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**Title of Thesis : Commercial Surrogacy in India: A Critical Appraisal of
Medico-Legal Framework**

ABSTRACT

Any kind of reproductive technique which attempts to obtain pregnancy by means other than intercourse is said to be “surrogacy”. In other words, surrogacy is an act where one woman carries the child that belongs to someone else. She simply rents her womb to the intended parents. When she gives birth to the baby, it is not she who becomes the parent of the child. Broadly speaking, surrogacy can be divided into two types i.e. traditional and gestational. In a Traditional surrogacy, the woman who gives birth to the child is actually the biological mother of the child whereas in a Gestational surrogacy things are little different. In such case, the surrogate mother is not the biological mother of the child but she merely rents her womb to the commissioning parents. At present, there are a variety of approaches to Surrogacy all around the world. However, response to surrogacy is to some extent in a state of flux. Many countries have already legislated upon this issue whereas many are still are in the stage of introducing the bills or such bills are under consideration.

India because of many favourable situations like poverty, low medical expenses, easy availability of surrogates and lack of legislation, favoured the boom of surrogacy in India. ICMR guidelines, 18th Law Commission Report, various Bills and the notification of the relevant Ministries are the rules that govern surrogacy. A change was brought in the outlook of surrogacy in year 2014, wherein for the first time, commercial surrogacy was proposed to be banned in India with immediate effects to both foreigners and Indian citizens and only altruistic surrogacy was allowed that too with various restrictions like relevant certificates, five years of marriage, surrogate to be a relative of the commissioning parents.

The current study analyses the effect of banning commercial surrogacy and allowing altruistic surrogacy. The study investigates about the reasons why a female agrees to be a surrogate mother, what are the socio-economic reasons which compel her to give consent to be a surrogate mother to commissioning parents. This study also investigates the possibilities of a female to

give consent to be a surrogate mother in cases of no monetary compensation awarded to her in lieu of giving birth to a child for some other couple.

This thesis has seven chapters; all seven chapters have been given equal importance and have been written with thorough research on the subject. On the basis of the doctrinal and empirical study the researcher has come up with certain recommendations for the purpose of making law relating surrogacy in a way to serve the best interests of all the parties involved in the surrogacy arrangement, especially the surrogate mother and the child.

The government should fix up with the minimum amount of monetary consideration to be paid in the surrogacy arrangements which confers most of the benefits to the surrogate mother as compared to the middlemen and the commercial institution. For effective implementation of the legislation, the government requires to devise some specific institution which shall be responsible to deal with the surrogacy matters only in specific. Such institutions can be a specific organizations, courts and independent bodies. A general surrogacy contract should be framed by the governments which should act as a model for contracts to be entered into in respect of surrogacy. The said contract should clearly specify the rights and obligations of all the stake holders. The requirement of five years of marriage before opting for surrogacy arrangement should be abolished or reduced to one year together with the submission of certificate of infertility. The essential requirement of surrogate mother being the close relative of the intended parents should be abolished. The punishment which is maximum term of five years as given in the Surrogacy Regulation Bill, 2018 for the contravention of the provisions of the Bill, should be changed to minimum term of five years. In case of repetition of the same, the punishment which is suspension of practice for a period of five years under Surrogacy Regulation Bill, 2018, should be changed to cancellation of license to practice for life time. The legislation can be little relaxed for NRIs or for those people who owes their origin in India. However in such cases, the family of either party must be permanently residing in India and should agree to such arrangement. They should also agree to be the guardian of the child and take custody of the child in case of either breach of arrangement or any mishap to the parties of the surrogacy arrangement.