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- *Sreedhar Kusuman & Sonali Kusum*

Mar Gregorios College of Law

Mar Ivanios Vidyanagar, Nalanchira,
Thiruvananthapuram, Kerala - 695015

Phone & Fax : 0471 2541120,

Email. info@mgcl.ac.in Web. www.mgcl.ac.in

SAFEGUARDING CHILD RIGHTS IN ERA OF ASSISTED REPRODUCTIVE TECHNOLOGY –SPECIAL CASE OF CHILD BORN THROUGH SURROGACY

Sreedhar Kusuman & Sonali Kusum¹

Abstract:

A child born through surrogacy marks distinction as the child is born through a specialized medical procedure of In Vitro Fertilization (IVF), involving three mothers among birth or Surrogate or Gestational mother secondly Egg donor or Genetic mother thirdly Commissioning or Intending mother claiming motherhood accordingly parentage determination of child is a vexing issue, in light of irrefutable presumption of motherhood in favour of birthing mother or surrogate mother under Indian Evidence Act 1872, further recognising birthing or surrogate mother as mother for all legal purposes under Registration of Birth & Death Act 1969,

This impairs right to identity, civil political rights as citizenship, nationality, pass port, as testified in *Baby Yamnda Manji (2008)*, Japanese surrogate child born in India who was declared stateless, parentless!

The right to health of child born through surrogacy is questionable as there is no breast milk, children affected by birth defects leads to abandonment of child by couple, the psychological health of child may adversely impact after disclosure of actual birthing process of the same.

There are sex selective surrogacy causing violation of Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994,

These gained significance as the Surrogacy Regulations Bill 2016 is passed by Lok Sabha, it is yet to be notified. But this Bill 2016 suffers limitations as there is no provision on breast milk or substitutes, no prohibition on sex selective surrogacy!

The Supreme Court in *Baby Manji Vs Union of India 2008* neither prohibited surrogacy rather directed National Child Commission to protect interest of child but no recommendations have been issued by the same,

However, surrogacy has been largely looked from perspective of surrogate mother, commercialization of surrogacy but there is dearth of research, documentation on child born of surrogacy, their legal safeguards hence there is need to build an understanding on surrogacy

¹ Assistant Professor SNGCLS College, Kollam, Kerala & Assistant Professor, Tata Institute of Social Sciences, Mumbai

from a right based perspective on best interest of child for children born through surrogacy following state obligation under Indian Constitution and India's International treaty obligation to UN Child Right Convention.

I. MEANING & DEFINITION OF CHILD BORN OF SURROGACY UNDER INDIAN STATUTES

The term "child born of surrogacy" or generally used as "Surrogates child" is not specifically defined, The Surrogacy Bill defines "foetus" as "a human organism during the period of its development beginning on the fifty-seventh day following fertilisation or creation (excluding any time in which its development has been suspended) and ending at the birth"² whereas earlier draft bill on surrogacy namely the Assisted Reproductive Technologies (ART Bill) 2010, 2014 defines the term child "child", means any individual born through the use of assisted reproductive technology³.

A. Plight of Child Born Through Surrogacy & Need for Legal Safeguard-

The surrogate child following the birthing process of In Vitro fertilization, embryo Transfer (IVF, ET) is subject to physical, psychological health risks, including, multiple births, premature delivery of the child, foetal complications, infant mortality, chromosome modifications genetic disorders birth defects, mental retardations. The breast feeding for surrogate child is not provided. As the surrogate mother (birthing mother) is required to hand over or surrender the custody of surrogate child to couples therefore there is no scope for breastfeeding of child.

The legal status of surrogate child is uncertain considering issues of, determination of motherhood, legitimacy of birth for child born of surrogacy taking after legal presumption, the birth mother or surrogate mother's name is registered in the birth certificate, this is incorrect parentage information regarding surrogate child. Where as in case of surrogate child the parentage, legal presumption of birth is ought to be vested in intending mother, thus the parentage of child is distorted.

² Surrogacy Bill 2016, Surrogacy (Regulations Bill) [Bill No. 257 of 2016] approved by cabinet introduced in Lok Sabha on 21st November 2016, secs. 2 (k) and 7

³ ART Bill 2010 The Assisted Reproductive Technologies (Regulation) Bill - 2010 (Draft), Ministry of Health & Family Welfare Govt. Of India, New Delhi & Indian Council of Medical Research New Delhi, sec. 2 (f) and ART Bill 2014, Government of India, Ministry of Health and Family Welfare, (Department of Health Research) ART Bill 2014, 30th September 2015, sec. 2 (g)

B. Health (physical, psychological) of Surrogate Child & Impact of IVF surrogacy process on health of child –

The Surrogacy Bill is silent on the physical, psychological health of surrogate child. This Bill neither address preventive, curative health safeguards for the surrogate child. One of the side effects of IVF“ART is responsible for approximately 50% of all multiple births and premature birth premature delivery of child posing risks of illness, disability, infant mortality. It is stated that “there is higher IMR infant mortality rate among the surrogate children” worldwide.”⁴ The surrogate Children are usually low birth weight (VLBW), and these children are vulnerable to osteopenia (low bone density) and fractures in their adult life than others.”⁵

Besides babies born through IVF, Surrogacy are at greater risk of birth defects, heart and lung defects, problems including the bladder and genitals disorders and reproductive abnormalities at puberty and long term risks include systemic diseases such as obesity, hypertension or cardiovascular disease and possibly other ailments later in life, increased risk of birth defects.

Children of multiple pregnancies run a higher risk of suffering various birth defects or condition like Beckwith-Wiedemann syndrome (BWS) causes symptoms such as unevenly sized limbs, an enlarged tongue and a high risk of kidney tumors.⁶ The surrogate Children are more prone to increased risk of sex chromosome abnormalities. These are some of the major physiological health risks facing surrogate child as found by research study.

C. Psychological Mental or Emotional risk facing children born of Surrogacy-

The surrogate child are exposed to psychological health risks nature of surrogate birthing process involves conception, fertilization outside the body, surrogate children feel inherently wronged as the children are deprived of minimally decent existence to which they are inherently entitled by the virtue of being a human being or person. There is already existing risk of identity, personhood for the surrogate child .

The process of surrender of surrogate child by the birthing or surrogate mother post birth under the agreement, causes severing of maternal-fetal attachment (MFA)⁷.. It is stated that strong

⁴ Dmitry Sudakov, *Surrogacy may lead to extinction of humanity*, Pravdu.ru (Nov 11, 2020, 3:31 PM), <https://english.pravda.ru/society/126157-surrogacy/>

⁵ *IVF may cause higher infant death rates More money may lead to worse health, says doctor*, BioEdge (Mar. 24, 2007), <http://www.slate.com/id/2161899>.

⁶ James Chapman, *Child health problems linked to IVF*, Daily Mail, (Nov 11, 2020, 3:31 PM), <http://www.dailymail.co.uk/health/article-180379/Child-health-problems-linked-IVF.html#ixzz3ZvfNoxqT>

⁷ Hoda Ahmari Tehran, et al., *Emotional experiences in surrogate mothers: A qualitative study*, 12 IRAN J REPROD MED. 7, 471–480 (2014).

bonds are established between mother and the foetus during pregnancy following the constitution and release of oxytocin hormone during the pregnancy which generates “natural maternal instinct” and “knowledge of fetal-maternal physiology” therefore relinquishing the child to the commissioning couple after gestating, this absence of gestational link affects the psychological health of child as aggression, behavior, lack of emotional empathy, emotional attachment difficulty forming lasting bonds with a mate, mental illness, among others.⁸

The disclosure of information on gamete donors, surrogate mother, birthing process to surrogate child is the psychological impact on the health of surrogate child is the fraught with psychological distress, trauma which may not be conducive for the emotional or psychological health of child.

There is a felt need for conducting research, study in India on health risks issues of children born of surrogacy. In this line, it is pertinent to state that pioneering fertility expert, UK Human Embryology Fertilization Authority (HEFA) Authorities has recommended for investigation, research into the long term adverse health effects of surrogate children and the scientist have recommended for follow-up health care study two or three years after birth⁹.

D. Legal status of child born of surrogacy under Surrogacy Bill 2016–Presumption of legitimacy birth & Legitimate Status for surrogate child as normal biological child –

The Surrogacy Bill expressly states that the Surrogate children shall be deemed to be a “biological child” of the couple entitled to all the rights, privileges available to a natural child but this provision is short of declaring legal presumption of surrogate child as legitimate child of the couple as stated in the ART Bill.

The Surrogacy Bill provides for legal presumption as legitimate status of child and equal entitlement to child born of surrogacy as all the rights and privileges available to a natural child”. But this legitimate status of surrogate child and presumption of motherhood, parentage set out in favour of intending mother, couple stands inconsistent with the presumption of motherhood set out under the existing legislations namely Indian Evidence Act, Birth Registration Act.

⁸ Marcus Johansson Agnafors, *The harm argument against surrogacy revisited: two versions not to forget*, *Linköping University 2014, Medicine*, 17 HEALTH CARE AND PHILOSOPHY 3, 357-363. 4

⁹ *Supra* note 6.

II. EXISTING LEGAL PRESUMPTION OF MOTHERHOOD UNDER INDIAN LAWS

The term motherhood is not defined in any Indian statute. The General Clauses Act 1879¹⁰ not defined "mother" though it defines the term father. The Indian Evidence Act¹¹ sets the rule of motherhood is an irrefutable, irreversible certain fact, fatherhood is a presumption based on the rule of legal maxim *mater semper certa est* (the mother is always certain) and legal recognition of motherhood *mater est quam gestation demonstrat* (meaning the mother is demonstrated by gestation) *pater est quem nuptiae demonstrant* (father is demonstrated by marriage). Pursuant to this Indian Evidence Act, the women giving birth during the continuation of valid wed lock is held as the mother in the eyes of law and her then husband is held to vest in a person who is the husband of the mother is considered as the father. Therefore, under the force of this law, surrogate mother and her husband may be legally presumed to be the legal mother, father of the surrogate child and accordingly legal parentage may be vested in them. Similarly the Birth Registration Act¹² also provides for recognition of birthing mother as "natural mother" or "natural parent" to be named in registered in the birth certificate as mother for all legal purposes. Therefore as per this law, the surrogate mother or birthing mother is to be named in the birth certificate of surrogate child. Surrogacy Bill runs inconsistent to the established ground rule of motherhood specified under the Indian Evidence Act, Birth Registration Act.

*In Jan Balaz vs Union of India*¹³ the Gujarat High Court (HC) held that "no presumption can be drawn that child born out of a surrogate mother, is the legitimate child of the commissioning parents, so as to have a legal right to parental support, inheritance and other privileges of a child born to a commission couple through their sexual intercourse" . On the contrary the Gujarat HC held that under Birth Registration Act, Indian Evidence Act, surrogate mother is held as one of the natural mother or natural parent and surrogate mother is held as one of the parent under the under presumption established under the Indian Evidence Act .

Critical Assessment of legal rights & safeguards for surrogate child under Surrogacy Bill 2016

¹⁰ See The General Clauses Act 1879 (10 of 1897)

¹¹ *Ibid.*

¹² See Registration of Births and Deaths Act, 1969 (Act No. 18 of 1969)

¹³ AIR 2010 Guj 21

This Bill neither provide for right based perspective for surrogate child nor enumerated rights for child.

A. Right to parentage of surrogate child -

Under the Surrogacy Bill 2016 there is a proposal of parentage transfer to the intending couple through court (Magistrate) order,¹⁴ The Surrogacy Bill directs couples to secure “an order concerning the parentage, custody of the child” born through surrogacy from court of Magistrate of first class or above . The Bill does not specify appropriate time juncture of seeking such order minimum and maximum time duration, grounds for grant or denial of such order is not prescribed. The recourse in case of refusal of such certificate is not provided in the Bill.

The surrogacy bill is silent on naming the couple in the birth certificate of the surrogate child as seen in case of *Jan Balaz v. Anand Municipality and Ors*¹⁵ The apex court directed the Centre to enact a law on Surrogacy providing for parentage, citizenship determination for child born under surrogacy arrangement.

B. Right of surrogate child to be free from rejection and abandonment of surrogate child post birth by intending couple -

The surrogacy Bill 2016 prohibits and penalize refusal, rejection, abandonment of surrogate child by intending couple post birth on the ground of health, physical handicap or number¹⁶. The surrogacy Bill provides for definition of abandoned child as child born out of surrogacy deserted by his intending parents or guardians and declared as abandoned by the appropriate authority after due enquiry.” It is also ethical violation of life. But this list of criteria omits to mention the ground of the sex of the child, taking advantage of such loophole, an Australian intending couple who had twin surrogate child in India left the male surrogate child while the girl surrogate child was taken with them to Australia reasoning that they already had a male child and they only needed a girl child to complete their family¹⁷.

¹⁴ Surrogacy Bill 2016, sec. 4

¹⁵ AIR 2010 Guj 21

¹⁶ ART Bill, 2010, sec. 34 (10) & ART Bill, 2014, 60 (11) (a) and (b)

¹⁷ Diana Bryant, *Aussie couple reject Indian surrogate girl child*, AP Canberra, (Nov 11, 2020, 3:31 PM), <http://www.hindustantimes.com/india-news/australian-couple-reject-child-born-to-indian-surrogate-mother-because-of-baby-s-gender/article1-1273356.aspx>

Under Indian constitution, Directive Principles of State Policy (Art. 39(f), 45) providing for “early childhood care” and “protection of child against material and moral abandonment”. The Surrogacy Bill needs stringent measures on the same.

C. Right to social security, Insurance for surrogate child –

This Surrogacy Bill provides insurance for the surrogate mother only but excludes surrogate child. The predecessor draft Assisted Reproductive technologies (ART) Bill 2014 provides Insurance Policy like Jeevan Balya for maintenance of up till the age of twenty-one years”¹⁸.. The Government of India Law Commission report no. 228 recommended for “financial support” or insurance for surrogate child¹⁹. This insurance compensation is to be used for the development and growth of the child/children by the next in the family.

D. Right of Surrogate child to information on gamete donors, surrogate–

The Surrogacy Bill absents the “right of surrogate child to information on genetic parentage, donor and surrogate mothers” which is crucial for medical, health reason for the surrogate child. This lack of medical information abridges and denies right to health of surrogate child. There is lack of record keeping on the medical information on gamete donors, surrogate mothers, child born of surrogacy under surrogacy Bill, the absence of this information in case of genetic disease or other medical reason may impair the health of child.

Such disclosure is fraught with grave psychological impact on the child therefore there is also need for appropriate psychological counselling to be incorporate in the Bill for building understanding, mental preparedness of the surrogate child.

This disclosure, information is much in consonance with the “right of child to know and to be cared for by his/her parents” under United Child Right Convention UNCRC 1989²⁰ . Under South Africa Children’s Act which provides for “counselling of child by specified Health expert (Director-General of Health) before any information is disclosed in terms of biographical and medical information concerning genetic parents on to them”²¹. This provision

¹⁸ ART Bill, 2014, secs. 61 and 21 (a) iv

¹⁹ LAW COMMISSION OF INDIA, NEED FOR LEGISLATION TO REGULATE ASSISTED REPRODUCTIVE TECHNOLOGY CLINICS AS WELL AS RIGHTS AND OBLIGATIONS OF PARTIES TO A SURROGACY, REPORT NO. 228, AUGUST 2009.

²⁰ UNCRC 1989, art. 26, See also Convention on the Rights of the Child, UN General Assembly resolution 44/25, 20 November 1989.

²¹ South Africa Children’s Act no 38 of 2005, Ch. 3, sec. 41.

ensures better psychological health of surrogate child. A similar provision necessitating counselling may be included in Surrogacy Bill.

E. Right of surrogate child to birth certificate (Registration of names of Intending couple)

The surrogacy Bill is silent on the birth certificate of surrogate child. There has been series of cases wherein, the birth certificate of surrogate child name of surrogate mother has been mentioned in the birth certificate as mother for all legal purposes, this constitutes incorrect parental details in birth certificate of surrogate child giving rise to legal complications,

In one of the overseas surrogacy cases, Maulik Modi (39) a US citizen commissioned surrogacy in capacity of being both intending and genetic father (sperm donor) in India resulting in birth of girl surrogate child Medhavi in the year 2010²². The birth certificate issued to the girl surrogate child mentioned “anonymous surrogate” as the mother’s name thus birth certificate does not bear the name of wife of the intending father or intending mother. Owing to this incorrect parental details in the birth certificate of the girl surrogate child, the surrogate child is not allowed to secure US passport or travel documents and accordingly she is not permitted to travel inter country (to US, country of residence of Intending father). This constitutes violation of right to family relations, privacy for surrogate child,

Australia, Victoria Assisted Reproduction Act 2008 provides for amendments in the existing status of children Act 1974,²³ and Births, deaths and marriages registration Act 1996 provide for necessary changes in the registration of parentage details in keeping with surrogacy regulations. Similar amendment is necessary for in Indian legislations.

F. Right of surrogate child to inheritance, succession, testamentary rights –

Though there is no specific provision in surrogacy Bill on right of surrogate child to inheritance, succession, testamentary rights. The Surrogacy Bill expressly states that the surrogate children shall be deemed to be a “biological child” of the couple entitled to all the rights, privileges available to a natural child²⁴ but this provision does not mention legitimacy, legal presumption of child born of surrogacy.

²² *A Dilemma, a Decision, Two Children*, New Indian Express (Nov 11, 2020, 3:31 PM), <http://www.newindianexpress.com/nation/A-Dilemma-a-Decision-Two-Children/2014/02/23/article2072590.ec>.

²³ See Assisted Reproductive Treatment Act 2008 (76 of 2008).

²⁴ Surrogacy Bill 2016, sec. 39.

Whereas this rule of legal presumption stands inconsistent with Hindu succession Act mother has the right to the property of son, surrogate mother once gives birth to the child becomes natural guardian being mother gets right to the child's property²⁵.

Foreign law namely UK Human Embryology Fertilization Authority (HEFA) Act²⁶ providing for parental order which has been issued by the UK family courts which provides for specifically vesting permanently all parental rights and obligations in the Intending couples and all legal rights accruing therefrom the couple, at the same time, permanently extinguishing, terminating all the legal rights and responsibilities of the surrogate mother and her husband. The legal rights following post birth of child in establishing parentage, other legal rights between the couple and the child are not provided under the surrogacy Bill.

III. SUGGESTED SAFEGUARDS FOR SURROGATE CHILD – ENUMERATION OF RIGHTS NOT MENTIONED IN SURROGACY BILL 2016

A. Right to breastfeeding for surrogate child

The Surrogacy Bill is silent on the most fundamental right of child, that every infant including surrogate child has right to breast feeding. The surrogacy bill does not refer to the existing law regulations on breast feeding substitutes namely the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act 2003²⁷. Surrogacy bill do not provide for any obligation on ART clinic to ensure availability of human milk bank or breast-feeding substitutes to be provided to the surrogate child immediately at birth. Surrogacy Bill deprives the surrogate child from the most significant nutrition leading to hampering of early growth and development of child and exposing the surrogate child to risk of infant mortality and other health infirmities.

The World Health Organization (WHO) states that early initiation of breastfeeding within an hour after birth is crucial to protection of health, survival, life of newly born child and also helpful in preventing infant mortality rate (IMR). The supreme court of India in *People's Union*

²⁵ See The Hindu Succession (Amendment) Act, 2005 (39 OF 2005).

²⁶ Re X (A Child) [2014] EWHC 3135 (Fam) Case No: BM13P08884, Thomas Dudley, Re X (A Child) (Surrogacy: Time limit) Garden Court Family Law Chambers Family Law Week, (Nov 11, 2020, 3:31 PM), <http://www.familylawweek.co.uk/site.aspx?i=ed133396>.

²⁷ See Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act 2003 Act, 1992 as Amended in 2003 (IMS Act) Video the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992, No. 38 of 2003.

for *Civil Liberties (PUCL) vs. Union of India, Laxmi Mandal vs Deen Dayal Harinagar Hospital*²⁸ supreme court held that “motherhood and childhood are entitled to special care and assistance and all children providing for the right to nutrition and medical care of the newly born child including breastfeeding”.

The Thailand surrogacy law 2014, National Legislative Assembly (NLA) Thailand has proposed that the surrogate mother may be permitted to breastfeed the child for at least three months, even though the legal parentage vests with the couple commissioning surrogacy²⁹. Surrogacy Bill is silent on health aspect of surrogate child, Canada Assisted Human Reproduction Act that “health and well-being of children born through the application of assisted human reproductive technologies must be given priority in all decisions respecting their use”. The New Zealand Human Assisted Reproductive Technology Act³⁰ states that “the health and well-being of children born of surrogacy as a result of the performance of an assisted reproductive procedure should be an important consideration in all decisions about that

B. Screening of intending couples before surrogacy–

This Surrogacy Bill 2016 is silent on screening of couples in order to assess their fitness to be parent, including their social economic background, criminal records in past, their health, age, and family information and related check before they are permitted to commission surrogacy. In absence of such screening of couple, the surrogate child’s interests suffers considerable risk as the custody, care parentage of child may not be in the interest of child or may harm the child. In many case the intending couples have found to be of criminal background yet they not only successfully commissioned surrogacy but also obtained the legal custody of surrogate child. There has been a reported case of an Israeli pedophile who commissioned surrogacy in India thereafter left the country with the girl surrogate child subsequently it was discovered by the Israeli authorities that the intending father was a pedophile criminally charged for sexual abuse of children as per his past criminal records , this case was extensively criticized³¹ by the national child commission, concerned Ministries in India but neither any action nor any recommendation was issued by them on requisite screening of couples³¹ .

²⁸ W.P.(C) Nos. 8853 of 2008 & 10700 of 2009.

²⁹ See Draft law on surrogacy ready to be submitted for NLA review, 2014, Surrogacyindia, (Nov 11, 2020, 3:31 PM), http://www.surrogacyindia.com/updateevent.php?cat_id=5&id=87

³⁰ New Zealand Human Assisted Reproductive Technology Act 2004, No 92 of 2004, 21 November 2004, sec. 4(a).

³¹ Jason Overdorf , *Israeli sex offender exploited Indian surrogacy trade*, Alaska Dispatch news, (Nov 11, 2020, 3:31 PM), <http://www.adn.com/article/20130611/israeli-sex-offender-exploited-indian-surrogacy-trade>.

The Australia New South Wales NSW Surrogacy Act 2010³² provides for independent psychological Counselling for both the surrogate and IP's prior to entering into a surrogacy agreement by a qualified psychologist, qualified psychiatrist or qualified social worker, these authorities are required to give their opinion on the psychological health of the parties concerned. There is need for adequate screening of the couple before commissioning surrogacy.

C. Right of surrogate child to be free from criminal offences as Trafficking, Abduction other crimes -

The Surrogacy Bill sets out punishment for persons, couples “initiating “assisting aiding or commissioning of commercial surrogacy” and “exploitation of surrogate child,” with imprisonment for a term which shall not be less than ten years and with fine which may extend to ten lakh rupees³³. However term “exploitation of surrogate child” is not described or defined in the Bill.

There has been several such cases of baby selling both in India and in foreign countries. A Doctor named Bharat Atit running infertility clinic in Gujarat had sold two children for eight lakhs posing as surrogate children belonging to two different intending couples respectively in Porabander, Gujarat in the year 2009. The doctor was charged with criminal charges of human trafficking or illegally selling of babies, fraud, forgery and conspiracy under relevant section of the Indian Penal Code³⁴. Pertaining to these issues of trafficking of surrogate child, there has been a PIL public interest petition filed before Delhi High Court to curb trafficking or illicit use of surrogate child for unlawful or illegal, immoral purposes or prostitution or unethical genetic engineering among others.

The Indian constitution as well as the statutory enactments namely Indian Penal code under relevant provision mentions the offense of human trafficking but such description of offense of trafficking is confined to prostitution generally, in the modern day medical technology these statutory provisions need to be revised to address trafficking, abduction or other crimes in guise of surrogacy, ART related medical procedures.

³² Section 35

³³ Section 35, 36, 37 Surrogacy Bill 2014

³⁴ Press Trust of India, *Ahmedabad doctor accused of selling babies NDTV*, (Nov 11, 2020, 3:31 PM), <http://www.ndtv.com/article/cities/ahmedabad-doctor-accused-of-selling-babies-324934>.

Surrogacy Bill in its list of prescribed offences do not provide for trafficking or sale of child, abduction of surrogate child or mother under commercial surrogacy arrangement.

D. No Punishment against Sex Selective or Family Balancing Surrogacy elimination of girl surrogate child –

The surrogacy Bill does not include “sex selective surrogacy or family balancing surrogacy to have child of a pre-determined sex” under the list of offenses and punishments therein the surrogacy bill, whereas the earlier ART Bill 2014 expressly prohibited and penalized the same by incorporating relevant provisions of Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994³⁵. in Surrogacy. These issues of sex selective family balancing hold particular significance in India considering gender imbalance, dismal sex ratio, which has caused demographic crisis in few states of India.

There has been a host of cases at national level on the issue of sex selection, surrogacy which may be reiterated here, In *Varsha Laxman Deshpande vs The Municipal Commissioner* ³⁶ wherein a women right NGO based in Mumbai filed a complaint at the magistrate court against a popular hindi film actor for conducting sex selection test using the genetic testing techniques (PGD) on the surrogate foetus to ensure birth of male surrogate child thereby violation of the PCPNDT Act, pursuant to this Mumbai HC issued a legal notice against the actor for the same and the court directed the civic body for necessary investigation in the same.

It is suggested that the surrogacy bill may incorporate relevant provisions of PCPNDT Act after revised amendment applies to infertility clinics, the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PC & PNDT Act) 1994 amended as the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act 2003 includes within itself the emerging pre conception sex selection techniques used by infertility clinics under its regulatory purview.

Under Canada Assisted Human Reproduction Act³⁷, use of PGD for sex selection for the purpose of detection of particular gender is both prohibited and punishable as a criminal act

³⁵ ART Bill 2010, secs. 25, 37, 39

³⁶ AIR 2005 Bom 26, 2005 (1) BomCR 595, (2005) 107 BOMLR 737, 2004 (4) MhLj 1058.

³⁷ Government of Canada, Ministry of Law & justice, Canada, Assisted Human Reproduction Act, § 5, 60, S.C. 2004, c. 2, Assented on 2004-03-29 , (Nov 11, 2020, 3:31 PM), <http://laws-lois.justice.gc.ca/eng/acts/A-13.4/page-1.html>.



with a penalty of imprisonment up to ten years in jail and fine amounting to \$500,000. Thus, these foreign legislations need reconsideration on these lines.

IV. CONCLUSION

Following perusal of Surrogacy Bill, there are shortcomings in bill to protect interest of child born of Surrogacy, significant legal interest, safeguards are oversight in the Bill which needs to be read into. The inconsistencies with existing legislations, the unprecedented issues in light of medical technology and misuse of medical technology needs to be controlled in greater interest of child. The Indian constitutional directives on protection of child interest needs to be reinforced for children born of surrogacy

At the outset the best interest of child to be safeguarded as paramount consideration as a ground norm all laws, cases involving surrogacy. Progressive foreign legislations, cases may serve as precedent for surrogate child interest.
