

ECUMENICAL LEGAL PHILOSOPHY OF THE BOOMING INFERTILITY TREATMENT: OUTSOURCING PREGNANCY

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INTRODUCTION

Surrogacy is a ray of hope to millions of Childless Couples. The New Encyclopedia Britannica defines 'Surrogate Motherhood' as the practice in which a woman bears a child for a couple unable to produce children in the usual way. According to the Black's Law Dictionary, Surrogacy¹ means the process of carrying and delivering a child for another person. The Warnock defines Surrogacy as the practice whereby one woman carries a child for another with the intention that the child should be handed over after birth.²

But at the same time, Commercialization of Surrogacy has raised fears of a black market and of baby selling and breeding farms; turning impoverished women into baby producers and the possibility of selective breeding at a price. Surrogacy degrades a pregnancy to a service and a baby to a product. An experience show that has with any other commercial dealing, the customer lays down his/ her conditions before purchasing the goods. And hence, the legal aspects surrounding Surrogacy have become very complex, diverse and are mostly unsettled. In most of the countries world over, the woman giving birth to a child is considered as the Child's legal mother. However, in very few countries, the Intended Parents are be recognized as the legal parents from birth by the virtue of the fact that the Surrogate has contracted to give the birth of the Child for the Commissioned Parents. India is one country amongst the few, which recognize the Intended/ Commissioning Parent/s as the legal parents. Many states now issue pre-birth orders through the courts placing the names of the Intended Parents on the birth certificate from

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¹ According to the Draft ART (Regulation) Bill and Rules - 2010; " 'Surrogacy' means an arrangement in which a woman agrees to a pregnancy, achieved through assisted reproductive technology, in which neither of the gametes belong to her or her husband, with the intention to carry it and hand over the child to the person or persons for whom she is acting as a surrogate."

² The Report of the Committee of Inquiry into Human Fertilization and Embryology or the Warnock Report (1984)

the start. In others the possibility of Surrogacy is either not recognized, all contracts specifying different legal parents are void, or is prohibited. Thus, jurisdictions in various countries have held different views regarding the Legalization of Surrogacy. Under this Article the researcher has tried to elaborate the International Legal Scenario of Surrogacy.

INTERNATIONAL LEGAL SCENARIO

While instances of Commercial Surrogacy have raised by leaps and bounds, its regulation or rather non-regulation has been a matter of concern. Within this flourishing market, even as clinics and other players continue to make huge profits, there are several ethical concerns that



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arise out of the increasing commercialization of women's bodies and bodily labor; this includes concerns about the health and rights of the Surrogate and the child/children born out of Surrogacy. It not only raises ethical or social aspects but there are many

legal aspects even which need to be looked after in any Commercial Surrogacy Arrangement. Considering this fact many international conventions and treaties are being made to curb the misuse of Surrogacy. Following are few of the joint initiatives taken by various International bodies to regulate Surrogacy universally.

INTERNATIONAL INITIATIVES

International Initiatives include various Conventions, Treaties, Multilateral instruments and Declarations signed by different countries jointly to regulate and check the flourishing business of baby selling. Further it incorporates various researches undertaken by International Universities to study the impact and Social utility of Surrogacy which is fruitful in making Legislative enactments.

The Convention on Protection of Children and Co-operation in respect of Inter country Adoption 1993

At first sight the 1993 Hague Intercountry Adoption Convention would appear to be an ideal Instrument,³ with a few adaptations, to regulate International Surrogacy arrangements. Indeed it has been reported that where there is no provision for bespoke parental orders, adoption orders can be made as if the arrangement were an Intercountry adoption. However, the Hague Conference has noted the following problems arising making the 1993 Convention an inappropriate vehicle for International Surrogacy arrangements:

- ❖ Article 4(c)(3) states that commercial adoptions are prohibited under the Convention;
- ❖ Article 4(c)(4) states that the consent of the mother must be given after the birth of the child. In Surrogacy cases the Surrogate mother will often have given her consent before the child has even been conceived;
- ❖ Article 4(b) sets out the Subsidiary Principle, namely that consideration must be given to the possibility that the child may be placed in the state of origin; this will not apply to many Surrogacy cases, particularly international cases.
- ❖ Article 29 sets out a general rule that there should be no contact between prospective adopters and the child's parents; this is unlikely to be workable in Surrogacy cases as contact will have to take place when the Surrogacy arrangement is entered into and when any reproduction process or treatment takes place.

³ http://www.hcch.net/index_en.php?act=conventions.text&cid=69

The Convention on Jurisdiction, Applicable law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, 19th October 1996

The 1996 Convention could also potentially be an appropriate vehicle for regulating being broadly accepted internationally. *However, Article 4(a) the Convention specifically excludes from its scope “the establishment or contesting of a parent-child relationship”*⁴ It would be unlikely for such a fundamental provision of the Convention to be renegotiated, not least because of the likely dispute between state parties any proposed alteration would cause.

A Written Declaration by Council of Europe

A Written Declaration on Surrogate Motherhood by Council of Europe Signed by the Parliamentary Assembly which affirms that Surrogate Motherhood is incompatible with the dignity of the women and children concerned and is a violation of their Fundamental Rights considering various other Conventions. The Signatories to the Declaration are Italy, Spain, Ukraine, France, Bulgaria, France, Republic of Moldova, Russian Federation ,Croatia, Liechtenstein, Greece and Lithuania.⁵

The Brussels II Revised Regulation, 2003

Harmonization within the European Union could be a positive first step towards a Global system of regulation. But it is doubtful whether this can be achieved through the Brussels II Revised Regulation.⁶ **The Tenth Preamble states** that the regulation is not concerned with issues of parenthood “*nor to other questions linked to the status of persons.*” Although the Regulation may be of some use in resolving disputes as to parental responsibility, it will not assist in resolving the wider disputes about parentage which can arise in Surrogacy cases.

⁴ Id.

⁵ Council of Europe; Surrogate Motherhood, Written declaration No. 522 | Doc. 12934 | 04 July 2012 Available at <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=18975&lang=EN>

⁶ Official Journal of the European Union, Dec 23, 2003, available at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:338:0001:0029:EN:PDF>

The Hague Conference on Private International Law

The Hague conference on Private International Law begun to focus on the issue of International Surrogacy arrangements in 2010, in particular the status of such arrangements under Private International Law and the status of children born through International Surrogacy arrangements. In April 2010 the Council and General Affairs on Policy for Hague Conference invited the Permanent Bureau to provide a note to the Council on Private International Law issues relating to the status of children born of Surrogacy arrangements. The Council acknowledged the complex issues of Private International Law and child protection arising from the growth in Cross-border Surrogacy arrangements.

The issue was addressed in June 2010 at a meeting of the Special Commission on the practice and operation of the **Hague Child Protection Convention 1993**. The Special Commission noted that the number of International Surrogacy arrangements was on the increase. It also noted, however, that the 1993 Child Protection Convention would not be appropriate for regulating International Surrogacy cases. It recommended that the Hague Conference on Private International Law carry out a further study of the legal, especially the Private International Law issues surrounding International Surrogacy. On the 10th March 2011 the Permanent Bureau of the Hague Conference produced a Preliminary Document on the Private International Law issues surrounding the status of children, including issues arising from International Surrogacy arrangements.⁷ It produced an interim report in March 2012 and a full report in 2013 on International Surrogacy Arrangements.

Work of the Council of Europe

An 'Instruct' was drafted by the **Council of Europe** to cover the rights and legal status of children and parental responsibility. It includes provisions relating to legal parentage in the context of medically assisted reproduction. The European Union is currently considering the

⁷ ABA Section of Family Law, 2012, Fall CLE Conference Philadelphia, October 2012, The Hague Convention on Surrogacy: Should we agree to disagree?, Anne-Marie Hutchinson OBE, Partner and Head of International Children Department Solicitor (England & Wales), Dawson Cornwell, London, United Kingdom

possibility of facilitating the creation of simple status documents within in the EU for the recognition of legal parentage between EU member states. Research papers have suggested that the work should extend to Surrogacy arrangements; it may well be that the status documents provide a mechanism for the effective recognition of the rights of parents involved in Surrogacy arrangements.

Research by the University of Aberdeen “International Surrogacy Arrangements: An Urgent Need for a Legal Regulation at the International Level” (the Aberdeen Model)

*In July 2010, the Nuffield Foundation awarded a grant to Professor Paul Beaumont and Dr. Katarina Trimmings to conduct a study into private international law aspects of international surrogacy arrangements.*⁸ The ultimate goal of the research was to explore possible types of International regulation of Surrogacy arrangements, and to prepare a document that could assist in the process of preparation of a possible future International Convention on Surrogacy. The project was carried out in collaboration with the Hague Conference on Private International Law.

INTERNATIONAL JURISPRUDENCE

International Surrogacy is a phenomenon which is truly global in its reach. Recent data shows that Intending parents entering into international arrangements come from all regions of the world.⁹ The States to which Intending parents are travelling are also geographically diverse and primarily include Eastern Europe, Asia and North America. The phenomenon is also global in that one arrangement may often involve more than two States.¹⁰

⁸ See <http://www.abdn.ac.uk/law/surrogacy/> for more details and “*Regulating International Surrogacy*, March [2012] IFL 125.

⁹ *E.g.*, whilst only a “snapshot”, the information obtained by the Aberdeen University research project (*supra* note 15) from five “agencies” that specialise in international surrogacy (based in the United States of America, India and the United Kingdom), evidences that international surrogacy arrangements have been entered into by intending parents resident in Europe, Australasia, North and South America, Asia and Africa.

¹⁰ This is particularly the case where gamete donors are used: for example, intending parents resident in one State may use an egg donor in a different State and a surrogate mother in a third State (*e.g.*, the documentary “Google Baby” illustrates such an example: < <http://www.hbo.com/documentaries/google-baby/index.html#/documentaries/google-baby/synopsis.html> >, last consulted 16 March 2012).

The number of International Surrogacy arrangements entered into globally is impossible to determine. However, data from five agencies specializing in International Surrogacy shows a tremendous growth in the “market”: when comparing 2010 to 2006, the figures demonstrate a percentage increase of nearly **1,000%** across the agencies.¹¹ Cross-border Surrogacy arrangements are complicated with varying laws, medical practices or codes of ethics. Jurisdictions in various countries have held different views regarding the legalization of Surrogacy. *In England, Surrogacy arrangements are legal and the Surrogacy Arrangements Act 1985 prohibits advertising and other aspects of commercial surrogacy.*

In the US also, commercial surrogacy seems prohibited in many states. In the famous *Baby M case*¹², the New Jersey Supreme Court, though allowed custody to Commissioning parents in the “Best interest of the child”, came to the conclusion that Surrogacy contract is against public policy. It must be noted that in the US, Surrogacy laws are different in different states. Thus, in the growth and development of Surrogacy, pivotal role is played by the Legislators as well as Judiciary. At International level, there are many incidences of Surrogacy when Judiciary has set precedent for the welfare of all the parties involved in Surrogacy. Following are the few historical cases in context of International Surrogacy.

BABY M CASE

Many reproductive tourists, made international headlines by travelling from their native England to California to commission a child using a Gestational Surrogate.¹³ Elton John chose California as his Surrogacy destination because England does not allow Commercial Surrogacy.

¹¹ See *supra* note 7.

¹² In re *Baby M*, 109N.J. 396, 537 A.2d 1227 (N.J. 1988)

¹³ See Laura Roberts & Nick Allen, Elton John Uses a Surrogate to Become a Father for the First Time, THE TELEGRAPH, Dec. 29, 2010, <http://www.telegraph.co.uk/news/celebritynews/8228152/Elton-John-uses-a-surrogate-to-become-a-father-for-the-first-time.html> (noting that the couple may have spent paid the California based surrogacy agency more than £100,000 for the transaction).

*Despite the high costs for Commercial Surrogacy in California, many regard the state as “the nation’s hub for Surrogate pregnancies” because of “its well - established network of sperm banks, fertility clinics and social workers” and regulations favoring intended parents.*¹⁴ Unlike many countries, the United States has not banned Surrogacy on a national level.¹⁵ Each state has its own policy on Surrogacy. This regulatory environment reflects mixed public sentiment regarding whether it is realistic for a mother to relinquish rights to a biological baby that she has carried to term as a Surrogate, regardless of earlier contractual and monetary agreements. This mixed sentiment arose in connection with a prominent, controversial case from 1985, the New Jersey Baby M case.¹⁶ The Baby M case involved a Traditional Surrogacy arrangement in which the Surrogate Mother, Mary Beth Whitehead, refused to give up the baby. Experts predicted that the case was the beginning of the end of Surrogacy; but although the Baby M case caused uproar among the public and may have led to two failed federal attempts to prohibit or restrict Surrogacy arrangements, Surrogacy regulations continue to be governed at the state level.¹⁷ The famed Baby M case in 1986 was the first US court ruling on the legitimacy of Surrogacy. After signing a contract with a married couple to be inseminated by the husband, to carry and give birth to the baby and relinquish parental rights for a fee, the Surrogate mother refused to hand over the child. Eventually, the couple prevailed in a landmark court ruling in the state of New Jersey. The biological mother gave up the baby, but had visitation rights. The facts of the case are Mary Beth Whitehead entered into a contract with William Stern in which she agreed to be artificially inseminated with Stern's sperm. At the time, Mary Beth was married to Richard Whitehead, with whom she had two children.

¹⁴ See Julie Watson, Surrogacy Scandal Raises Questions On Regulation Woman Used Flawed System To Broker Babies, Dupe Couples. HOUSTON CHRONICLE, August 12, 2011.

¹⁵ Many countries including Germany, Sweden, Norway, and Italy have banned all forms of surrogacy. Australia, Greece, Denmark and the Netherlands ban all commercial surrogacy. J. Brad Reich & Dawn Swink, Outsourcing Human Reproduction: Embryos & Surrogacy Services in the Cyberprocreation Era, 14 J.HEALTH CARE L.& POL’Y241, nn.117–18(2011).

¹⁶ Supra note 14, Chapter V

¹⁷ Todd M. Krim, Comparative Health Law: Beyond Baby M: International Perspectives on Gestational Surrogacy and the Demise of the Unitary Biological Mother, 5 ANNALS HEALTH L.193, 213 (1996).The “Surrogacy Arrangements Act of 1989” proposed imposing criminal penalties on Anyone who knowingly engaged in commercial surrogacy. Id. at 214.The “Anti-Surrogate-Mother- Act of 1989,” sought to criminalize “all activities relating to surrogacy” Id.Neither bill received much support. See id.12

In the *Surrogate Parenting Agreement* Mary Beth agreed that after the baby was born she would relinquish the baby to Stern and his wife Elizabeth and would permit the termination of her parental rights so that the Sterns could adopt the baby. In return the Sterns would pay Whitehead the sum of \$10,000, plus expenses. Elizabeth Stern was not a party to the contract.¹⁸ Richard Whitehead did not object to the contract and acknowledged that his wife would be artificially inseminated by Stern's sperm.

Prior to the *Baby M case*, Surrogacy agreements had been most often used when the wife of the adopting couple was infertile. But in the *Baby M* case Elizabeth Stern was not infertile. Instead the Sterns decided not to have Elizabeth bear a child due to the possibility that being pregnant would exacerbate her multiple sclerosis. Under the Surrogate Parenting Agreement, Mary Beth was not entitled to payment of her \$10,000 fee until after the child was born, surrendered to the Sterns, and her parental rights had been terminated. The contract also provided that the Whiteheads would receive no compensation if the child was miscarried prior to the fifth month of pregnancy and would receive only \$1,000 if the child was miscarried after that time.¹⁹ Additionally, Whitehead renounced her right to have an **ABORTION**, unless it was medically necessary.

Whitehead gave birth to a baby girl named Melissa on March 27, 1986. She turned custody of the child over to the Sterns on March 30, 1986, but immediately regretted doing so. Alarmed by Whitehead's anxieties and fearing that she might commit suicide, the Sterns allowed her to have temporary custody of the child. After Whitehead refused to return the baby to the Sterns, William Stern filed an ex-parte application for an order to show cause why the Superior Court of New Jersey should not issue an order for **SUMMARY JUDGMENT** to enforce the Surrogacy contract and a verified complaint seeking specific enforcement of the contract. The complaint sought injunctive relief to obtain custody, termination of Whitehead's parental rights, and an order allowing the Sterns to adopt Melissa.

¹⁸ <http://law.jrank.org/pages/4604/Baby-M-in-Re.html>

¹⁹ Id.

The trial court issued a **TEMPORARY RESTRAINING ORDER** and an order requiring the Whiteheads to surrender Melissa to William Stern. The case then proceeded to a trial on the merits. The trial lasted 32 days and consisted of testimony from 23 lay witnesses and 15 expert witnesses.²⁰ Ultimately, the trial judge declared the Surrogacy contract valid and enforceable, awarded custody of Melissa to William and Elizabeth Stern, and terminated Mary Beth Whitehead's parental rights, although the judge permitted Mary Beth limited visitation rights pending her direct appeal to the New Jersey Supreme Court.

Finally, in 1988 the New Jersey Supreme Court declared Surrogacy contracts void against state public policy but then determined that the best interests of the child born to the Surrogate mother required that custody of that child be awarded to the Biological father and his wife, with liberal, unsupervised, uninterrupted **VISITATION RIGHTS** later being granted to the Biological mother Mary Beth Whitehead. *Baby M* was the first case decided by a state court of final jurisdiction in which the lawfulness of a Surrogacy contract was addressed. States responded to the *Baby M* decision by passing a flurry of legislation. Further, the advent of Gestational Surrogacy technology diminished some of the concern surrounding a Surrogate's possible refusal to give up the baby that existed at the time of the *Baby M* case.²¹ In the last half-decade, Gestational Surrogacy rates in the United States have risen almost 400%.²² Estimates compiled in 2010 suggest that 1,400 babies are now born via Surrogacy in the United States each year.²³ Not only do a large number of Americans decide that Surrogacy is the right option for them, but a sizeable number of international couples choose to utilize American Surrogate Mothers to give birth to their children as well.²⁴

²⁰ Id.

²¹ See supra notes 7-8

²² In 2006, the Society for Assisted Reproductive Technology estimated that the total number of surrogate mothers in the United States was 260. Ali, supra note 12. In 2008 SART estimated this number to be 1000. Id. However, the number is certainly higher than that because at least 15 percent of clinics do not report their numbers to SART and because private agreements made outside of an agency are not counted.

²³ Nara Schoenberg, Growing Number of Surrogates Carry Babies for Foreign Clients, THE TIMES, April 19, 2011, available at 2011WLNR 7629757.

²⁴ Seema Mohapatra, Stateless Babies & Adoption Scams: A Bioethical Analysis of International Commercial Surrogacy, 30 Berkeley J. Int'l Law. 4, 12 (2012). Available at: <http://scholarship.law.berkeley.edu/bjil/vol30/iss2/4>

JOHNSON V. CALVERT

California is the capital of Commercial Surrogacy in the United States, and many California courts have upheld Surrogacy agreements.²⁵ In one of the most notable cases, *Johnson v. Calvert*,²⁶ the Supreme Court of California ruled that Commercial Surrogacy agreements were enforceable.²⁷ In *Johnson*, the court determined that in cases of Gestational Surrogacy agreements, the conflict of rights to the child between the egg donor and the Surrogate must be resolved by looking to the intent of the parties at the time of the Surrogacy arrangement.

In 1990, the Californian Trial and Appellate Courts were called to decide between the claims of a Gestational Surrogate, an African American woman named Anna Johnson, and those of the white Commissioning couple, the Calverts. While the Calverts had provided both sperm and oöcytes, Johnson argued that her bearing and birthing of the child gave her superior claim to be its legitimate parent. The Lower Courts found in favour of the Calverts, on grounds that Johnson was a host rather than a mother to the child, and that the **Uniform Parentage Act (1975)** favoured Genetic Parenthood over Gestational Parenthood. The California Supreme Court overturned the ruling, on the grounds that the Uniform Parentage Act did not give clear guidance regarding the distinction between Genetic and Gestational Motherhood. It based its determination strictly on contract law, looking to the intentions expressed in the contested Surrogacy contract.

“[The Calverts ---- affirmatively intended the birth of the child, and took the steps necessary to effect In-Vitro Fertilization. But for their acted-on intention, the child would not exist. Anna Johnson agreed to facilitate the procreation of the Calverts’ child. ...We conclude that ...she who intended to procreate the child - that is, she who intended to bring about the birth of a child that she intended to raise as her own - is the Natural mother under California law”.]

²⁵ California Surrogacy Law, HRC.ORG., <http://preview.hrc.org/laws-and-legislation/entry/california-surrogacy-law> (last visited Sept. 21, 2011).

²⁶ *Johnson v. Calvert*, 851 P.2d 776, 782 (Cal. 1993).

²⁷ See Elizabeth S. Scott, Surrogacy and the Politics of Commodification, 72 LAW & CONTEMP. PROBS. 109, 121-23 (2009) (noting that *Johnson v. Calvert*, 851 P.2d 776 (Cal. 1993), helped increase California’s appeal as a surrogacy-friendly state.)

And thus, Johnson was ordered by the Court to complete the contract by relinquishing the child, rather than to pay damages. It's apparent that California statutory law also accepts parenthood as determined by a Surrogacy agreement.²⁸ Therefore, the names of unrelated intended parents may be placed on a birth certificate without an adoption procedure. Additionally, California law provides a variety of procedures prior to the finalization of a Surrogacy arrangement. For example, a Surrogacy facilitator directs the Intended parents to place funds in either an independent, bonded escrow depository or a trust account maintained by an attorney.²⁹

KIRKMAN SISTER'S CASE

The 1988 *Baby M case* in the US forced many to put on legal thinking caps, similarly this year also witnessed Australia battling with societal eruptions over the *Kirkman sisters' case*³⁰ in Victoria. Linda Kirkman agreed to gestate the Genetic Child of her older sister Maggie. The Baby girl, called Alice, was handed over to Maggie and her Husband at birth. This sparked much community and legal debate and soon Australian states attempted to settle the legal complications in Surrogacy. Now in Australia, Commercial Surrogacy is illegal, contracts in relation to Surrogacy arrangement unenforceable and any payment for soliciting a Surrogacy arrangement is illegal.

²⁸ See CAL.FAM.CODE§ 7648.9 (West 2004); In re Marriage of Buzzanca, 72 Cal. Rptr. 2d 280, 282 (Cal. Ct. App.1998) (which held that the California statute, which makes a husband the lawful father of a child unrelated to him if he causes it to be created by artificial insemination, also applies to intended parents).

²⁹ California statute defines a surrogacy facilitator as “a person or organization that engages in either “[a]dvertising for the purpose of soliciting parties to an assisted reproduction agreement or acting as an intermediary between the parties to an assisted reproduction agreement, or charging a fee or other valuable consideration for services rendered relating to an assisted reproduction agreement.” See CAL.FAM.CODE§ 7960(a)(1), (2) (West 2011).

³⁰ CAL.FAM.CODE§ 7961(a) (West 2011). California law also makes clear that the surrogacy facilitator may not have a financial interest in the escrow company, and that the funds may only be disbursed in accordance with the reproduction agreement. CAL.FAM.CODE§ 7961(b) (West 2011). In addition to this funds regulation, legislation has been introduced in California that would further regulate surrogacy agreements. See An Act to Amend Section 7613 of, and to Add Section 7613.5 and 7962 to, the Family Code, Related to Assisted Reproduction, H.R.1217,2011-12 Sess. (Cal. 2011), http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_12011250/ab_1217_bill_20110620_amended_sen_v95.pdf.

JAYCEE B. CASE

Surrogacy can lead to an array of legal complexities regarding motherhood was shown by *Jaycee B. v. Superior Court*³¹ Different countries have taken different stands to address this issue. In UK, the Surrogate Mother is the legal mother; *vide Section 27(1) of the Human Fertilisation and Embryology Act 1990*. Section 30 of the said Act at the same time provides that if the Surrogate Mother consents to the child to be treated as the child of the Commissioning Parents the court may make a parental order to that effect.

This section also prohibits giving or taking of money or other benefit except than expenses reasonably incurred in consideration of the making of the order or handing over of the child. *In Jaycee's Case*³² a child was born to a Surrogate Mother using sperm and eggs from anonymous donors because the infertile couple was unable to create their own embryo using the In-Vitro Fertilization techniques. The couple chose to use anonymous donors rather than asking the Surrogate to use her own eggs because of the *Baby M Case* in New Jersey in which the Surrogate had eventually refused to hand over the baby saying that she was its Biological Mother and her right to raise the child pre-empted the Commissioning Parents'.

The child thus had five people who could lay claim to parenthood – **a Genetic Mother, a Commissioning Mother, a Surrogate Mother, a Genetic Father and a Commissioning Father**. One month prior to the birth of the baby Jaycee the Intended parents John and Luanne separated and John sought to rescind his obligations under the Surrogacy contract so as to avoid having to pay child support for Jaycee. Luanne sought both custody and support from her ex husband. The Court battle continued and for three years Jaycee did not have a legal parent. A Californian Court granted temporary custody of the baby Jaycee to Luanne and ordered John to pay for child-support.

³¹ See 228th Report of Law Commission of India is available on www.lawcommissionofindia.nic.in/reports

³² 42 Cal.App.4Th 718 (1996)

CONCLUSION

In this article the researcher has toiled hard to surface the International Legal Scenario and the International Jurisprudence of Surrogacy. There are currently a variety of approaches to Surrogacy globally. Responses to Surrogacy are, however, somewhat in a state of flux: several nations have introduced legislation recently and several others have bills currently under consideration. However, despite this, there are distinct identifiable policy approaches amongst various Nations and, within these, many similarities in terms of Legislation and judicial trends can be seen. Given such a context, the need for a comprehensive legal framework cannot be overemphasized. This is particularly evident in cases involving legal tussles about the citizenship status of children born through Transnational Surrogacy arrangements.

There is an urgent need to address the legal issues arising out of Surrogacy arrangements whether International or National. All the Countries shall unanimously concede to formulate uniform International Surrogacy Laws so that no one can abuse the Surrogacy arrangements in guise of legal voidness.