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A STUDY ON "IS SURROGACY ANALOGOUS TO LEASE UNDER PROPERTY LAW"

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1. Abstract

However, in asking whether the concept of surrogacy is analogous to that of lease in the realm of property law, one inevitably ventures into the territory of testing the limits of imagination when it stretches far enough to wrap the same principles it attempts to impose. Under section 105 of the transfer of property act, 1882, a lease entails the transfer of a right to use immovable property within a specific zone or time period against the payment. At first glance, surrogacy bears similarities to a lease because it is a temporal or a temporary agreement, make use of the service of a woman temporarily, and in a commercial arrangement, even involves monetary compensation

This paper, where the subject of such an analogy to critical survey. While the existence of some structural similarities between surrogacy and lease, especially in terms of the structure of contracts involved, it is my position that the analogy collapses once it is subjected to the survey in light of constitutional principles, international human rights standard, and the basic tenet of law according to which the human body is non property and should not be reduced to property. As provided for in the surrogacy regulation act of 2021, only altruistic surrogacy is allowed in India.

From doctrinal, comparative and moral perspective this paper proves that not only is the lease analogy legally deficient but it is also unconstitutional and morally hazardous. By defining the function of the surrogate in terms of her being a mere custodian of someone else "property", she loses all the attributes of humanity that are associated with agency, integrity, and humanity. Finally, the paper offer proposals to further consolidates and improve the current legal framework while maintaining its human rights orientation.

Keywords:– surrogacy, lease, property law, human dignity, Bodily autonomy, Altruistic surrogacy, commercial surrogacy, Transfer of property act, 1882, Surrogacy regulation act, 2021

2. INTRODUCTION

Surrogacy is not a new practice but long before it was regulated by statute and debated by courtrooms where women carried children out of their passion, kinship obligation and or due to financial necessity. however the legal infrastructure built around it was to attempt to translate deeply human and intimate arrangement into enforce the contracts and regulatory framework.

In India, surrogacy grew rapidly from late 1990s through the 2010s, during which the time of the country became one of the most prominent destination for reproductive tourism. Couples from various countries and world such as Europe, North America, Australia came to India for the sake of surrogates which where drawn by the relatively of lower cost and the availability of willing women is near to absence of legal regulation. Clinic proliferated which means to grow or to reproduce. Brokers and women enters

into the picture and many of them who the people choose are poor with limited alternative and some might not be having basic facilities to maintain their daily needs and out of all this they enter into an arrangement that are rarely and truly free choices.

This research gave a rise to serious concerns about exploitation, commodification, and the lack of legal protection for surrogates. The Law Commission of India addressed this in its 228th Report of 2009, ⁷⁹recommending prohibition of commercial surrogacy and the introduction of a regulatory framework. Finally in the surrogacy regulation act 2021, a law that decisively shifted India's position from permissive to strictly regulated, and from ⁸⁰commercial to exclusively altruistic surrogacy.

It is against the historical backdrop that the question of whether surrogacy resembles a lease under property law must to be understood. It is partly from the commercialization of surrogacy and the financial exchange made the arrangement look like a transaction involving the temporary use of a service. But now the India has moved away from that model, the analogy deserves fresh and critical examination.

The analogy between surrogacy and a lease is not entirely fanciful. Legal scholars, particularly those writing from a feminist or critical legal theory perspective, have noted that commercial surrogacy agreement do bear a structural resemblance to lease transaction. Consider to the elements there are:-

1. Transferor{the surrogate}
2. Transferee{the intended parents}
3. A defined object{the reproductive capacity or womb}
4. Time period{the duration of pregnancy }
5. Consideration{ money paid for the service}

This parallel has been used in the academics literature both to the critique

commercial surrogacy arguing that it reduces women to walking incubators to objects of temporary use like rented property and ⁸¹occasionally to defend it on the grounds that women should be free to contract for the use of their bodies just as landlords contract for the use of the property. However, it runs into serious legal and ethical difficulties.

The section 3 of the paper discusses the legal aspect concerning surrogacy in India, such as the transfer of property act and the surrogacy regulation act 2021. Section 4 discusses comparative law and regulation related to the topic in question. Section 5 provides an analysis of existing judicial decision in India and as well as worldwide. Section 6 discusses the controversy that is central to the lease analogy. Finally Section 7 provides some recommendation for policy making.

3. Legal Framework

Any serious examination of the lease analogy must begin with the law of lease as it exist in India. Section 105 of the transfer of property act, 1882 defines a lease as a transfer of a right to enjoy immovable property, made for a certain time, express or implied or to be in a perpetuity, or in a consideration of a price paid or promised, or any other things of value, to be rendered periodically to the Transferor by the transferee ⁸²who accepts the transfer on such terms.

Several essential elements flow from this definition. First, the subject matter should be immovable property. The transfer of property act 1882 defines ⁸³'immovable property' in Section 3 to include land, benefits arising out of land, and things attached to the earth. The human body is noticeably absent from this definition and for good reason. Second, there must be a transfer of a right to enjoy not ownership, but possession and use. Third, the arrangement must be for a definite or determinable period. Fourth, there

⁷⁹ Law Commission of India, 228th Report on Need for Legislation to Regulate Assisted Reproductive Technology Clinics as well as Rights and Obligations of Parties to a Surrogacy (New Delhi: Government of India, 2009).

⁸⁰ The Surrogacy (Regulation) Act, 2021 (Act No. 47 of 2021).

⁸¹ Carmel Shalev, Birth Power: The Case for Surrogacy (New Haven: Yale University Press, 1989), 96–102.

⁸² The Transfer of Property Act, 1882 (Act No. 4 of 1882), s. 105.

⁸³ The Transfer of Property Act, 1882 (Act No. 4 of 1882), s. 3

must be consideration. Fifth, the transferee must accept the transfer.

When one maps these elements onto a surrogacy arrangement, some parallel do emerge. There is a defined period roughly nine months of pregnancy. There is a commercial surrogacy, financial consideration. There is a transfer of the use of a capacity the reproductive function of the surrogate's body. While this is made there is an agreement between both the parties that formalizes the arrangement.

However, here lies the problem with the analogy itself the human body is no immovable property. Indeed, the human body is not a property in any respect as far as Indian laws are concerned. A woman's body cannot be alienated from her person. Here in a lease agreement, the lease can be exclude the lessor from enjoying the lease while he exercises his right to enjoy it.

Additionally, the type of legal remedies one would pursue against breach of a lease agreement under property law are simply inapplicable to surrogacy. The remedies in such cases may include eviction, payment of damages, specific performance. In case the surrogate decides to stop midway through pregnancy, then these are completely inapplicable because the surrogate is not a piece of property that can be forced into doing anything.

The most important aspect of the act is the ban on commercial surrogacy.⁸⁴ Section 4 of the act provides the conditions under which surrogacy can be done, and clearly prohibits any type of surrogacy that is done for commercial gain. Section 38 provides the punishment clause, with⁸⁵ commercial surrogacy carrying a punishment of up to 10 years of life imprisonment, along with a fine of up to 10 Lakh rupees. Under the act only 'altruistic surrogacy' is allowed,⁸⁶ according to Section 2(b), which refers to surrogacy in which there are no charges, expenses, fees, or payment of any kind other

than the medical costs and insurance of the surrogate mother.

There are strict eligibility requirements for surrogacy in the 2021 Act. The intending couple has to be citizen of India who are married for five years and have a medical condition that requires surrogacy to be done. The surrogate has to be a close relative of the intending parents or couple, a married lady aged between 25 and 35 with a minimum of one child, and she can act as a surrogate only once in her lifetime.⁸⁷ There is provision in the act for a National surrogacy board.

The particular importance is to change in focus to altruistic surrogacy, which eliminates the most obvious point of comparison to lease in terms of payment for the service rendered. There would be no exchange of monetary compensation other than payment made towards the costs of the medical procedure involved.

4. Constitutional Provision

Article 21: The Right to Life and Personal Liberty

Article 21 provides that no person can be deprived of life or personal liberty without following the procedure laid down by law. The Supreme Court of India has a series of Judgements which have been interpreted the meaning of Article 21 and has incorporated a large number of rights within its ambit⁸⁸ the right to health, right to privacy, the right to dignity, the right to reproductive freedom, and the right to non exploitation.

In Justice K. S. Puttaswamy v/s Union of India, (2017) 10 SCC1,⁸⁹ it was decided by the Supreme Court in a nine judge bench that the right to privacy is a fundamental right under Article 21. The right to privacy includes decision autonomy and the right of an individual to choose what to do with his or her body, which also includes

⁸⁴ The Surrogacy (Regulation) Act, 2021 (Act No. 47 of 2021), s. 4.

⁸⁵ The Surrogacy (Regulation) Act, 2021 (Act No. 47 of 2021), s. 38.

⁸⁶ The Surrogacy (Regulation) Act, 2021 (Act No. 47 of 2021), s. 2(b).

⁸⁷ The Surrogacy (Regulation) Act, 2021 (Act No. 47 of 2021), ss. 5–16.

⁸⁸ Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1.

⁸⁹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

reproductive decision autonomy. The right to privacy is very much connected to surrogacy because the decision whether to exercise one's reproductive rights is a very personal decision.

However the use of principles of property law in the context of surrogacy may not be in harmony with Article 21. For instance, if a woman's uterus is considered rented property and any decisions that she makes about her body within that period will have to be limited according to the conditions of the contract. She can be considered guilty of breaking the agreement for her actions, such as terminating pregnancy or refusal to undertake a particular treatment on her body.

Article 23: Prohibition of Traffic in Human Beings.

⁹⁰Article 23 forbids traffic in persons and forced labor. Surrogacy on a commercial basis, especially in its most exploitative way forms and may arguably be included in traffic in human beings as it is related to the sale or hire of bodily functions for financial gain.

The lease analogy which is properly followed up in the context of business surrogacy, would produce the opposite effect of what the article 23 was intended to outlaw the legalization of trafficking in reproductive labor through a 'womb lease'.

Article 14 and 15: Equality and Non discrimination

⁹¹Articles 14 and 15 provide for equal protection before law and prohibition of discrimination on the grounds of sex. The very nature of surrogacy puts an emphasis on female individuals. By considering surrogacy as similar to leasing property, a legislation would

impose the property law logic on the activity mainly performed by females, reproducing stereotypes about the use of women's body by other people.

5. International provision

1. The Convention of the elimination of all forms of discrimination against women

Article 12 of CEDAW states that women should not face any discrimination in accessing the health care services.

⁹²CEDAW, It was ratified in India in 1993 which makes it mandatory for the states to ensure equal access for services relating to women's health and reproductive rights. ⁹³The general recommendation number 24 of the CEDAW committee makes it clear that women's right to reproductive freedom be protected; nothing must be done which would objectify a woman's body and make it a commodity.

Commercial surrogacy is seen as a renting of the womb and would run contrary to the basic principles of CEDAW. Altruistic surrogacy may contribute to the existence of unequal relations between parties unless properly regulated. In view of that, the international legal framework provides support for the legislative ban on commercial surrogacy.

2. The universal declaration of human rights (UDHR), 1948

⁹⁴Article 1 of the UDHR says that human beings have been created equally free and dignified. Article 4 does not allow the existence of any forms of slavery and servitude. Dignity of human being in UDHR is fundamental because it demands that human beings can't be considered as means or object of other's utility. This is a Lease type of concept of surrogacy

⁹⁰ Constitution of India, Article. 23

⁹¹ Constitution of India, Articles. 14, 15.

⁹² Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW), Article. 12; India ratified CEDAW on 9 July 1993.

⁹³ CEDAW Committee, General Recommendation No. 24 Article 12 of the Convention (Women and Health), UN Doc. A/54/38/Rev.1 (1999).

⁹⁴ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A(III), art. 4.

clearly violates the very essence of this principle.

6. JUDICIAL PRECEDENTS

INDIAN JURISPRUDENCE

A. Baby Manji Yamada v. Union of India, (2008) 13 SCC 518

⁹⁵This is one of the first instances of surrogacy that came up for the consideration before the Supreme court of India. A couple from Japan had made an agreement for surrogacy in India, but got separated. The intended parent or the mother declined to take custody of the baby while the intended father wanted to take the baby to Japan. There was absolutely no legal provision relating to surrogacy before the court.

The issue of the lease agreement was not directly dealt with in this particular case, however the case highlighted the effects of considering surrogacy as an agreement that does not have any regulation from the courts. The baby was stateless as no one claimed the child as either their biological child or as their child by virtue of a surrogacy agreement.

B. Jan Balaz v. Anand Municipality, (2009) SCC Online Guj 2069

⁹⁶Here in this instance the Gujarat High Court considered the nationality and citizenship of the twins born out of a surrogacy arrangement by a German couple. It was concluded that the babies were Indian citizens because they were born in India to an Indian woman who served as a surrogate mother, although they had German genes. It can be seen that the court considered a complicated interconnection between surrogacy, citizenship, and family law without applying property law rules.

The case is important due to the fact that it clearly shows how impossible it would be to use property law approach to solve a surrogacy issue because the children cannot be treated as some kind of a movable property that needs to be transferred.

C. Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

Although this is not case of surrogacy, ⁹⁷Puttaswamy lays down the framework for the constitutional reasoning on surrogacy with the nine judge bench's affirmation of privacy as a fundamental right, which includes bodily integrity and freedom to make choices, any application of property based logic on a women's reproductive capability would definitely violate Article 21 as read in Puttaswamy case. The freedom of the surrogate to make decision regarding her body while carrying the child cannot be submitted in a contract.

D. Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1

This being a case relating to the laws of inheritance among Hindus, ⁹⁸its underlying philosophy, which states that personal and family relationship cannot be equated with mere property transaction, is pertinent to the surrogacy debate. The court's broad interpretation of women's rights in relation to property transactions demonstrates an understanding that women are not mere tools in such transactions but bearers of rights themselves.

7. The Controversy: Analyzing the Lease Analogy and Its Implications

Where the analogy appears to work

In order to take an honest look at the analogy of leasing, it is important to

⁹⁵ Baby Manji Yamada v. Union of India, (2008) 13 SCC 518.

⁹⁶ Jan Balaz v. Anand Municipality, (2009) SCC Online Guj 2069.

⁹⁷ Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1

⁹⁸ Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1.

recognize what makes it so attractive. In terms of its structure, there is no doubt that the process of gestational surrogacy has certain characteristics of leasing. It is possible to speak about the subject matter of the arrangement, about the limited period of time within which the deal is made, and parties who participate voluntarily in the deal. Consideration is also present in the case of business surrogacy arrangement.

In addition to this, there is ulterior motive behind the analogy used by some feminists to prove that women have the freedom to negotiate for the use of their body and reproductive function.⁹⁹ "if men are allowed to sell their sperm, then why not give women the right to rent their womb?" in fact, the property based rationale for commercial surrogacy is exactly like this.

Where the analogy break down

The body is not a property

The most basic flaw in the analogy is in the assumption on which it is based.¹⁰⁰ The property irrespective of movable or immovable, is an entity that exists independent of the individual and also it can be owned, alienated, mortgaged, and leased. Not so the human body which is indivisible from the individual body. There is no sense in saying that the surrogate "has" a womb in the same way that the landlord has his flat.

¹⁰¹ Under the Indian law, there is no property right recognized in one's own body. There is no clause in the Transfer of Property Act, Indian Contract Act, or any other laws which makes it possible for a person to rent or license his bodily functions. Such an omission is not due to any lack of consideration but is on the

principle that the body is inseparable from the individual.

Exclusive Possession Cannot Be Transferred

Lease confers exclusive possession of the property to the lease. The lessor leaves the lessee takes possession. Surrogacy does not allow for that kind of transaction. The surrogate will always be there in her body and in full possession of her body and the surrogate retains her decision making power concerning her body what she eat, how she sleep and also when she accesses medical care. The intended parents can never enter her body nor they will have possession or control over her body.

Specific Performance and Enforcement Impossible

Under the property law a lease, if unlawfully prevented from accessing leased property than it may cause for sue for specific performance. In the context of surrogacy what will be specific performance? And what will happen if the surrogate decided to abort pregnancy? The answer is no in both the cases because such action will amount to a violation of article 21 and the human rights principles. It is clear that even the most elementary form of remedy in property law does not apply in surrogacy and that in itself is sufficient proof of the failure of the analogy.

The Prohibition on Commercial Surrogacy

¹⁰² The 2021's Act's prohibition on commercial surrogacy removes the financial consideration that is essential to both lease and the lease analogy. Altruistic surrogacy does not involve profit or rent. It is an Act of generosity, not a commercial transaction. Without which the consideration in the property law

⁹⁹ Shalev, Birth Power, 102–108.

¹⁰⁰ Radin, Contested Commodities, 16–29.

¹⁰¹ The Transfer of Property Act, 1882 (Act No. 4 of 1882); The Indian Contract Act, 1872 (Act No. 9 of 1872).

¹⁰² The Surrogacy (Regulation) Act, 2021 (Act No. 47 of 2021), s. 4

sense the analogy loses its most tangible basis.

Ethical Implications: Commodification and Dignity

The ethical criticism of the lease analogy might even be stronger than the legal one. By using the notion of a lease to define the practice of surrogacy. The surrogate mother's body is seen as an object that can be transferred at any moment of time, put into use for a certain goal, and then transferred again.

¹⁰³The principle of humanity developed by Immanuel Kant, states that persons should be regarded as ends in themselves and not as a means for certain purposes. If we view the practice of surrogacy as a kind of lease, the surrogate mother becomes a temporary tool rather than an autonomous person who is capable of making choices and making her own will.

The issue of the commodification is not merely theoretical in nature. ¹⁰⁴In India, where many of the surrogate came from socioeconomically disadvantaged groups, there was an immense imbalance in terms of power dynamics between the intended parents and the surrogates. With the advent of the money into the equation, the choice of the surrogate was made not out of free will but out of economic necessity. Under the "lease" concept the power dynamics would be further enshrined within law in terms of commercial surrogacy.

Implications for Children Born Through Surrogacy

Furthermore, the notion of leasing also brings some disturbing connotations in terms of the babies born through surrogacy arrangements. As it was noted earlier, in leasing the product of

transaction the right to the use of the property for the period of the lease. If we talk about leasing agreement in terms of surrogacy and the baby becomes in some way the product which results from the use of the leased property.

Consent, Exploitation, and the Surrogate's Agency

One of the most contentious aspects of surrogacy, especially in India it is the issue of freedom and informed consent in relation to the surrogate mother. According to the contractual theory, the people entering into a contract are assumed to do so freely and with adequate information about the outcomes of their actions. In reality, surrogate mother in commercial contracts may feel socially pressurized by their family members and financially and broken in addition to lack of legal counseling.

The comparison of surrogacy to lease makes the issue of consent all the more problematic. In a lease, once the contract is signed, the parties are committed to its provision and the lessor has no right to modify the contract. Were such an agreement used to make a case for surrogacy and the fact is that the women had consented to carry a fetus from the beginning should keep her commitment, even if circumstances had changed.

8. Suggestions and Recommendations

Strengthening Protections for Surrogates

The 2021 Act is a positive development, but its execution has been somewhat inconsistent. There are various practical suggestions to be made to make sure the surrogate will be truly safeguarded. First the Act needs to be modified so that it includes the right to independent legal representation for the surrogate, distinct

¹⁰³ Immanuel Kant, *Groundwork of the Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1997), 38.

¹⁰⁴ Pinki Pahuja, *Surrogacy: Law, Practice and Policy in India* (New Delhi: Bloomsbury Publishing India Pvt. Ltd., 2021), 54–67.

from any counsel hired by the intended parents. In this particular case, it is assumed that the surrogate is able to deal with the legal and medical aspects of her role without professional legal help. Such an assumption is unrealistic.

Furthermore, ¹⁰⁵the Act must specify a basic minimum requirement regarding the surrogacy contract the guarantees the surrogate's right to decide on all matters relating to the medical treatment during the term of her pregnancy as well as her right to terminate the pregnancy under the medical termination of pregnancy act.

Expanding the Pool of Eligible Surrogates

The limitation of surrogate mothers to close relative alone has proved to be problematic. In some cases, they may not be any willing close relative available for the job or medically fit for the same. While this policy has been put in place in the best interests of the couples, the unforeseen outcome has been that it has made the process of altruistic surrogacy out of bounds for many such couple.

¹⁰⁶While the 2023 amendment enabling single female to seek out surrogacy is certainly welcome, it must go further and accommodate the right of the LGBTQ couple, who currently fall outside the purview of surrogacy under the law where a point of which the view has changed since ¹⁰⁷The Supreme Court's judgment on LGBTQ rights.

Dedicated Surrogacy Tribunals

The conflicts emanating from surrogacy agreements are currently heard in general civil courts, which are not suited for addressing the intricate nature of medicine, ethics, and law involved in

surrogacy. There should be legislation allowing for the creation of specialist family benches that have knowledge in assisted reproductive technology. The delay and uncertainty involved in the normal civil process of resolving disputes is especially detrimental in surrogacy cases.

Moving Beyond Contract and Property

The most significant conceptual suggestion might be the following; surrogacy should be considered as a Sui Generis phenomenon in terms of legislation, borrowing from both contract and family laws, but not being reducible to them. The draft bill of 2021 makes some progress in this direction, however, in the context of the legislative and judicial discourse about surrogacy, there is a tendency to resort to well known legal phenomena when the situation does not quite fit into those legal phenomena.

A separate code on surrogacy or alternatively, ¹⁰⁸some judicial guidelines prepared by the supreme court in the manner of the Vishaka guidelines for sexual harassment can contribute to the development of a more consistent legal framework which should be based on constitutional principle, namely, dignity, autonomy, equality and the best interest of the child.

Addressing Cross-Border Surrogacy

While the 2021 act deals with the domestic surrogacy, it makes no mention of the equally important matter of cross border surrogacy, which includes scenarios involving Indian surrogate carrying babies for foreign commissioning couple or vice versa.

¹⁰⁹The efforts being made by the Hague

¹⁰⁵ The Medical Termination of Pregnancy Act, 1971 (Act No. 34 of 1971), as amended by The Medical Termination of Pregnancy (Amendment) Act, 2021.

¹⁰⁶ The Surrogacy (Regulation) Amendment Act, 2023.

¹⁰⁷ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

¹⁰⁸ Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

¹⁰⁹ Hague Conference on Private International Law, The Parentage / Surrogacy Project (The Hague: HCCH, 2014). Available at: <https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy> [Accessed: 21 April 2026].

conference regarding international surrogacy standards offer an opening for Indian to interact with the rest of the world in framing a multilateral regime for safeguarding surrogate mothers and children.

Data, Research, and Impact Assessment

It is unfortunate there are no systematic statistics available in India about the number of surrogacy arrangements, disputes, adverse health effect on surrogate mothers, and number of babies delivered via surrogacy per year. It is very important to gather such statistics to evaluate the success of the current legal framework and any lacunae in it.¹¹⁰ There should be an obligation on the national surrogacy board to compile and publish annual statistics regarding surrogacy in India.

9. Conclusion

It turns out that what appeared to be an issue concerning whether surrogacy is similar to a lease in property law is in fact an issue of far grater magnitude: that how the law conceives of the human body and whether the categories that have been developed in relation to the world objects maybe co operated for the governance of the world of persons.

It appears that it is negative and without seriously distorting both the categories of property law and the guarantees contained in the constitution. The necessary condition of a lease agreement and property that is immovable, exclusive possession, transferable enjoyment, legal remedy and are inapplicable to surrogacy without leading to outcomes that are both legally nonsensical and constitutionally unacceptable. The human body is not immovable property.

A surrogate cannot vacate herself and the enforcement of a surrogacy lease agreement would involve compulsory pregnancy, a flagrant denial of the guarantees of article 21.

As¹¹¹the surrogacy regulation Act 2021 has demonstrated in so many ways, this question has in effect already answered in favor of India's position prohibition of commercial surrogacy and allowing only altruistic surrogacy arrangement. Without the element of pecuniary rewards as per property laws, the concept of leasing has no earning. What then follows is the concept of a relation bound not by lease but by family ties, medicine, and constitutional ideas.

An ethical analysis of the issue further supports the legal one. The body of the surrogate cannot possibly be regarded as leased property: the act of doing so is equivalent to treating human Personhood as merchandise and assigning value to the intimate aspect of the female body. It amounts to dehumanizing objectification which, under any conception of human dignity, must necessarily be prohibited.

In conclusion, this paper argues that the lease analogy is legally inadequate, constitutionally flawed, and ethically perilous. Surrogacy is not a lease arrangement; surrogacy is an area about which the law knows almost nothing and a discussion on the subject that India, and the world at large, must have carefully and respectfully.

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