

## An Analysis of Surrogacy Problems in India

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### ABSTRACT

*This study is concerned with the issues of surrogacy and women's rights. It also covers a variety of surrogacy-related topics. Legal issues, psychological issues, religious issues, ethical issues, general issues, and health issues were also discussed in this study. This study discusses the many types of surrogacy. Though, this study also focuses on the rights of surrogate mothers and children, as well as government initiatives aimed at improving surrogacy and surrogate mother and child rights in India. In this study, I conceptualize incidents related to surrogacy and legal issues in the global context, but I also gestate the landscape of surrogacy in India, as it is a new concept for India and not acceptable in various portfolios, so I also focused on the social and economic background for the deepening of this concept at the grassroots level. While constructing this research, I also critically assess the Artificial Reproductive Technology (ART) Bill, in which I critically analyses both its positive and bad features for the research's impact on commissioning parents and their surrogacy rights. In conclusion, procreating a kid in a surrogate woman's womb is a grateful gift to those women who are unable to conceive.*

**Keywords:** *treatment option, surrogacy gestational, problems, health concern*

## I. INTRODUCTION

Massive investments in modern technology have resulted in some significant successes in the health sector, among others, in recent years, particularly in India. The creation of an artificial means of creating a kid through surrogacy or Assisted Reproductive Technology has piqued the interest of Indian investors. As a result of these health-care breakthroughs, India has opened the door to economic development through medical tourism. As a result of these developments, India has seen a tremendous growth in the number of foreign tourists and NRIs seeking various healthcare services, particularly in the case of surrogacy. In the field of surrogacy, India has emerged as a popular destination due to its low costs and legal ease. That is the only reason why India is so popular in the field of surrogacy compared to other industrialized nations. The main reasons for their involvement in this profession were poor illiteracy, poverty, low income, and the fact that their mother was the only earning member of the family. People who invest in the surrogacy industry make the most money in the short term, which means that surrogacy clinics face a lot of competition, not just in terms of pricing, but also in terms of hiring and keeping Indian women as surrogates, as well as providing high-quality treatment to patients for good results.

The carrying of a pregnancy for intended parents is referred to as a surrogacy arrangement or surrogacy agreement. Traditional surrogacy and gestational surrogacy are the two basic types of surrogacy. A gestational surrogacy pregnancy occurs when an embryo generated through in vitro fertilization (IVF) is transferred in such a way that the eventual kid is genetically unrelated to the surrogate. Gestational carriers are another term for gestational surrogates. The surrogate is impregnated naturally or artificially in traditional surrogacy, but the kid is genetically connected to the surrogate. Gestational surrogacy is more popular in India than traditional surrogacy, and it is less legally complicated.

When pregnancy is physically impossible, pregnancy risks pose an intolerable risk to the mother's health, or it is a same-sex couple's preferred method of procreation, intended parents may seek a surrogacy arrangement. These arrangements may or may not include monetary compensation. The arrangement is regarded as commercial surrogacy if the surrogate receives remuneration in addition to reimbursement of medical and other reasonable expenditures; otherwise, it is referred to as altruistic surrogacy. Surrogacy's legality and price vary greatly among nations, leading to interstate or worldwide surrogacy arrangements.

## II. SURROGACY GESTATIONAL

The Gestational Surrogacy with Intended Parent Eggs programme is for intended parents who can provide all of the necessary biology to generate embryos but need the help of a gestational surrogate. If you do not already have a medical team, Circle staff can assist you in choosing an IVF centre. After that, you'll be matched with a gestational surrogate who fits your legal, psychological, and emotional requirements.

### 2.1 Child's Best Interests

Surrogacy usually entails paying a fee to the surrogate mother in exchange for the child's delivery and handover to the commissioning parents. As a result, it has been compared to buying and selling a child. It is also claimed that it would lead to the selection of a child's sex and qualities, resulting in the production of designer babies. Surrogacy would thus result in the treatment of a kid as a product, which is morally wrong and unethical. In vitro fertilization is been known to result in the birth of triplets or quadruplets throughout the surrogacy process. This may be detrimental to the child's interests, as the commissioning parents may not be able to care for a large number of children born against their will. Surrogate children may also be born with abnormalities, according to some. The determination of parentage and child custody is another sensitive topic in this process. Surrogacy entails the involvement of three, four, or five adults. As a result, determining the parentage of a child is challenging.

## III. TREATMENT OPTION- I.V.F

In the following situations, this approach is used:

- A low sperm concentration or a high level of defective sperm with low motility, as determined by sperm analysis
- Surrogacy is a concept in India. In the end, this study had an impact on the negative elements of surrogacy in India. Eventually, sperm from the testicles or the epididymis was surgically removed and used for fertilization.
- Failure to fertilise spontaneously in the previous cycle despite a positive sperm analysis.
- The ICSI procedure boosts pregnancy rates while decreasing IVF losses.

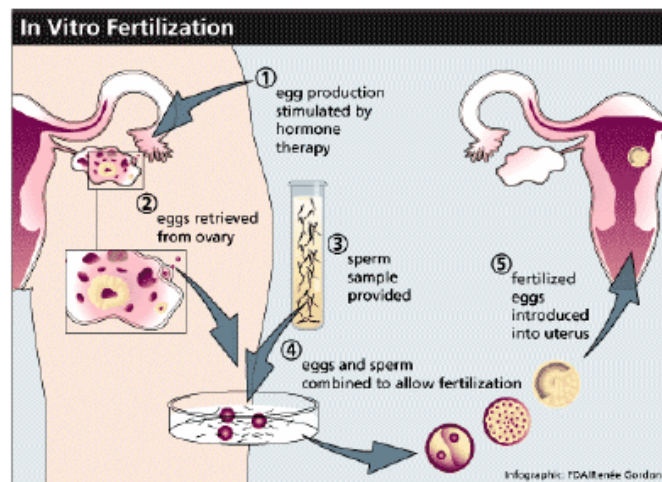


Figure 1: Sperm injection into the cytoplasm

### 3.1 God-like Behaviour

A child is traditionally regarded as a divine gift. Procreation was also viewed as a religious obligation that spouses must fulfil in order to have a child. Prior to the evolution of medical technology, a childless couple's only options were to adopt a child or accept their childlessness as a divine choice. Science and medical technology advancements have ushered in a revolution by allowing childless couples to have a kid that is genetically related to at least one of the parents. Though science has been a blessing to childless families, the growing use of technology and experimentation to create infants with specified traits and qualities has been criticised. Critics claim that by tampering with the natural reproduction process, men are acting as gods. This is regarded as a moral, ethical, and religious transgression.

Attachment and disclosure to surrogate offspring; surrogate mothers' experiences, features, and motives; and changes in the commissioning/intended mothers' profiles have all been studied.

Women who abort their children are nonetheless outside the acceptable range. On the other hand, normal population surveys are less receptive to third-party reproduction since they have no personal need to reconsider and hence keep their initial normative, cognitively coherent state. Surrogate motherhood triads have psychological issues: The commissioning mother (or spouse) will get the commissioned baby, and the offspring. The baby is relinquished by the surrogate mother (or couple) at or shortly after birth.

More than half of the participants in Ciccarelli's (1997) study reported problems in interpersonal relationships as a result of becoming a surrogate mother, and more than 40% said they had lost a connection as a result. The majority are pregnancy side effects that cause physical discomfort and are experienced by all postpartum mothers. Surrogate moms have every reason to expect that their pregnancies would be normal and easy, yet they all have common aches and pains, and some experience issues that could lead to a difficult pregnancy. Surrogacy causes the father to feel uncomfortable and uneasy because the child's mother is not his wife. In comparison to whether one's birth mother wanted to keep the child, the procedures of how a pregnancy was acquired would be a minor psychological issue from the child's perspective. Giving up the child can be exceedingly distressing for the mother, according to researchers Fazli Khalaf, Abdollah Madjid Tarahomi, and Shafiabadi, who publish in "The Journal of Reproduction and Infertility." Surrogacy can lead to family strife and difficult relationships between the surrogate mother and her husband. He may find it difficult to believe that his wife is expecting a kid who is unrelated to either of them, and the family's children may ask why they will not have a new sibling. Some surrogates are quite young and may not grasp the implications, regretting their decisions later at the time of relinquishment or even later in life, when it is too late. Surrogates in India have indicated that money is one of the reasons for becoming a surrogate. Surrogate mothers expected their commissioning parents to be forthright about the child's origins, just as they had told all of their own children that the surrogate baby was a member of the intended couple's family and not their own. As a result, most surrogate mothers intended for some communication between them to continue after the baby was relinquished, so that their new friendships could be preserved and their children could still visit the surrogate child. The biological mother bonds with and grows emotionally attached to the baby growing inside her over the nine months of pregnancy. In previous research looking at the outcomes of children in lesbian families, women who became mothers in the setting of a heterosexual marriage before embracing a lesbian identity were compared to single heterosexual mothers in previous research. There were no differences between their children in terms of emotional well-being, friendship quality, self-esteem, or masculinity or femininity. Lesbian mothers were just as child-oriented, loving and responsive to their children, as well as nurturing and confident as heterosexual mothers in terms of parenting abilities.

## **IV. SURROGACY'S LEGAL AND MORAL ISSUES**

### **4.1 Surrogacy Available**

Procreation is a basic human right. Surrogate mother suffers negative Effects however, with the rising use of technology, the question of whether surrogacy may be used as a right and who can use it arises. Surrogacy has always been thought of as the last resort for married couples who are unable to have children. However, the use of surrogacy by other people, such as divorced, same-sex couples, bereaved, single, the elderly, and the disabled who want to have a child, has become a divisive subject. Increased use of technology by these people to conceive a child would have a significant impact on the social structure, institution of marriage, and meaning of the family, and morals, social norms, and ethics. Furthermore, the use of surrogacy by elderly or disabled people will pose questions about child maintenance and care. As a result, conditions for using surrogacy by anyone other than married infertile couples must be established.

### **4.2 Surrogate Mother Suffers Harm**

Due to poverty or other financial constraints, the majority of Indian women act as surrogate moms. Surrogacy technology, on the other hand, may cause issues and injury to the surrogate mother's health and life. This raises the fundamental question of who is responsible for the surrogate mother's injury. It would be difficult to determine culpability and hence compensate the surrogate mother if there was no medical negligence on the part of the doctors and other paramedical workers.

Only the birth mother is recognized in the Indian system. As far as the Indian legal system is concerned, there is no idea of DNA testing for confirming paternity, which means that the name on the child's birth certificate must be that of the birth mother and her husband. In 2008, the Supreme Court of India ruled in Manji's case (Japanese Baby) that commercial surrogacy is legal in India, reinforcing international confidence in India as a surrogacy destination.

The 35-page bill aims to control India's mainly market-driven fertility industry, with proposals ranging from clinic regulation to ART access limitations. The following are some of the highlights of the Indian Surrogacy Bill, which is formally included in the bill:

1. To become a surrogate, married women must obtain their husband's permission.
2. "Patients for whom it would ordinarily be possible to carry a baby to term" are not eligible for surrogacy.
3. Surrogacy contracts must be legally binding.
4. Fertility clinics and gamete donation banks will be subjected to a thorough accreditation process.
5. Surrogates may not be used as surrogates for the same couple more than three times.
6. The identities of egg donors will be kept totally private.
7. Foreigners seeking surrogacy services must produce written documentation that their home country "allows surrogacy and allows the kid born through surrogacy in India to enter the nation." (This appears to exclude people from Canada and a number of European nations that expressly forbid commercial surrogacy, as well as people from countries that don't openly allow it.)
8. A "national ART registry" will be established and managed by the Department of Health Research.
9. Only "couples" who "have a sexual connection that is legal in India" would be eligible for ART. (This appears to exclude out gay couples.)
10. The ICMR's 2010 ART Bill contains several essential features. It states that a woman working as a surrogate mother in India must be between the ages of 21 and 35. She also has a limit of five live births, which includes her own children.
11. The bill also calls for the establishment of national and state advisory committees made up of Health Department employees, industry representatives, scientists, and other members of civil society. These boards are in responsible of implementing the bill's various guidelines and enforcing them.
12. A measure introduced by a single member of parliament that is not backed by the government.
13. The bill requires the appointment of a local guardian in surrogacy cases where the intended couple is residing outside of India. If the intended couple does not take delivery of the child delivered through the surrogacy arrangement, this local guardian will be legally obligated to do so.
14. The bill ignores ART Banks, which allow surrogate mothers and egg donors to be recognised.
15. The bill allows for commercial surrogacy agreements for couples from outside India if they have a guardian appointed in India.
16. This bill only addresses surrogacy arrangements, not Assisted Reproductive Technology in general.
17. After same-sex relationships are legalized in India, the bill allows for surrogacy for gay couples.
18. The bill requires the commissioning couple to finance surrogate mother insurance.

### **4.3 Issues of Religion**

Surrogacy is a challenging moral and ethical issue that cuts across all civilizations. Religions naturally have opinions on procreation since they are in charge of the spiritual principles that govern human life. Surrogacy is seen differently by different religions, ranging from full prohibition to support. The rise of Westerners using Indian surrogate mothers has given the religious and legal dispute a political dimension. Religions naturally have opinions on procreation since they are in charge of the spiritual principles that govern human life. Children have also been seen as a gift, not a right, according to the Christian religion, the Bible. If God decides whether or not people have children, then if a couple does not have children, it may be God's decision. When individuals or couples are unable to produce children naturally, they have a number of different options for forming a family. While adoption is an option, many people want to see a kid through conception, pregnancy, birth, and upbringing. For some, the problem of having a true biological relationship with that child is also a concern.

All types of surrogacy arrangements are considered haram in Muslim tradition, as are the rules and regulations governing surrogacy arrangements. In several well-known medical facilities in Tehran and other cities in Iran, gestational surrogacy is used as a treatment for infertility. While Sunni Muslims make up the majority of the world's Muslims, Shiites make up the majority of Iranians. Most Sunni scholars prohibit surrogate motherhood since it entails a man's sperm being implanted into the uterus of a woman to whom he is not married. Most Shiite scholars, on the other hand, have issued fatwas allowing surrogate motherhood as a therapy for infertility, but only for lawful couples. They consider this to be the transfer of an embryo or fetus from one womb to another, which is not prohibited in Shiite law. Nonetheless, there are considerable disagreements over some topics, such as kinship and inheritance. The monetary relationship between the intended couple and the surrogate mother is the key ethical concern in Iran's gestational surrogacy experience. While monetary compensation is common in Iran and is sanctioned by religious authorities, it appears to be fraught with ethical issues. This article suggests that this type of monetary relationship be changed and confined to the repayment of ordinary expenses. This type of change necessitates new legislation as well as religious precepts. Surrogacy arrangements of any kind, as well as the norms and regulations governing surrogacy agreements, are considered haram in the Muslim tradition.

Surrogacy is only legal in Jewish law if it is a full-gestational surrogacy. In addition, both the intended parents' gametes should be involved, and in vitro fertilization should be used as the method of fertilization.

Despite the various challenges surrounding surrogacy, data shows that the number of women who take on the position of surrogate has been steadily increasing. The Society for Assisted Reproductive Technology, or SART, projected 260 surrogate deliveries in 2006, and the number has continued to climb since then.

#### **4.4 Health Concerns**

All women considering surrogacy should be aware that IVF, fertility medicines, pregnancy, and childbirth include significant risks. Surrogate moms encounter a wide range of side effects, problems, and major hazards, which are detailed in the list below. Exhaustion (common in the first few weeks), altered appetite and senses of taste and smell, nausea and vomiting (50 percent of women in the first trimester), heartburn and indigestion, constipation, weight gain, dizziness and lightheadedness, bloating, swelling, fluid retention, and hemorrhoids are all common pregnancy side effects. Surrogacy is not a new notion in India. In India, commercial surrogacy, sometimes known as "Womb for Rent," is a booming industry. In India, an English-speaking environment and lower-cost services attract eager customers. Surrogacy's future projections range from opportunity to exploitation, from rural women in India being lifted out of poverty to a futuristic nightmare of a baby farm in a developed country. In the instance of surrogacy in India, it's difficult to discern whether these women are exercising their own personal rights or are being pushed to become surrogate moms in order to meet their mother-in-law's husband's material and financial needs.

Surrogacy opponents say that the procedure is analogous to prostitution and that, as a result of this similarity; it should be prohibited on moral grounds. Because they undermine the authenticity of the surrogate's perspective on her pregnancy, surrogacy contracts are "dehumanizing and alienating." The surrogate mother attempts to avoid forming a personal attachment with the child in her womb and sees the pregnancy as a method to make money. Payment for bodily services dehumanizes the surrogate mother and exploits her reproductive organs and capacity for the wealth's selfish gain.

## **V. AN ANALYSIS OF THE SITUATION**

The topic of my survey is Situational Analysis Response. I conducted a situational analysis to better understand the process. The situational study was carried out on 25 surrogate mothers from three blocks: Kheda, Anand, and Ahmedabad. According to my findings, the majority of surrogate mothers were between the ages of 25 and 35, so they were classified as surrogate mothers. Surrogate mothers aged 25 to 30 years old accounted for 44% of the total, those aged 31 to 35 years old accounted for 40%, and those over 35 years old accounted for 16%.

Surrogate women adhered to two religions: Hinduism (52%), and Christianity (48%) for nearly all of them. All of the surrogate moms were from households with a male head of family. This statistic suggests that a woman becomes a surrogate mother with her husband's permission in order to supplement the family's income. Because of the nuclear family structure, the majority of homes only have a few family members. Surrogates make up 68 percent of the population because they need money for their children's education. The same percentage of surrogates suggests that 68 percent are interested in this contract because they want to create a new home for their family. Another reason is that the debt payment for a house is 28 percent, and the debt payment for land is also 28 percent. These mothers do surrogacy for a variety of reasons, including a new home, money, child education, debt repayment, home repair, and getting an auto to participate in the surrogacy procedure. They talked to their family, husband, friends, agents, and in-laws about being surrogates. Some of the husbands first refused to participate in the surrogacy procedure, but after consulting with an agent or other acquaintances, they agreed. The vast majority of mothers refuse to tell their children about surrogacy. Few believe their husband will say something in the future, while some say they will only say yes if their child asks in the future. Some mothers' parents are initially unsupportive of the process. Surrogate mothers' occupations at the time of joining surrogacy show that 76 percent are housewives who are not working or running a business, and 8% are health workers who work at small hospitals on a primary level. Some of them work as laborers, with 16% of them earning a daily wage. Surrogate mothers have a wide range of educational backgrounds, with 40% having completed primary school, 20% having completed high school, and 12% having completed secondary school. Uneducated mothers account for 28% of all mothers. Almost half of the responders had only completed primary school. However, approximately 28% of surrogate mothers are illiterate, which is a significant finding because it hampers their capacity to work in either the public or private sectors. My findings suggest that the surrogate spouse has an occupation less rate of 8%, which means no service, work, or labour. Only 28% of respondents earn daily salaries, and more spouses work or provide services. Surrogate moms are only covered for health insurance in 64% of cases. And the majority of mothers (36%) are not covered by health insurance. Similar to when a mother seeks a second surrogacy, Health and medical insurance are only covered for 40% of the mothers, while health and medical insurance are not covered for 60% of the mothers. This insurance does not cover pregnancy, so it is life insurance rather than medical insurance. The doctor advises that you buy life insurance with a death benefit. Surrogate mothers receive between Rs. 2000 and Rs. 3000 per month on average during the surrogacy procedure, with 40% receiving Rs. 3000 per month as a monthly expense, 8% receiving Rs. 2500 per month as a monthly expense, and 52%

receiving Rs. 2000 per month as a monthly expense. It should be noted that the mothers must stay at the surrogate hostel for up to 9 months, with the agency or doctor covering all expenses. The mother who receives the most money as pocket money every year, as indicated by four respondents, receives about 120,000 Rs. per year, accounting for about 16% of the total respondents. Yearly expenses are distributed as follows: 48 percent receive Rs. 1, 30,000, 12 percent receive Rs. 1, 40,000, and the remaining 24 percent receive Rs. 1, 50,000. Male births constitute 70.21 percent of all natural births, while female births constitute 29.78 percent. It's also worth noting that she had more male children during their natural pregnancy. The type of pregnancy shown is that 100% of the mothers are having natural pregnancies. No one is having a Caesarean section throughout their natural pregnancy. When compared to surrogacy, only 59.45 percent of male children and 40.54 percent of female children are born. However, the data shows that 100 percent of Caesarean sections were performed during the surrogacy procedure, with no indication that 0 percent of the time was spent on a normal birth. It's worth noting that after surrogacy, 100 percent of the mothers elect to have a Caesarean section. Stretch marks (worse in younger women), loose skin, permanent weight gain or redistribution, abdominal and vaginal muscle weakness, pelvic floor disorder (occurring in up to 35% of middle-aged former child-bearers and 50% of elderly former child-bearers, associated with urinary and rectal incontinence, discomfort, and decreased quality of life), breast changes, varicose veins, and varicose veins are all common side effects of

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According to reports, roughly a quarter of surrogate mothers experience irreversible issues such as hysterectomy (removal of the uterus), salpingectomy (removal of the fallopian tube), and future infertility.

## VI. CONCLUSION

Surrogacy has been used to conceive children since the beginning of humanity. However, advances in science and technology have led to a rise in the use of this approach for conceiving biological children, not just by infertile couples, but by anybody who wants to start a family. Surrogacy's growing popularity has sparked legal, ethical, moral, and religious debates around the world. Surrogacy is becoming a thriving industry in India because of the abundance of surrogate mothers and the low overall cost of this approach when compared to other countries. It is important to note that the Indian legal system has not effectively addressed the multiple difficulties created by this technique of ART. There is no formal law in India that governs the concerns around surrogacy. The Indian Council of Medical Research attempted to create standards for the regulation of surrogacy. However, they are insufficient and lack legal force. The Assisted Reproductive Technology Bill, 2010, is another notable endeavour in this area. However, it has not yet become a law and does not go into depth on surrogacy. However, the following recommendations are made for efficient regulation and resolution of the various difficult issues generated by surrogacy:

Several things appear to be apparent from Scripture. Surrogacy in India is accompanied by a number of recommendations.

There should be comprehensive regulations in place to safeguard the interests of children.

Surrogacy arrangements involving all three parties, i.e., the surrogate mother and the commissioning parents, should be governed by legislation.

Because she is a party to the arrangement, the surrogate mother should be provided with a copy of the contract. Her interests should be considered. The anonymity of the surrogate moms must be maintained and monitored at all times.

Termination and transfer of parental rights are legally recognized.

Almost all of the surrogate mothers interviewed have already given birth to a child and have two children of their own. This implies that these women are capable of natural reproduction and are used as surrogate mothers as a result of reproductive assistance techniques.

Surrogate mothers are typically from low-income families, with an average monthly income of Rs. 2,500–6,000.

The majority of surrogate mothers is married and has a nuclear family, making surrogacy a simpler decision for the couple.

They work as domestic helpers, construction workers, or health workers, and the majority of them are illiterate. As a result, they are financially vulnerable and seek financial assistance. As a result, the need for money is driving them to become surrogate mothers.

Although some husbands do not object to their wives going through the surrogacy process, once the baby is born and handed over to the woman, the husband and her own children distance themselves from her.

Most of the time, it is the surrogacy agent who contacts the prospective surrogate mother to assist her in contacting the appropriate clinic. Former surrogate mothers who have delivered two surrogate babies in the same clinic are frequently used as agents.

The majority of them use the money to fund their children's educations as well as to construct or renovate their homes. The majority of them live in rented kutcha or semi-pucca houses with limited or no latrine facilities. In some situations, their homes lacked a roof, causing their children to catch a fever during the rainy season.

Almost none of the surrogate moms have a copy of the written surrogacy agreement, despite the fact that they are a part of it.

The commissioning parents, the surrogate mother (including her husband), and the fertility doctors sign the surrogacy contract. The clinic administration avoids legal entanglements in this manner.

## REFERENCES

1. S. Kumar. (2019). India's proposed commercial surrogacy ban is an assault on women's rights, *The Wire*. Available at: <https://thewire.in/law/surrogacy-ban-assault>.
2. Sengupta, J. (2016). Opinions on the new draft Surrogacy (Regulation) Bill, 2016 in India. *Journal of Reproductive Health and Medicine*, 2, S18. doi: 10.1016/j.jrh.2016.11.002.
3. Timms, O. (2018). Ending commercial surrogacy in India: significance of the Surrogacy (Regulation) Bill, 2016. *Indian Journal of Medical Ethics*. doi: 10.20529/ijme.2018.
4. Choudhary, S. (2015). Surrogacy: Policy & legal framework in India. *SSRN Electronic Journal*. doi: 10.2139/ssrn.2612347.
5. Garzone, G. (2018). Scientific knowledge and legislative drafting: Focus on surrogacy laws. *Languages Cultures Mediation*, 5(1).
6. Surrogacy (Regulation) Bill, 2019. (2019). Available at: <https://www.manifestias.com/2020/03/03/surrogacy-regulation-bill-2020/>.