

# DOES SURROGACY INVOLVE MAKING FAMILIES OR SELLING BABIES?

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**Abstract:** International surrogacy is a booming business. At the same time nations all across the globe are condemning commercial surrogacy which was legalized by Supreme court in India in 2002 in an effort to stimulate medical tourism, the emerging practice of travel across international borders to obtain cheaper health care. According to a 2012 study by the Confederation of Indian Industry (CII), the sector is worth \$2 billion. Countries such as India wish to build a reputation as international surrogacy Mecca's by providing quality medical care at a low cost and by attempting to provide the most comprehensive legal protections for intended parents. From Baby Manji to the baby-selling scandal in California, we are reminded that tremendous ethical concerns surround international commercial surrogacy and demonstrating gaps in the current surrogacy laws and regulations and also the case exposed the lack of clear guidelines and laws related to international surrogacy in India. This article highlights some of the issues regarding state of child born out of surrogacy arrangement. Identity of the Child – There are also ethical considerations that are brought to mind in terms of informing the child of his or her surrogate mother, as doing so may have an effect on the child's self-identity. There is no transparency in surrogacy contract and chances of legal problems are high. Cross border surrogacy leads to problems related to nationality, motherhood and rights of child

**Keyword:** Child rights, Surrogacy, ART bill, Law, Confederation of Indian Industry (CII), Ethics.

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## SURROGACY IN INDIA

India has become the top international surrogacy destination for couples, despite the growing number of surrogate babies born every year, there continues to be much controversies and debates surrounding surrogacy. The growing demand for surrogacy in India has also raised issues, including those of child rights.<sup>1</sup>In surrogacy, the rights of the child are rarely considered. Early handover of the child hampers breastfeeding. Transferring the duties of parenthood from the birthing mother to a contracting couple is denying the child its claim to both the mother and the father. It is virtually uncontested that a child fares best when raised in a home with married, biological parents.<sup>2</sup>It could affect the psychosocial well-being of children who are born as a result of a surrogate motherhood arrangement.<sup>3</sup> Others raise concerns regarding payment and commercialization and hold the idea this kind of arrangement makes the child a saleable commodity and due to possibility of shifting emotions and attitudes towards the fetus during gestation, it is not possible to give informed consent in true sense beforehand to relinquish the child until the birth has occurred. Identity of the Child – There are also ethical considerations that are brought to mind in terms of informing the child of his or her surrogate mother, as doing so may have an effect on the child's self-identity. This will make India a baby farming operation and many children will be subjected to neglect and abuse as such children will not have any emotional bondage with the commissioning parents. There is no evidence to suggest that surrogacy is harmful to children, and we agree that it is more likely that banning or criminalising surrogacy would result in substantial harm to children. We have also argued elsewhere that surrogacy does not necessarily constitute the commodification or degradation of children.<sup>4</sup>All those involved or intending to enter in surrogacy arrangements often confronted with specific and often intricate legal questions. This industry has been rocked by several recent scandals. The purpose of this article is to briefly examine some of these questions against the background of the relevant legislation taking help of ART DRAFT BILL 2010.

According to ART DRAFT BILL 2010, Rights of the child to information about donors or surrogates are<sup>5</sup>

1. A child may, upon reaching the age of 18, ask for any information, excluding personal identification, relating to the donor or surrogate mother.
2. The legal guardian of a minor child may apply for any information, excluding personal identification, about his / her genetic parent or parents or surrogate mother when required, and to the extent necessary, for the welfare of the child.
3. Personal identification of the genetic parent or parents or surrogate mother may be released only in cases of life threatening medical conditions which require physical testing or samples of the genetic parent or parents or surrogate mother provided that such personal identification will not be released without the prior informed consent of the genetic parent or parents or surrogate mother.

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