

THE OTHER SIDE OF THE HORIZON

Vol - II

PEN ACCLAIMS

**To,
Soham,
Companion & confidant!**

“The Other Side of the Horizon”

(Volume -2)

ISBN: 9798675903337

Anthology of,

‘4th National Article Writing Competition’

Powered by,

“Pen Acclaims”



Preface

A thought that has been enduring in mind when becomes real, is truly an interesting and exciting experience. This book is one such cherished work that has its roots in the persuasion of many authors, contributors and also mentors which has now embellished to become the snapshot of the innumerable efforts put in since months. This book serves to reinforce increased awareness, improved interaction and integration among all of us.

As the Editor of this book entitled “The Other Side of the Horizon”, I wish to thank all researchers across the globe, who have submitted their contributions. The main aim of this book is to enhance knowledge among researchers, students and the legal fraternity at large and to provide an opportunity for creative research and multi-level consideration of broader issues related to legal insight from both national and interdisciplinary perspective.

It has been indeed a pleasure going through the journey of compiling this book. This maiden issue will surely inspire all of us for a new beginning and enlighten the minds of young scholars with hope, confidence and faith.

Happy reading!

**Dr. Pooja Dasgupta
Chairperson
Pen Acclaims**

Index

S. No.	Title of Paper	Page No.
1	Nikita Chauhan School of Law, UPES, Dehradun (<i>Surrogacy: Medical Divinity or Capitalist Exploitation?</i>)	1
2	*Kajal D. Mhasal **Sachal Mantri Maharashtra National Law University, Aurangabad (<i>Highlights and Brief Analysis of the Surrogacy (Amendment) Bill, 2020</i>)	4
3	Taniya Singh Amity Law School, Delhi (IP University) (<i>Surrogacy: Systematic Evolution towards Betterment</i>)	8
4	H. Abhinav Srinivasan Tamil Nadu National Law University (<i>Unauthorized Personnel Only: A Broad Perspective on Mob Lynching from Here to Eternity</i>)	12
5	*Maheswari Suresh **Ardra V. Sabu Kerala Law Academy Law College, Trivandrum (<i>Surrogacy in India</i>)	15
6	*Aditya Narayan **Jayant Sagar ICFAI Dehradun (<i>Nepotism and its Global Presence</i>)	18
7	*Amisha Tiwari **Upasna Tawar UPES, Dehradun (<i>Machinery of Violence in the Hands of the Mob</i>)	22
8	Kavya Chintapalli GITAM School of Law, GITAM University (<i>Fake News Induced Mob-lynching by dint of Social Media- A concern?</i>)	25
9	B. Makarajothi Tamil Nadu Dr. Ambedkar Law University (<i>India and its Lingering Border Disputes</i>)	29
10	Ankita Tiwari School of Law, UPES Dehradun (<i>Mobocracy: A Colour Line Murder?</i>)	33
11	Priyansi Vijay Patil Agnel School of Law (<i>Mob Lynching</i>)	36
12	*Akanksha Mukherjee **Ragini Chakraborty KIIT School of Law, Bhubaneswar, Odisha (<i>Mob lynching: The Dark Truth of Social Media</i>)	40
13	Nishant Kumar School of Law, UPES, Dehradun (<i>Mob Lynching: A curse to the civilized society</i>)	44
14	*Roma Sangwan The NorthCap University, Gurugram **Mohit Vats University School of Law and Legal Studies, Guru Gobind Singh Indraprastha University, Dwarka (<i>Surrogacy (Regulation) Bill, 2020: Golden Triangle Test</i>)	47

15	*Sonali Pal **Alka Sharma Amity University, Kolkata (<i>Surrogacy Laws in India: A Critical Interpretative Approach</i>)	52
16	Biruchan Chetia Phukon Alliance University, Bangalore (<i>Mob Lynching: Law and Order at Stake</i>)	56
17	Chetan Hasija Symbiosis Law School, Noida (<i>Mob Lynching</i>)	59
18	Ms. Ankita Mondal VELS Institute of Science, Technology and Advanced Studies, Pallavaram (<i>Mob Lynching: A Violation of the 'Rule of Law'</i>)	63
19	Khyati Deshmukh National Law Institute University, Bhopal (<i>Dilemmas of Surrogacy</i>)	67
20	Shubhanker Jhingta Symbiosis Law School, Pune (<i>Commercialization of Surrogacy in India</i>)	70
21	Gurmehar Singh Gandhi Department of Law, Panjab University (<i>India and Its Lingerin Border Disputes</i>)	74
22	*Arti Chauhan **Gaurav Kumar Arya School of Law, Galgotias University (<i>Surrogacy in India- A Reproductive Right</i>)	77
23	*Aditya Goswami **Shivani Goyal Law Centre – 1, Faculty of Law, DU (<i>Surrogacy</i>)	80
24	*Samikshya Mohanty **Poulomi Barik KIIT School of Law (<i>India and its Lingerin Border Disputes</i>)	84
25	*Aisha Beevi Azeez **Soorya Mariya Kurian Government Law College, Ernakulam, Kerala (<i>Dividing Line Dilemma: India and its Lingerin Border Disputes</i>)	88
26	*Harshit Tiwari DNLU, Jabalpur **Tanya Agrawal DES SNFLC, Pune (<i>Mob Lynching: A Horrendous Act of Mobocracy</i>)	92
27	*Ashish Ojha **Jahnvi Agnihotri Galgotias School of Law, Galgotias University, Greater Noida (U.P.) (<i>India and its Lingerin Border Disputes</i>)	96

“Surrogacy: Medical Divinity or Capitalist Exploitation?”

*Nikita Chauhan
School of Law,
UPES, Dehradun*

“Sometimes while making something precious, unique, and beautiful, it takes an extra helping heart”

We, like all other forms of life are genetically coded to procreate, to want to procreate. Not only is it the joy of extending one's lineage but it can also be the sole purpose of one's natural life. Although Modern lifestyles and radiation exposures have led an increase in infertility of couples worldwide, there are options. Surrogacy is one such divine option.

Surrogacy is a process through which infertile couples seek help from another woman (the surrogate mother) who bears the child for them. The process and overwhelming when it comes to the type of relation the intended couple wants with the surrogate mother post-delivery. This becomes further complex in the case of 'traditional surrogacy', where the surrogate mother donates the egg, and the intended father/donor gives the sperms. This form has been practiced since times immemorial. Traditional surrogacy can be traced to the biblical times, when Sarah and Abraham asked Hagar, their servant to be a surrogate mother for them. The surrogate mother is the biological mother, she might develop a significant attachment and affection towards the child during the period of gestation. Therefore it is imperative to mutually agree to legally binding conditions. The other type of surrogacy is 'gestational surrogacy' where the intended couple or the external donors donate the eggs and sperm to form a zygote. Gestational surrogacy has been encouraged and preferred lately over traditional surrogacy. Not only does it decrease the emotional struggle that the surrogate mother might go through as a result of being the biological mother, but also ensures that a genetic link is created between the child and the intended couple, thus allowing them the joy of becoming biological parents. The process of surrogacy is followed worldwide by infertile couples, as their numbers across the globe cross 50 million! But the veil of generosity of a surrogate mother granting an infertile couple their wish to have a child sometimes hides a wide range of inadequacies behind itself.

Not many years ago, countless women from countries like India, Thailand, etc. were being exploited in the name of commercial surrogacy. The sanctity of the womb and the titles like “jannani” given to a woman for bringing life into the world were stained by exploitation of financially needy, unaware, uneducated women, both illegally and unethically. While countries like Russia, Ukraine etc. have legal provisions for commercial surrogacy, some countries like France, Germany, and Italy have banned it in all forms, and countries like India, Australia etc. practice 'altruistic' surrogacy, in which the surrogate mother is not given any monetary compensation, and only the medical/realistic expenses are handled by the intended parents.

International surrogacy was a common practice in India, it was relatively cheaper, and many women in need of money were ready to 'rent their wombs'. This practice carried on for

decades without any provisions, on the basis of some ambiguous guidelines. This resulted in people indulging in unethical and illegal acts. The practice witnessed multiple incidents like parents abandoning one of the twin children, or leaving the child with the surrogate mother based on gender preferences. Other complications during the gestation period were also observed, which included refusal for aborting the child by surrogate mother, despite complications, even after the insistence of the doctors and intended parents, due to her attachment. Such issues thereby highlighted the need for a well designed legislative system to regulate the practice. The Law Commission in the 228th report (2009) iterated the need for regulating the process and providing a legal framework to govern the same, and provide exclusive rights as well as obligations of both the parties. In 2015, surrogacy for foreign nationals was banned in India, after incidents like separation of the intended parents before the birth of child (*Baby Manji Yamada v. Union of India*¹) surfaced. It was contended that such lengthy Court procedures would traumatize the child. In *Jan Balaz v. Anand Municipality*² a German couple, working in the United Kingdom, was getting their citizenships litigated, when twin children were born through surrogacy. The children required passports to travel, but the original State of the parents did not recognize surrogacy. Therefore, they had to seek exit permit from the Hon'ble Supreme Court of India, and an adoption permit from the German State. The intricacy here was that the twin children were not granted citizenship of either State for a period of two years. Such predicaments pushed both the judiciary as well as the legislature to ponder upon these delicate issues, and form laws guarding the process of surrogacy. For this very purpose, the Surrogacy (Regulation) Bill was introduced and passed by the Lok Sabha in 2019. The Bill banned commercial surrogacy, as it was seen as a practice of trading the life of a child for money. It required the couple to provide a certificate of infertility, so that nobody could misuse the practice and hence shielded surrogate mothers from being exploited. The Bill permitted couples to apply for surrogacy after five years of marriage. Certain essentials were laid down for being eligible to be a surrogate mother. The surrogate mother had to not only be a close relative, but could be a surrogate mother only once in her lifetime, after having conceived a child of her own.

However, in an attempt to protect the rights of both the surrogate mother and the intended parents, it brought up issues that were simply left untouched and unaddressed by the Bill. These regulations lacked some serious key points that were not addressed at all.

For instance, the Bill did not cover the loss of wages of the woman due to pregnancy, or other expenses except medical ones during gestation period. Having only a close relative as an option would give rise to the probability of the family pressurizing a woman to become a surrogate mother, it would also mean that the surrogate mother would stay in touch with the child, leading to psychological attachments/distress in the future.

.....

¹ (2008) 13 S.S.C. 518 at 521.

² (2010) AIR (Guj) 21. 7



PenAcclaims

(Multi-disciplinary National Journal)

Email: editor.penacclaims@gmail.com

Website: www.penacclaims.com