Journal, (2020).

orphaned. India currently lacks comprehensive adoption laws that apply to all or any of its citizens, irrespective of their place of worship or country of origin, including Non-Resident Indians (NRIs), Persons of Asian Nation Origin (PIOs), and Indians who are expatriates (OCIs). They are therefore forced to select between IVF and surrogacy. The Guardian and Wards Act of 1890 only permits adoption, not guardianship. The Hindu Adoption and Maintenance Act of 1956 prohibits non-Hindus from adopting Hindu children, and immigration laws that come into effect after adoption add to the difficulties. The Surrogacy (Regulation) Bill of 2016 attempts to address the concerns of two key stakeholders in the surrogacy industry: the surrogate mother and surrogate child, in order to avoid exploitation and protect their rights. The bill's focus should have been on two things: safeguarding children's rights and respecting the agreement between the moms and the commissioning parents.

At this point, a robust law with stringent restrictions and enforcement is essential to answer the concerns of all sector players. There is a strong desire for change to simplify the adoption process for everyone. Laws should be written and followed in order to fill in the blanks and protect the rights of women and children. However, by outright prohibiting commercial surrogacy, the measure has placed an undue emphasis on the surrogate mother. India's surrogacy sector is now developed. Prohibiting it now might lead to implementation issues, extortion by state officials, and the firm going underground.

There are several cases of how a surrogacy might lead to a legal hassle. For example, in Baby Manji Yamada's case²⁷, in this specific case the Japanese couple went into an agreement with an Indian lady to be the proxy mother for their youngster. After this Baby Manji Yamada's case led to one of the most prominent legal hassles in India involving the nationality and citizenship of Baby Manji Yamada. In the end the Apex court of India mediated and Baby Manji was permitted to leave the country with her grandmother. After the instance of Baby Manji the Supreme Court of India in 2008 held that surrogacy is legal and valid in India because of which there is a rise in the global trust in going in for the surrogacy in India. Another case on these lines is the The German Couple Case²⁸ wherein a couple has twins through the surrogate mother and their nationality and citizenship was in question and the surrogate mother did not want to give up the children. The High Court of Gujarat guaranteed him as the Indian resident and the surrogate mother thus needed to give the kid to the German couples in reception. In an another case the Israel gay couple Yonatan and Omer Gher became guardians in India in year 2008 through help of a surrogate mother, after which both the gay couples have accorded with a child as the Israel regulations doesn't permits a similar sex marriage and thus they arrived in India. Hence, the kid was conceived and the gay couple left to the Israel in the year 2008.

That being said, the Bill is criticised to strip women of their right to bodily autonomy. It puts excessive limitations on would-be surrogate's rights as the authorities have offered no consistent reasoning for why unwed and childless

²⁷ WRIT PETITION (C) NO. 369 OF 2008

²⁸ Dhananjay Mahapatra, German or Indian? Surrogate Twins In Legal No-Man's Land, Times Of India, (2009).

ladies ought not be a surrogate. With the shortfall of such a defence, the choice of any genuinely and intellectually fit lady to proceed with a surrogacy course of action ought to be her choice alone, especially when the courts of the country have held their ground on numerous occasions that the right to make reproductive choice, right to privacy, right to dignity and the right to bodily integrity are covered by Article 21 of the Indian Constitution. Further, this attempt of the government is an encroachment of the various fundamental rights and basic principles are inscribed in the Constitution of India itself. The Bill confines itself to wedded straight couples is violative and discriminatory against the LGBTQ+ society. Additionally, the bill's meaning of infertility that is used to lay out couple's eligibility is excessively restricted. It covers as it were "those couples who can't consider following five years of unprotected sex." It doesn't cover accomplices who experience the ill effects of ailments, for example, uterine fibroids, that might permit a lady to imagine yet keep her from conveying a child to term. It likewise doesn't cover ladies who basically don't wish to convey a kid to term. The rundown of such provisions goes on: The bill gives the intending couple to say in whether to proceed or end a pregnancy; it condemns not just the ones who fill in as a surrogate yet in addition their mates and family members; and a lawful outlining that moves the obligation to prove anything onto those companions and family members could prompt an expansion in vindictive arraignments. No doubt, the act of surrogacy might appear to be ethically repulsive and strange to certain individuals, there stays this inevitable truth: It was a significant kind of revenue to numerous ladies in India - especially ladies from financially distraught foundations. Assuming that this bill becomes regulation, the effect on these ladies' lives will be significant, considering how even the Parliamentary Standing Committee on the 2016 surrogacy guideline bill perceived disadvantages of limiting surrogacy only to altruistic cases.²⁹

Comparative analysis of surrogacy laws in India, Netherlands, The United Kingdom, South Africa, Greece and Russia

Simply expressed, the right to privacy refers to the legal framework that protects persons and their personal information. Article 12 of the United Nations Declarations of Human Rights (UDHR) 1948 and Article 17 of the International Covenant on Civil and Political Rights (ICCPR) 1966 both stipulate the right to privacy. An individual's right to privacy shields them against 'arbitrary intervention.'³⁰ India is a signatory to both the ICCPR and the UDHR.

| SURROGACY LAWS ACROSS THE GLOBE | | | | | | |
|---------------------------------|--|--|--|--|--|------------------------------|
| Country | India | Netherlands | UK | South Africa | Greece | Russia |
| Nature | Altruistic-Commercial surrogacy prohibited | Altruistic-Commercial surrogacy prohibited | Altruistic-Commercial surrogacy prohibited | Altruistic-Commercial surrogacy prohibited | Altruistic-Commercial surrogacy prohibited | Commercial surrogacy allowed |
| Fees paid to | Insurance | IVF-related | Reasonable | Insurance | Costs | There is no |

²⁹ Shonottra Kumar, India's Proposed Commercial Surrogacy Ban Is An Assault On Women's Rights, *The Wire*; (2019).

³⁰ Krishnadas Rajgopal, The Lowdown On The Right To Privacy, *The Hindu*, (2017).

| | | | | | | |
|---------------|----------------------------|---|---|---|--|--------------|
| the surrogate | coverage and medical costs | costs that are reasonable, as well as those associated with pregnancy, birth, adoption, insurance, and legal fees | costs that do not include compensation for the surrogate mother | coverage and medical costs; Any reduction in income incurred by the surrogate mother because of the pregnancy. Pregnancy-related expenses, as well as those for gestation, birth, and the postpartum period | associated with the pregnancy, labour, delivery, and postpartum period; Any reduction in income incurred by the surrogate mother because of the pregnancy. | restriction. |
|---------------|----------------------------|---|---|---|--|--------------|

CRITERIA FOR ELIGIBILITY FOR COMMISSIONING PARENTS

| | | | | | | |
|---------------------------------|---|---|--|--|---|---|
| The need of marriage | Yes | No- Single male/female allowed | No—includes prospective parents who are in a civil relationship or who are only living together as partners. | No- Single male/female allowed | No- Single female allowed | No- Single female allowed |
| Citizenship and/or residency | Citizenship | Citizenship | Permanent residence | The commissioning parents must be a domicile in the nation, at least one of them. | Domicile | There is none. |
| The presence of a medical cause | The incapacity to conceive must be proven | Hysterectomy, congenital uterine absence, or any other condition that makes it difficult for the intended | There is none | Unable to become pregnant and having such a condition permanently and irreversibly | The intended mother is unable to give birth due to medical issues | It is not feasible to become pregnant or give birth owing to medical issues |

| | | | | | | |
|---|----------------------|--|--|-------------------------|-------------------------|---|
| | | mother to conceive a child | | | | |
| SURROGATE MOTHER CRITERIA FOR ELIGIBILITY | | | | | | |
| Age | Lesser than 44 years | Nothing specific | Nothing specific | Nothing specific | Nothing specific | 20 years to 35 years |
| Pertaining to commissioning parents | Close relative | No such requirement | No such requirement | No such requirement | No such requirement | No such requirement |
| The need of marriage | It exists | No such requirement | No such requirement | No such requirement | No such requirement | No such requirement |
| Number of biological children | Minimum one | Minimum one | No such requirement | Minimum one. | No such requirement | Minimum one |
| How many times a person may act as a surrogate | Once | There is no restriction | There is no restriction | There is no restriction | There is no restriction | There is no restriction |
| Approval from the partner | No such requirement | No such requirement | No such requirement | There is a requirement | There is a requirement | There is a requirement |
| The surrogate child's statutory guardian | Commissioning couple | Surrogate- Transfer of guardianship through adoption | Surrogate- If the intended parents are genetically related to the surrogate baby, the guardianship can be transferred by adoption; if not, a court order must be obtained. | Commissioning couple | Commissioning couple | If the surrogate mother has donated her egg, then she. If the surrogate mother hasn't given her egg, the intending parents. |
| Imprisonment for engaging in commercial surrogacy | Minimum ten years | Maximum one year | Maximum three months | Maximum ten years | Minimum two years | There is no such mention |

*A comparative study on the regime of surrogacy in EU member states, European Parliament, 2013; India: The Surrogacy (Regulation) Bill, 2016; Netherlands: Dutch Society of Obstetrics and Gynaecology guidelines; United Kingdom: Surrogacy Arrangements Act, 1985; South Africa: Chapter 19, Children's Act, 2005; Greece: Article 1458 of the Greek Civil Code; Russia: Article 51-52, Family

Code,1995; Federal Law on the Fundamentals of Protection of Citizens' Health in Russian Federation 2011; PRS.³¹

Various nations have a comprehensive and stringent system of rules which, unfortunately, leads the the childless couples to visit the other nations in order to have a child using the various artificial techniques. Nepal can be considered as a center point for surrogacy where huge number of couples visit consistently to employ surrogate mothers. The explanation for this is most importantly it is extremely financially savvy in nations like Nepal and besides, neediness forces the hands of the women of such nations to take part in this strategy. In U.S., on the off chance is of the view that the surrogate mother if does not to have a blood connection with the intending couple, the child isn't permitted to have a citizenship of the country. This standard is trailed by numerous nations to set an example to discover that who truly has a place with their country.³² But when spoken of bodily autonomy, with the overturning of *Roe v. Wade*³³ in *Dobbs v. Jackson Women's Health Organization*³⁴, leaves abortion regulations totally up to the states because there is no federal statute safeguarding the right to an abortion in the US. Restrictive regulations that forbade abortions before the Supreme Court established the 1973 foetal viability criterion are likely to be reinstated by conservative states.

The Irish Constitution guarantees people' personal rights under Article 40. Bodily integrity is an assumed right, even if it is not a written or codified rule in their constitution. This signifies that the government has deduced from precedents or other legislation that physical integrity is their right and will be protected. "You have the right not to have your body or personality tampered with," the court said in *Ryan v. Attorney General*³⁵. This implies that the government cannot endanger your life or health in any way. You have the right not to have your health jeopardised while you are in custody."

The United States Constitution does not allow the government to take a stance on personhood. However, the United States Supreme Court has frequently maintained people' right to privacy, therefore maintaining physical integrity. The case of *Griswold v. Connecticut*³⁶ was heard in 1965. The Supreme Court of the United States backed women's rights to acquire birth control without their spouse's approval. By way of precedent, this has indirectly empowered women with reproductive autonomy. The idea of body autonomy, however, is not without limitations. The country pushes for the government to infringe on a person's actions in a fair manner, whether by prohibiting narcotics and euthanasia or requiring the use of helmets and seatbelts in a vehicle.

³¹ Nivedita Rao, International Comparison Of Surrogacy Laws, PRS Legislative Research, (2016), <https://prsindia.org/billtrack/prs-products/international-comparison-of-surrogacy-laws-2713>.

³² Ibid 10.

³³ 410 U.S. 113

³⁴ 2022 WL 2276808

³⁵ *Ryan v. Attorney General*, 1965 IR 294

³⁶ *Griswold v. Connecticut*, 381 U.S. 479

Conclusion and Findings

The craving for parenthood leads fruitless couples/single people/gay couples to look for elective arrangements, and surrogacy introduces itself as the most feasible other option. Sometimes surrogacy is the just accessible choice for the couple who wish to have a kid that is naturally connected with them. The Surrogacy Bill, 2020 in comes with perfect timing when there is need to investigate the course of the business surrogacy which is turning into an untrustworthy business for individuals of India at large. The Bill principally centers around the restriction of the double-dealing that is drilled with the substitute mother and the youngster too who is brought into the world through the surrogacy.

1. As of late, India has arisen as an extremely famous objective for surrogacy as course of action for a couple who is unable to have a child. Explanation for this is, it cost extremely modest for this in contrast with different nations and another explanation is that, in the vast majority of the European nations and in certain provinces of USA, surrogacy is unlawful.
2. The surrogacy contract includes the intending couple, surrogate mother and the facilities similarly, yet it is so that in the contract, the only parties are the intending couple and the surrogate mother and not the clinics as they do not want to be involved in these activities, which leads to a lack of accountability, and a testament to this is the rise in maternal death.
3. Gradually, however consistently, India is arising as a well-known objective for surrogacy game plans for some rich outsiders. The lack of law in this regard and the lack of accountability makes India an alluring choice. Be that as it may, with the section of monetary plans in return of the surrogate kid, substitute parenthood has raised troublesome moral, philosophical, and social inquiries.
4. Surrogacy has made child a 'saleable ware', and confusions have emerged in regards to the rights of the surrogate mother, the child, and the intending couple. The absence of exploration on surrogacy additionally represents an issue for Government organizations with regards to starting lawful arrangements and making a considerable move against those viewed as liable.
5. Ensure that a court or other competent authority determines all paternity and parental responsibility decisions concerning a surrogacy agreement, with the child's best interests acting as the primary factor.³⁷
6. Various surrogacy related questions stays unanswered, including: is it legitimate to become surrogate mother in India? Will the kid brought into the world to an Indian surrogate mother be a resident of this country? Who orchestrates the birth declaration and visa expected by the unfamiliar couple at the hour of movement? Whose name will show up on the birth certificate? How might the authorizing guardians guarantee being a parent? What occurs in the event that the substitute mother alters her perspective and won't surrender the child or extorts for care? Who will assume the liability of the kid on the off chance that the charging guardians won't take

³⁷ United Nations Human Rights, Surrogacy, Special Rapporteur On The Sale And Sexual Exploitation of Children, <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>.

the youngster? What might occur assuming that the kid is conceived impaired? What might occur on the off chance that the sex of the kid isn't to the loving of the authorizing guardians? Such inquiries need careful examination before any approach connecting with surrogacy is planned and lawful arrangements are made.

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