



Surrogate Motherhood In India And The United States: An Overview

Dr. Manpreet Kaur

Assistant Professor of Law

Rajiv Gandhi National University of Law, Punjab

1. Introduction

Human nature has been put under stress by surrogacy, which has been regarded as an ethical and emotional disaster. Only Israel and the United Kingdom openly permit surrogacy, while the majority of European nations prohibit it and many others do not practice it. It is more prevalent in the Western region of the United States of America. In commercial surrogacy, a woman consents to carry a child for commissioning parents or for one parent alone. Payment to the surrogate mother is part of the commercial surrogacy agreement. The amount paid exceeds the real costs. The surrogate mother just gets the costs of an altruistic surrogacy; she is not compensated financially. Surrogate motherhood is either genetic or gestational surrogacy. In genetic surrogacy, the surrogate mother—who is the child's genetic mother—is impregnated by the male member of the commissioning couple, typically through artificial insemination. In gestational surrogacy, the commissioning couple provides both the egg and sperm. The fertilised egg is placed into the womb of a surrogate mother in order to aid growth and birth; although she is not genetically connected to the child, based on the baby's anatomy, she is unquestionably child's biological mother. In this instance, the child's genetic father is the male spouse. According to genetics, the female partner in the commissioning couple is also the mother. This indicates that the child has two biological moms.¹

By using assisted reproductive technology, a commissioning couple can have their own biological child through gestational surrogacy. When a couple uses gestational surrogacy, the surrogate mother conceives a child for them in her womb. The surrogate mother acts in this capacity for payment or other incentives in commercial surrogacy. Couples that are under social pressure to reproduce and use assisted reproductive technology (ART) to have their biological child are satisfied. If not, they constantly regard themselves as being inept and ineffective. Their sense of personal autonomy is constantly under threat from externally determined demands. They are expected by society to demonstrate that they are just as fertile as everyone else. For the couple who are commissioning this, it is really frustrating. For the commissioning

¹ Hugh V. McLachlan and J. Kim Swales, "Commercial Surrogate Motherhood And The Alleged Commodification of Children: A Defense of Legally Enforceable Contracts," *Law and Contemporary Problems*, (2009).

couple, the development of ART technology has provided a curative measure. The child's biological and genetic parents are the commissioning couple in a gestational surrogacy. However, commercial surrogacy entails substantial expenditures, nevertheless, which not everyone can afford. Legal motherhood rights are not granted to carriers. Furthermore, the selection of exclusively young, healthy women as carriers could result in prejudice against other willing candidates. Children born via surrogacy do not have the same rights as children born naturally to grow up alongside their gestational mother.²

2. Surrogacy in the United States

Since ancient times, marriage, procreation and sexuality have been topics of discussion. The right of every individual to exercise self-determination over how they express their marriage, sexuality and procreation has always been at odds with the orthodox ideas of conservative civilizations around the globe. Even the technologies that help people express themselves more fully in regards to sexuality and procreation must battle the narrow-minded views that permeate both the contemporary state and society. Bodily and psychological privacy, if protected fully, allow an individual to make decisions about their bodies. Informed control over the body, mind, and soul helps in realising self-existence, which is the subject matter of fundamental rights jurisprudence around the world. Decisions pertaining to one's body, such as tattoos, piercings, amputations, organ donation, sexual activity, etc., are private matters that are unrelated to the general welfare. The decision-maker may have a financial, spiritual, religious, emotional, humanitarian, or any other benign reason. The constitutional courts in various legal systems around the world have acknowledged women's personal autonomy over reproductive choices, including the right to an abortion. The constitutional courts have emphasised in their many landmark verdicts that women who possess the freedom to choose their own reproductive path can participate in conversations regarding sexuality and procreativity.

The U.S. Supreme Court in *Griswold v. Connecticut*,³ held that the right to marital privacy, which is protected by the Constitution, can be claimed against state prohibitions on the use of contraception by married couples. Even if the right to privacy has not been expressly mentioned in the constitution, the Court has impliedly construed the right to privacy from the penumbra zone of the Bill of Rights. A married couple's right to privacy is established by the First, Third, Fourth, and Ninth Amendments taken together. It was decided that the Connecticut Act was invalid because it interfered with the enjoyment of this right.

Subsequently, unmarried couples were also given the right to use contraceptives under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. In *Eisenstadt v. Baird*⁴, the U.S. Supreme Court held that "If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child."

Further, in *Roe v. Wade*⁵, the United States Supreme Court has declared that the substantive due process guaranteed under the Fourteenth Amendment to the U.S. Constitution includes the right to an abortion. The court said that the right to privacy is protected against state interference by the Due Process

² See Pedro Brandão et al., "Commercial Surrogacy: An Overview," (2022) available at <https://www.scielo.br/j/rbgo/a/FFPF3ftjCQh7Lm63kK7H8jr/?format=pdf&lang=en>

³ 381 U.S. 479 (1965)

⁴ 405 U.S. 438 (1972)

⁵ 410 U.S. 113 (1973)

Clause of the Fourteenth Amendment, and a woman's choice to choose whether or not to have an abortion is covered by this right. A state statute that forbids abortion in general, regardless of a woman's stage of pregnancy or other considerations, is an infringement on her right. While the state has a right to safeguard expectant mothers' health and the "potentiality of human life," the relative importance of each of these interests changes throughout pregnancy, and the law must take this fluctuation into consideration. *Roe* was confirmed in *Planned Parenthood v. Casey*.⁶ In *Casey*, the Court established a new test for judging whether laws prohibiting abortions are constitutional. The revised test inquires as to whether a state's abortion law intends to impose or has already resulted in an "undue burden" on the woman's right to abortion. The spouse notice requirement was the sole clause that failed the undue burden test under this criterion. However, both *Roe* and *Casey* were overruled in *Dobbs v. Jackson Women's Health Organization*.⁷ The Supreme Court in *Dobbs* held that the Constitution does not protect the right to an abortion.

In the past, it was illegal for black people and white people to get married in the United States. But the U.S. Supreme Court held in case of *Loving v. Virginia*,⁸ that states prohibiting interracial marriage are unconstitutional under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Similarly, the right to same-sex marriage was also recognised in *Obergefell v. Hodges*.⁹ In *Obergefell*, the court said that the due Process Clause of the Fourteenth Amendment includes right to marriage, and same-sex couples should be treated equally by the State.

Right to procreate was also recognised by the U.S. Supreme Court in *Skinner v Oklahoma*.¹⁰ In this unanimous decision, the U.S Supreme Court held that laws allowing the forced sterilisation of criminals are unconstitutional because they infringe upon the rights guaranteed by the Equal Protection and Due Process Clauses of the US Constitution's 14th Amendment. A case of *J.R., M.R. and W.K.J. v. Utah*¹¹ has only been one other federal case that addresses the expansion of the fundamental right to procreate to include the ability to parent through surrogacy and assisted reproduction. Without conducting a judicial investigation, the Federal District Court assessed the validity of a Utah statute requiring the surrogate birth mother to be the child's legal parent for all purposes. As a result, the Act denied a genetically intended parent the ability to claim any parental rights over the child based only on their genetic link. The Act, according to the court, significantly impeded the ability of a woman wanting to make procreative decisions in order to bear and raise her own children but was unable to gestate her own child. The court held that the woman's exercise of her basic right to procreate was unreasonably burdened by this. The statute was declared unconstitutional as a result.

Anna Johnson, a gestational carrier in California, declined to transfer the child to Mark and Crispina Calvert, the intended parents. In *Calvert v. Johnson*,¹² the couple sued her for custody, and the court affirmed their right to raise children. This created a legal definition of the true mother, which is the woman who plans to have and raise a child in accordance with the terms of the surrogacy agreement.

⁶ 505 U.S. 833 (1992)

⁷ 597 U.S. 215 (2022)

⁸ 388 U.S. 1 (1967)

⁹ 576 US 644 (2015)

¹⁰ 316 U.S. 535 (1942)

¹¹ 261 F. Supp. 2d 1268 (D.Utah 2002)

¹² 851 P.2d 776, 784, 785 (Cal. 1993)

As a result, it can be successfully claimed that everyone has the fundamental right to procreate in accordance with the US position on the Constitutional right to procreate and its junction with surrogacy. Restrictions on an individual's ability to use surrogacy as a procreative option, whether they be national or international, will therefore be closely examined and likely to encounter opposition. Parentage is determined in accordance with existing rules pertaining to paternity, maternity, termination of parental rights, and adoption in the vast majority of states that do not have surrogacy statutes or case law. Every state follows a formal legislative or judicial process to determine which intended parents are the child's legal parents. This process is the same across all states. This guarantees every party's right to a fair trial and/or legislative procedure. The intended parent(s) obtains a court judgement confirming their parentage and establishing their right(s) to be named on the child's birth certificate once the court has approved and ratified their intended parenthood in a surrogacy proceeding. It makes no difference whether there is no law, a negative law banning or outlawing surrogacy, or a positive law favouring surrogacy in the state where such a judgement is obtained. A judgement is entered and is enforceable against all necessary parties who were informed of and took part in the proceeding if, after reviewing the parties' request for a parentage order, the court concludes that it is in the child's best interests that the intended parent or parents receive legal parentage.¹³

3. Surrogate Bodily Privacy in India

In India, right to bodily privacy has been recognized under Articles 14, 19 and 21 of the Indian Constitution. In *Suchita Srivastava and Another v. Chandigarh Administration*,¹⁴ the Indian Supreme Court ruled that, as implied by Article 21 of the Indian Constitution, a woman's ability to choose her method of reproduction constitutes a component of "personal liberty." The Court held that a woman's decision to procreate or not preserves her right to privacy, autonomy, physical integrity, and human dignity.

In *B. K. Parthasarathi v. Government of Andhra Pradesh*,¹⁵ the Andhra Pradesh High Court held that freedom to procreate is one of the fundamental civil rights. And the fundamental right to reproductive autonomy is part of the fundamental right to privacy.

It can be claimed that the reproductive autonomy as a part of substantive due process clause also includes a woman's right to become a surrogate mother. Once it is recognised, it can be further said that a surrogate mother is free to decide whether or not to sign a contract with the intended parents, doctors, or egg and sperm donors. In the 2008 ruling in *Baby Manji's case* and the 2009 ruling in *Jan Balaz's case*, the Supreme Court of India acknowledged commercial surrogacy as a legitimate form of individual liberty. There is currently no legislation in India that specifically governs surrogacy. As a result, the Supreme Court actively intervened in defending the surrogate children's citizenship and parental care rights at this time of need by exercising its inherent authority under the Indian Constitution. The state was required by the Constitution to defend the surrogate mother's interests, according to the court.

In *S. Khushboo v. Kanniammal*,¹⁶ the Supreme Court held that a live-in relationship is part of right to life and personal liberty guaranteed under Article 21 of the Indian Constitution. The court further declared that

¹³ See Steven H. Snyder, "Reproductive Surrogacy in the United States of America Trajectories and Trends." Available at https://www.family.law.cam.ac.uk/sites/www.law.cam.ac.uk/files/images/www.family.law.cam.ac.uk/documents/surrogacy/trajectories_and_trends_ch_37_shs.pdf

¹⁴ AIR 2010 SC 235

¹⁵ 2000 (1) ALD 199

advocating for the concept of a live-in relationship is a form of freedom of speech and expression protected by Article 19 of the Indian Constitution.

In a historic ruling in *National Legal Services Authority v. Union of India*,¹⁷ the Supreme Court acknowledged transgender individuals as belonging to the third gender. The Supreme Court of India held that the right to express one's identity as a non-binary gender is a fundamental component of freedom of speech and expression. In order to allow people to identify as male, female, or third gender, it instructed the government to grant the third gender legal status. The government was also directed to take the appropriate actions to eliminate the stigma associated with transgender people, support health programmes tailored to their needs, and provide them with equal legal protection.

In *KS Puttaswamy v. Union of India*,¹⁸ the Supreme Court firmly established that an individual's right to privacy is an intrinsic one, based on principles like dignity that form the foundation of all of our fundamental freedoms. In this case, judges' definitions of privacy varied, but generally speaking, the bench understood privacy to include informational privacy as well as individual autonomy with regard to one's body, intellect, and ability to make decisions. The court further acknowledged that women's right to exercise their reproductive autonomy is part of right to personal liberty guaranteed by Article 21 of the Indian Constitution.

Section 377 of the Indian Penal Code, 1860 was declared unconstitutional by the Supreme Court of India in *Navtej Singh Johar v. Union of India*.¹⁹ This was because the law prohibited consensual sexual contact between adults of the same sex. According to the Court, sexual orientation discrimination violates the right to equality. Criminalising consensual sex between adults in private violates the right to privacy. Sexual orientation is an intrinsic part of one's identity and cannot be denied.

In *X v. Principal Secretary Health and Family Welfare Department*,²⁰ the Supreme Court ruled that every person, including transgender and gender nonconforming individuals, has a right to reproductive decisional autonomy. Everybody has the right to reproductive health, which includes sex education, access to contraception, and safe, efficient, and reasonably priced family planning options. In addition, the Court recognised that the Medical Termination Pregnancy (MTP) Act is a provider-centric statute that disregards the rights of pregnant mothers. Since receiving an abortion requires permission from a registered medical practitioner (RMP), women who are denied services are forced to go to court or seek abortions under dangerous circumstances. Since doctors fear being charged under the IPC, they are hesitant to perform abortions, which has a chilling effect on other healthcare practitioners' actions. The Court decided that the right to reproductive autonomy was part of the right to privacy, granting pregnant women the freedom to decide whether to end their pregnancy if their marital status changed. Under such circumstances, it would be unconstitutional to use a strict interpretation of Rule 3B of the MTP Rules in order to exclude unmarried women. In order to give unmarried women access to safe and authorised abortions between 20 and 24 weeks of pregnancy, the Court decided that Rule 3B of the MTP Rules would need to be interpreted more broadly.

¹⁶ (2010) 5 SCC 600

¹⁷ (2014) 5 SCC 438

¹⁸ (2017) 10 SCC 1

¹⁹ (2018) 10 SCC 1

²⁰ 2022 SCC OnLine SC 1321

4. Socio-Psychological Effects of Surrogacy

The surrogate mother is free to sign any agreement related to surrogacy, but it's not necessarily true that she has made the decision with informed consent. Generally, the surrogate mother's ability to negotiate is less than that of the other participants in the contract. There are a number of negative reasons why she might give her approval to the contract: despair, subjugation, hardship, acting under inappropriate pressure, etc. In such circumstances, it is difficult to say whether she has truly exercised her free will. Adolescent girls are being trafficked in undeveloped countries solely to be used as surrogates. Due to their lack of resources, some impoverished parents either sign surrogacy agreements on behalf of their daughters or sell them to human traffickers. It is also possible for a woman who is seeking to escape poverty to sign a surrogacy contract only for financial gain. Under such circumstances, she is not left with many options but to surrender her person to the commercialised institution. And there isn't anything else for her in life. A woman cannot freely make her own decisions in society or in the state if there is no social environment to support her. The decision to become a surrogate mother in these situations is made by the female in order to fulfil the identity or need that the racist society has established.²¹

Currently, the state needs to take decisive action. When the surrogate mother makes her decision, the state must guarantee that it is free and independent. To help her realise the nature and ramifications of her action, the state must offer female psychiatric counselling. Should the woman accept the contract solely due to her financial hardships, the government ought to provide her with other essentials and financial incentives. For the welfare state's benefit, the female's general health status needs to be assessed by medical experts, including mental health specialists. The main factor contributing to exploitation is the present lack of legislative protections and regulatory monitoring for commercial surrogates.²²

The surrogate mother's psychological state is adversely affected by the unfair surrogacy deal that imposes unreasonable and cruel arrangements around her well-being. When a surrogate mother is exposed to the dangerous commercial surrogacy industry, her psychological health suffers. After giving birth, the surrogate mother finds it difficult to recover emotionally and doesn't receive support from the parties involved in the contract or from state agencies and instrumentalities.

She may be prohibited from living a natural life under the terms of the contract. She could have to follow a particular diet, hang out in private areas only, create only certain connections or associations, and so forth. Her processes relating to thoughts and opinions are obstructed by these restrictions. The way in which the intrinsic right to personal autonomy operates is hindered. Her emotions get agitated, destructive, indifferent, and frustrated. While surrogacy can be an exploitative kind of employment for impoverished women due to economic disadvantages, it is not always the case.²³

There has been a strong argument made that the commercial surrogacy industry unconscionably monetizes women's reproductive capacities and children. The autonomy of surrogate mothers is compromised

²¹ See National Rapporteur on Trafficking in Human Beings (2012). Human trafficking for the purpose of the removal of organs and forced commercial surrogacy. The Hague: BNRM, available at https://www.nationaalrapporteur.nl/binaries/human-trafficking-for-the-purpose-of-the-removal-of-organs-and-forced-commercial-surrogacy_tcm23-34770.pdf

²² Bronwyn Parry and Rakhi Ghosha, "Regulation of surrogacy in India: whenceforth now?," *BMJ Glob Health*. 2018; 3(5): e000986, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6195148/>

²³ See Suze G. Berkhout, "Buns in the Oven: Objectification, Surrogacy, and Women's Autonomy," *Social Theory and Practice* 34 (1):95-117 (2008).

by the surrogacy contract itself. The surrogate mothers are forced to subjugate their feelings to the desires of the other parties to the contract by means of the manipulative use of commercial conventions. The surrogate mother is not recognised by the surrogacy industry as having a separate viewpoint that should be taken into account. Furthermore, it exploits motives that women have developed under social circumstances that are incompatible with her personal autonomy. Therefore, rather than increasing women's autonomy, the surrogate industry actually erodes the internal and external conditions necessary for women to have complete agency over their choices.²⁴ In cases where the contract solely prioritises procreation, the surrogate mother experiences complete objectification and is not provided with psychological support during her pregnancy. Nonetheless, research indicates that every pregnant woman experiences a range of moods and mental states, necessitating the support of parents, medical professionals, and mental health specialists for psychological and emotional healing.²⁵

In addition, a surrogate mother forms a psychological bond with the unborn child during her pregnancy. After giving birth, she wants to keep the baby to herself. However, it is hard to understand such a contract as a fair contract if it forbids her from meeting the intended parents and the child after the delivery. Due to its disregard for the surrogate mother's psychological needs following childbirth, the contract would be unjust. When the surrogate mother made the surrogacy truce, her mental state was completely different than when the baby was delivered. Even the majority of surrogate moms are rather young when they sign the contract. The surrogate mother has emotional sorrow whenever the baby is taken away from her. Not surprisingly, the surrogate mother is considered to be treated inhumanely if the doctors give her sedative medicines to help her deal with her mental distress. There is no therapy that can overcome this psychological effect. This situation can only be resolved if the intended parents and the child's visiting and meeting schedules are given to the surrogate mother. By building or imagining a bond with the couple hiring them, women surrogate workers have been shown to fight the commercial and contractual nature of their partnerships. Even while the surrogates acknowledged the stark class divide that separated them from the couples who hired them, their stories occasionally created connections that went beyond these distinctions.

5. Discussion

The practices of commercial gestational surrogacy raise serious concerns when there is no state oversight. The unregulated surrogacy arrangement involves ethical and legal considerations. All of the individuals involved with the surrogacy arrangement will have societal and personal consequences if the arrangement is left unregulated. At the moment of conception, the commissioning couple would choose the child's gender and best physical and mental attributes if they gave in to social pressure. Social injustices that now exist exacerbate the issues faced by surrogate mothers who come from marginalised groups in society. It is untrue to say that certain genes are better than others. This idea would jeopardise every human right. This will divide civilization as a whole according to its genetic makeup. Under cutting-edge assisted reproductive technologies, a new caste structure would be established. Social justice goals cannot be undermined by any substantive liberty, not even according to the Constitutional Court. The essential component of the

²⁴ Elizabeth S. Anderson, "Is Women's Labor a Commodity?," *Philosophy & Public Affairs*, Vol. 19, No. 1 (Winter, 1990), pp. 71-92 at 91, available at: <https://www.jstor.org/stable/pdf/2265363.pdf?refreqid=excelsior%3Ad816ca5620ff73925ffba837de27d76d>

²⁵ R.J. Edelmann, "Surrogacy: the psychological issues," *Journal of Reproductive and Infant Psychology*, Vol. 22, NO. 2, May 2004, pp. 123-136, available at: DOI: 10.1080/0264683042000205981

constitutional theory is striking a balance between an individual's right to self-determination regarding reproductive choices and the law's ability to restrict that right in the name of social justice and equality. Determining a person's genetic makeup is blatantly illegal and goes against the concept of human dignity found in the Constitution. The terms that are currently in use to describe genetic features are actually based on the arbitrary assumptions of the general public. It is predicated on the utilitarian theory, which is incompatible with each person's fundamental rights. These racial terminologies view children as commodities, ornamental items, toys, commodities, status symbols, and so on, and the child's personal autonomy is totally absent in such arrangement. Nobody would anticipate anything different from the child, but for the child's inevitable genetic effects. Throughout the child's lifetime, he or she must prove to be as smart and talented as the commissioning spouse wants them to be. There would be disruptions to the child's thought and emotional processes. It would go against a child's natural longing for personal autonomy.

The commissioning spouses in the cases of Baby Gammy²⁶ and Baby Bridget²⁷ abandoned the disabled children upon birth. The welfare and safety of the children were in jeopardy. The children aren't even aware of the reasons behind their lack of social acceptance. The unborn child's right to a dignified life is being blatantly violated. On the contrary, the right to human dignity for the growing foetus was acknowledged by the German Constitutional Court in the Abortion I and Abortion II decisions.²⁸ Human dignity is an inalienable right, as stated in Article 1 of the German Basic Law. The Court underlined the state's legislation over pregnancy termination in the Abortion II case. When the woman wishes to end her pregnancy, which is within the first three months of her pregnancy, the court orders the state to offer counselling to her. As a result, the Court acknowledges the female's right to an abortion while simultaneously being concerned about the unborn person's human dignity. Unborn children must be protected from the selection of gender or genetic features using the same human dignity principles.²⁹

The Surrogacy (Regulation) Act of 2021 makes an effort to control surrogacy in India; however, it falls short of upholding the fundamental rights jurisprudence that the Indian judiciary has developed. The Act essentially prevents members of the LGBTQIA+ community and other marginalised groups from choosing surrogacy as a last resort for biological motherhood. Furthermore, the Act imposes a number of obstacles in the name of shielding women from the potentially unexpected consequences of commercial surrogacy and the artificial reproduction business. While commercial surrogacy is illegal in India, it is nonetheless permitted under the guise of altruistic surrogacy due to legal ambiguity.

To continue their line of succession, Indians usually prefer to have male children. In certain segments of Indian society, females are still viewed as the family's burden, the only keeper of the family's honour and dignity, the source of dowries, and other social vices. Additionally, there have been an increasing number of female foeticide instances due to these factors. Thus, in these conditions, the gender selection achieved by

²⁶ See Brianne Richards, "Can I Take the Normal One?" Unrelated Commercial Surrogacy and Child Abandonment, *HOFSTRA L.REV.* 201, 203 & 210 (2015).

²⁷ See Samantha Hawley, Damaged Babies and Broken Hearts: Ukraine's Commercial Surrogacy Industry Leaves a Trail of Disasters, ABC NEWS, <https://www.abc.net.au/news/2019-08-20/ukrainescommercial-surrogacy-industry-leaves-disaster/11417388>.

²⁸ Donald P. Kommers, The Constitutional Law of Abortion in Germany: Should Americans Pay Attention?, 10 *J. Contemp. Health L. & Pol'y* 1 (1994). Available at: https://scholarship.law.nd.edu/law_faculty_scholarship/733

²⁹ *Ibid.*

means of assisted reproductive technologies would serve to uphold the conventional and traditional notions of property and inheritance. The right to reproductive freedom must not be exercised in a way that undermines the goals of constitutional equality. In order to prevent people from exploiting assisted reproductive technology for gender selection or pre-determination of sex, the state must closely oversee this technology.

6. Conclusion and Suggestions

As the state is responsible for the surrogate mother's health and other fundamental rights, it must enforce her personal autonomy. It is plausible that the surrogate mother provided her assent under duress, deception, or undue influence, considering the terrible socioeconomic circumstances of the nation. She has to be shielded from exploitation by the state in these circumstances. Her fundamental rights to personal autonomy and the freedom to choose her reproductive path cannot be considered to have been given up under duress. The state must demonstrate that the surrogate mother is not being used as a product or commodity or as a means of profiting from the unregulated commercial surrogacy industry. The surrogate mother does not have the same standing in the commercial setup as the commissioning parents, physicians, or brokers. Her assent may have been obtained arbitrarily, through poverty, human trafficking, or for other reasons. Her right to privacy or the freedom to make her own decisions may have been unreasonably restricted by the terms of the surrogacy arrangement. It is quite possible that she was forced to give up any parental rights once the child was delivered. The terms of the surrogacy agreement may force her to live in risky areas, refuse to pay for the money needed for her postpartum care, offer her less money, or order her to take medications that could be beneficial for the child's health but could be harmful to her own. The state, medical professionals, healthcare facilities, commissioning couples, and other members of the surrogate's community should all uphold and safeguard her human dignity throughout the surrogacy agreement.

The surrogate mother's right to reproductive autonomy is violated if she is denied parental visitation or custody. The surrogate mother remains the child's biological mother, even though the arrangement involved gestational surrogacy. Both a biological and psychological bond are formed between her and the child from the moment of conception. There would be major emotional ramifications for the surrogate mother if the commissioning couple or the contract, which is enforceable through the legal system, disallow her from meeting the child after birth. An abandoned surrogate mother would be incapable of treating herself with self-respect. She would lose her dignity, privacy, and physical integrity. Such contracts cannot be interpreted literally, even by the courts. The concept of childbirth would be dehumanised if the contracts were read literally. Both the human spirit and human evolution would be stopped. The social pressure placed on commissioned couples to have a child and the resulting procreation to meet racial demands are both immoral.

It is proposed that the state should become involved in every step of the commercial surrogacy process in order to safeguard the surrogate mother's autonomy in making decisions. At every point in the contract, the state must ensure that the surrogate mother has equal bargaining power. Generally speaking, even though the gestational mother is not the biological mother, allowing her to see the child for the duration of her life would be an act of human dignity preservation. Her decision-making would become entirely autonomous with such emotional support. Involuntary medication administration to erase the surrogate mother's feelings from her mind or soul, according to the researchers, would be against the constitution and a breach of human dignity.

To alleviate the emotional suffering that the surrogate mother experiences following the birth of her child, the state must create comprehensive rules and guidelines. She needs to be shielded from discriminatory behaviour and stigma of any type. Education is necessary for the entire society. The state must act decisively to eliminate the stereotypes and biases that are traditionally associated with women in all societies.

It is not appropriate to discriminate against the commissioning couple only because they are not parents. Additionally, the surrogacy arrangement is unhealthy and unregulated due to this type of discrimination. A surrogacy arrangement cannot be handled separately. Infertility and surrogacy are primarily social issues. Should the practice have originated solely inside society or in response to societal constraints placed on commissioning couples, it becomes imperative that the state take into account all the ethical and psychological implications associated with the practice.

It's also important to improve adoption and foster care initiatives. Additionally, child welfare organisations should promote the concept of adopting an abandoned or orphaned child. Having their own genetic and biological child would no longer be a constant or attached notion for the commissioning spouse, which would relieve psychological pressure.

The child's psychology after birth may also be impacted by stereotypical views that might have forced the commissioning couple to use surrogacy to have their biological child. His or her identification may be associated with stigmas. To demonstrate the alleged pure blood of their parents, the child can be singled out by society. The child experiences severe traumatic stress in numerous instances where the commissioning couples decline to grant custody due to the child's unanticipated impairment. A youngster never feels like they belong in a diverse community. He or she could feel like an outcast in the community. The youngster would be exposed to the unwelcome gaze of society, which was fostered by notions of procreation, purity, beauty, and other concepts.

Both the child and the biological parents have an emotional and social bond, as does the child with the surrogate mother. The youngster must establish both relationships in order to fully develop. It is also against the child's right to personal autonomy to prevent him or her from learning who the surrogate mother is. Given the broad definition of a parent, a child has the absolute right to select their parents. Once more, in order for the surrogate child to form such comprehensive relationships in their lives, the state should establish a social environment for them. It would bring the child's inner and exterior personalities together. One could argue that the mother's capacity to bear children and the surrogate child are being objectified if the surrogacy arrangement overlooks these serious ordeals.

The idea of human dignity should be respected and incorporated into the surrogacy agreement. It is impossible to regard humans as robots. Given their innate need to uphold the dignity of every living thing on the planet, humans are reasonable creatures. It is not acceptable to encourage surrogacy arrangements at the expense of undermining human dignity globally in order to satisfy a singular, constrained stereotype about infertility. It is not appropriate to see concepts like procreativity, fertility, attractiveness, purity, and so on in closed boxes. These concepts' narrow interpretations force people to lead monotonous lives. In a restricted society, it is impossible for him or her to create original concepts or expressions. Entangled in the procreative

and non-procreative webs of society is the individual's innate right to personal liberty. Human civilization cannot allow its narrow ideas to taint the concept of human dignity.

