

LEGAL AND ETHICAL ISSUES OF SURROGACY: A COMPARATIVE ANALYSIS



Dr. Pooja Yadav

“Legal and Ethical Issues of Surrogacy: A Comparative Analysis”

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Preface

The world we live in today is fraught with obstacles. These difficulties become understandable and have a number of remedies available as doors open to welcome new developments. Assistive reproduction is one of the most crucial of these advancements. One significant application of assisted reproductive technology is surrogacy, in which a woman bears a child for another couple. Despite the appearance of mutual benefit, there are a number of intricate legal, moral, ethical, and social considerations surrounding this arrangement.

This book covers the sensitive concerns surrounding surrogacy which are adequately addressed by well-crafted legislation that safeguard the rights of intended parents, surrogate moms, and surrogate children, then surrogacy can be conducted in a peaceful manner. The immaculate efforts of Dr. Pooja Yadav can be seen in the various intricacies of the delicate subject matter and her unbiased opinion of surrogacy and biological parenthood.

Beneath the superficial layers of misogyny, entitlement, and exploitation, there exists a deep-seated disparity in the significance and manifestation of masculine traits relative to those of femininity. The author's goal is to repair and balance the patriarchy, not to topple it. She uses both the advantages and disadvantages of surrogacy and childbirth to address the big picture with remarkable clarity. They give a way to evaluate the current situation and present a clear route forward with objective, transparent standards.

This book is a phenomenal read and an exceptional guide to studying the issues of surrogacy.

Index

Chapter no.	Title	Page No.
1	Introduction	1
2	Legal Issues of Surrogate Motherhood in India, United Kingdom and United States of America	35
3	Ethical Issues in context of Surrogacy in India, United Kingdom and United States of America	82
4	A Comparative Analysis of Surrogate Motherhood in India, United Kingdom and United States of America	145
5	Data analysis	175
6	Conclusion and suggestions	224
7	Bibliography	244
8	Appendix	263

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- A.H.W. & P.W. v. G.H.B. & John J. Farmer, Attorney General of the State of New Jersey
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- Re T (A Child) (Surrogacy: Residence Order) [2011] EWHC F 33 (Fam).
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Chapter 1

Introduction

'He is my son'; 'No he is mine'.

After hearing both the women, the King delivered his judgement.

'Divide the living child into two, and give half to one and half to the other'.

This was a choice made by the King Solomon to distinguish who the genuine mother of the child was, to perceive that two women were battling among themselves to guarantee the privileges of an infant. Hearing the lord's choice, the genuine mother began crying and asked the ruler not to cut the child, yet to offer it to another female. In any case, the ruler gave the child to the female, who did a request not to cut her child because she was the genuine mother. While this is a story to feature the knowledge of King Solomon, such debates are normal and, truth be told, become a reality in present day times.¹

Advancements in the field of human generation have made it workable for a child to have a mother or father, today, the court has supplanted the mighty God. A significant inquiry that emerges today is whether the courts can choose a disagreement regarding an infant like King Solomon. Lord Solomon just had 2 contenders for the kid who were fighting to choose his destiny.

Procreation is a necessity for existence of various formations of life comprising human because no living creature is eternal. Like animals, human beings also needs reciprocal co-operation of two solitary people with distinct sex structure for the act of procreation. Desire in human beings related to this is known as sexual desire. To carry this notion, wedding evolved in the community of human beings.²

In a wider sense wedding means a lawful and communal authorization of a male and female that provides them with a status of husband and wife and lawfulness to their family. The foundation of marriage is favorable to the community as a whole because it is the base of a family which in turn is elementary building block of the community. It is observed that childbirth makes the foundation of marriage more significant and promising.

When a woman gives birth to an infant, real position is set up in the community and also an evidence of the male's sexual potency. The foundation of wedding provides marital privileges in the family and communal credibility to their association of which the outcome; is the procreation of children. Since ancient period; almost in all civilizations, the reproduction, carrying and upbringing of children is the duty given to the foundation of family in the institution of marriage. So, procreation of infants is considered as the main biological task of an association of marriage and the family which assures the flow of humanity. And most important is that every couple wishes to have their natural child. The rationale can be different for each couple that they want to adore and want to be adored by

¹ V. Rajalakshmi, Reproductive Technology v. Women, 1 Supreme Court Journal, 48, 49 (1991)."

² P.C. Pant, Law of Marriage, Divorce and other Matrimonial Disputes, 3 (Orient Publishing Company, New Delhi, 2003).

The dire need and progress of the notion of human rights has given rise to the basic requirement of a couple to bear children and has been acknowledged as fundamental human right included as right to procreate.

Procreation is a biological procedure through which the female delivers a child. The females are upraised to consider herself as a child bearer and male considers himself as originator of procreation. An infant is brought up by the biological mother and father to make him a successful person and make his name that continues hereditarily.⁷

Every couple wishes to extend their family, and that is normal human nature. It has been observed that when a couple fails to extend its family; they feel very lonely and hopeless. Therefore rightly so, every religion has pronounced the importance of a child in the family. Giving and bringing forth a child is vital not just for satisfying the individual desires of people, but also for the congruity of society.....

Meet the Author!

Dr. Pooja Yadav has done her Ph.D from Faculty of Law, University of Delhi in the field of Surrogacy laws. She has worked at Police training college in Jharoda as a guest lecturer. She has done internship at high court as well as district courts. She has done her LLM(Masters of Law) from USLLS, main campus, Guru Gobind Singh Indraprastha University. She has done her B.A.LL.B. from Vivekananda Institute of Professional Studies and her schooling from Delhi. She has presented various research papers in national and international conferences. Her papers have been published in UGC care and reputed Scopus indexed journals.

