ISSN 2278-2540 | DOI: 10.51583/IJLTEMAS | Volume XV, Issue VIII, August 2026

Psycho-Legal and Post-Delivery Rights of Surrogates: A Legal Analysis

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DOI: https://doi.org/10.51583/IJLTEMAS.2026.150800077

Received: 27 August 2026; Accepted: 01 September 2026; Published: 16 September 2026

ABSTRACT

Infertility is a pivotal issue in our society which affects both health and well-being of a person suffering it. The advancements in science and technology have made it possible for the infertile couples to enjoy family life with children with the help of surrogates. Surrogacy, as an arrangement has been widely practiced across the globe. It has landed with several legal, moral, ethical and social issues as it interferes with natural process of reproduction and makes the entire process of procreation a contractual and transactional process. Where current legal models are predominantly concerned with establishing parentage and the rights of intended parents, surrogate's psycho-legal and post-partum rights remain under theorized, and inadequately protected. It raises intersections between reproductive autonomy, contract law, human rights and psychological wellbeing of surrogates, intending parents and the child involved. The intended parents have dominating role in the legal framework but the post-delivery rights of surrogates need to be addressed. This paper explores psycho-legal dimension of surrogacy focussing on post-delivery rights of surrogates. From a legal standpoint, surrogacy regimes predominantly treats the surrogate's consent as irrevocable once the child is born, thereby privileging contractual certainty and child stability over the surrogate's post-delivery autonomy and wellbeing. This approach reflects a narrow contractual paradigm that inadequately accounts for embodied reproductive labour and its psychological consequences. By integrating insights from feminist legal theory, relational autonomy, and international human rights law—particularly the rights to health, dignity, and bodily integrity—this study argues for a re-conceptualisation of surrogates' rights beyond delivery. A legal analysis on human rights norms, international comparative law, psychological research is being held to reveal systemic gaps in protection of surrogates, and rights of surrogates post-delivery. This paper proposes framework to reconcile autonomy, contractual and parental claims, and psychological wellbeing while advancing concrete legal reforms.

Keywords: Surrogacy, Reproductive autonomy, Psycho-logical wellbeing, Human rights.

INTRODUCTION

Surrogacy has emerged as one of the most complex manifestations of assisted reproductive technology (ART). It is profoundly situated at the convergence of law, medical sciences, ethics and human psychology.[1] The rapid expansion of assisted reproductive technologies has redefined the traditional understanding of motherhood, parenthood and family. The legal discourse on surrogacy is largely centred on the rights of intended parents, contractual enforceability, and the legal status of the child, but the psycho-legal position of surrogate women in the post-delivery phase is completely unexplored. The process of gestation, childbirth, and relinquishment of child places a surrogate in a vulnerable position, raising questions concerning her bodily autonomy, mental and physical well-being, dignity and post-partum rights. Surrogacy is not just a biological act which is governed by contractual obligations, but it is an intense emotional experience.[2] Pregnancy leads to hormonal changes, psychological bonding and identity transformations which do not cease post-delivery. The post-delivery phase

[1] Parashar, Varalika, et.al., "Surrogacy in India: Constitutional challenges, ethical concerns, and comparative legal perspectives", JOURNAL OF INFORMATICS EDUCATION AND RESEARCH, Vol. 5, No.4, 2025.

[2] Uma, "Surrogacy in India: An Indian legal perspective on intended parents and surrogate mothers", INTERNATIONAL JOURNAL OF LAW, POLICY AND SOCIAL SCIENCES, Vol. 7, No. 2, 2025.

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deals with emotional instability, post-partum depression, social stigma and sense of detachment when surrogate mothers are required to surrender the baby immediately after delivery.[3]

The Surrogacy (Regulation) Act, 2021, has travelled from a permitted commercial surrogacy regime to restrictive altruistic one, leaving no room for the post-delivery surrogates to raise critical constitutional and human rights issues.[4] The existing framework serves no regulations to access post-partum healthcare, mental health support, compensation continuity, privacy and freedom from coercion. The surrogate women are literally invisible once the child is handed over to the intended parents.

This research paper undertakes a psycho-legal analysis of surrogacy focusing on the post-delivery rights of surrogate mothers. It examines whether existing legal framework recognizes the psychological impact of surrogacy and whether post-delivery protections are consistent with constitutional guarantees of dignity, equality, personal liberty and reproductive autonomy. The paper highlights a rights-based approach to surrogacy regulation needs to cover enforceable post-delivery protections that address surrogate mothers' mental health, social reintegration, and long-term well-being in addition to gestation and childbirth. The surrogates must be acknowledged as individuals with rights not just reproductive tools will be thrived by achieving moral, constitutional and gender-neutral surrogacy regulations. By doing this, the study demands a dire need for psycho-legal reforms in surrogacy laws which adds to the growing conversation on reproductive justice.

CONCEPTUAL FRAMEWORK- SURROGACY AND PSYCHO-LEGAL DIMENSIONS

Surrogacy is not a technique but an arrangement where a woman carries a child in her womb for another woman. The first scientific definition of surrogacy in India was given by Indian Council of Medical Research with National Academy of Medical Sciences in its "National Guidelines for Accreditation, Supervision and Regulation of ART in India, 2005" as, "*Surrogacy is an arrangement in which a woman agrees to carry pregnancy that is genetically unrelated to her and her husband, with the intention to carry it to term and hand over the child to the genetic parents from whom she is acting as a surrogate*".[5] The abovementioned definition is rooted in contractual and biomedical logic, it is inadequate on psychological and social realities of surrogate mother. A broader understanding of surrogacy as a psycho-legal concept focussing on legal norms, psychological process, bodily autonomy, emotional labour and social position of women should be constructed. From a psycho-legal angle, surrogacy cannot be pin-pointed to a single legal transaction which is terminated at birth, but it refers to a continuum of experiences including pre-conception consent, gestation, emotional bonding, childbirth and post-delivery adjustments.[6] Every stage has distinct psychological impacts and legal vulnerabilities, that defines surrogacy as an ongoing process rather than a discrete contract.

Psycho-legal theory emphasizes interaction between the legal framework and psychological experiences. Surrogacy as a continuum of psycho-legal engagement encompasses pre-conception consent, gestational embodiment, childbirth, post-partum recovery, emotional separation, social reintegration. Surrogacy defines reproductive labour as an inherently gendered and emotionally intense form of work without knowing its psychological impacts. The surrogate's body is treated as a place of legal regulation, while her emotional and mental well-being remains outside its legal jurisdiction.[7] This framework conceptualizes surrogacy as embodied labour by drawing on feminist legal theory and research on reproductive justice. Contractual intent does not invalidate the significant hormonal changes, identity negotiation, and emotional attachment that occur

[3] Sharma, Ashok, THE LAW AND BIOETHICS OF SURROGACY ARRANGEMENTS DISCERNING THE RIGHTS OF SURROGATE SUCKLING, 1st ed. 2024.

[4] Nikke, et.al., "Judicial contestation of the Surrogacy (Regulation) Act, 2021: Navigating Constitutional rights in Indian courts", INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW, Vol. 4, No. 3, 2025.

[5] ICMR (2005).

[6] Banga, Anjali, "Surrogacy in India: Legal framework and mental health implications", INDIAN JOURNAL OF LAW AND LEGAL RESEARCH, Vol.7, No.3, 2025.

[7] Supra N.2.

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during pregnancy. The psychological reality that consent is dynamic and context-dependent, especially in prolonged biological processes like gestation, is overlooked by the law's insistence on prior consent and intention as determining factors. The idea that pre-conception consent can completely legitimize emotional consequences following delivery is thus called into question by psycho-legal analysis.

Psychological Impact of Surrogacy on Surrogate Mothers

The psychological dimension of surrogacy is a central pillar of its conceptual framework. A pregnant woman gets attached to the baby in the womb, she feels it as a part of her body, there develops a strong connect which is difficult to break. She is attached to the baby physically, emotionally, mentally. In surrogacy, when the baby is separated from the gestational mother there is a pain of separation, anxiety, grief, and post-partum depression.[8] The post-delivery phase is crucial, as it involves not only physical recovery but also emotional disengagement and social reintegration. Surrogates may experience a sudden loss of nine long months, invisibility of the child she has carried for so long which is later handed over by legal contractual arrangements. Social stigma, family pressure, lack of mental health may worsen the situation of the surrogate. Thus, there is a need for a framework supporting surrogate women mentally, physically, psychological to make their live better ahead.

A. Gestational bonding and neurobiological attachment

The deep emotional connection formed between a mother and her child is known as mother-infant bonding, which is a foundational process for healthy development.[9] This process is built through consistent interactions and care over time. The quality of this early bonding lays the foundation for the child's emotional well-being and social competence. The transition to parenthood triggers neurological and psychological changes, chemically making the brain ready for caregiving. Neuropeptide oxytocin called as 'love hormone', surges in mother during labour, breastfeeding, and skin-to-skin contact.[10] Oxytocin is related with the feelings of calm, maternal responsiveness, and reduces physiological stress for both mother and the infant.

B. Post-partum psychological impact

Carrying a baby itself has an impact on emotions, health and social well-being of an individual. The surrogacy arrangement is made with care and consent, but the experience has long-term emotional consequences on the surrogate mothers. Post-delivery is marked by hormonal shifts, physical recovery, post-partum depression risks, emotional and physical separation from the child, social and family pressures may cause intense feeling of emptiness. Their emotional needs, post-partum counselling is often neglected marking it as a long- term emotional disturbance leading to depression.

C. Stigma and social reintegration

Surrogacy is seen as an acceptable method of reproduction as it helps a childless couple with their 'own' child with whom they can share their genetic relation. However, there are varied opinions about surrogate mother, lack of knowledge about how surrogacy is conducted, view her as a prostitute. A view that the surrogate mother violated the concept of motherhood by 'selling her own child' is made her to be judged as a 'bad woman'.[11] A contrasting view about a surrogate mother who saw her as a woman worthy of respect for helping childless couple, she is viewed as an angel to the lives of needy. The social stigma during her pregnancy, post-

[8] Bashiri, A., "Surrogacy: An important pathway to parenthood. A call for international standardization", JOURNAL OF REPRODUCTIVE IMMUNOLOGY, Vol. 163, 2024.

[9] Winston, Robert., et.al., "The importance of early bonding on the long-term mental health and resilience of children", LONDON JOURNAL OF PRIMARY CARE, Vol. 8, No.1, 2016.

[10] Carter, C. Sue., "Oxytocin and love: Myths, metaphors and mysteries", COMPREHENSIVE PSYCHONEUROENDOCRINOLOGY, Vol. 9, No. 1, 2021.

[11] Arvindsson, Anna., et.al., "Surrogate mother- praiseworthy or stigmatized: a qualitative study on perceptions of Surrogacy in Assam, India", GLOBAL HEALTH ACTION, Vol. 10, No. 1, 2017.

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delivery makes it difficult for the surrogate to survive. What she needs is care, love, affection and emotional support from her own family and care-givers leading to reintegration into the society.

Legal framework governing Surrogacy in India

India's Surrogacy laws have undergone a significant transformation in recent years, culminating in the Surrogacy (Regulation) Act, 2021. This Act was designed to address the legal, ethical and social issues surrounding surrogacy in India, following decades of unregulated commercial surrogacy that often led to the exploitation of surrogate mothers and disputes over parentage. The Act represents the latest attempt to provide a robust legal framework for surrogacy in India, focussing on the rights and responsibilities of all stakeholders involved.

One of the basic legal questions regarding surrogacy contracts is whether they can be legally binding under Indian law. In principle, surrogacy contracts are subject to the general rules of contract law under the Indian Contract Act, 1872 which regulates all the contracts made in India. According to the Section 10 of the Act, a contract is valid and enforceable if it meets certain essentials as:

i. There must be free consent of all parties.
ii. The contract must have a lawful consideration and lawful object.
iii. The parties to the contract must be competent to enter into a legal agreement.[12]

Surrogacy contracts, under commercial model have failed to meet these criteria due to its potential for exploitation and undue influence. Many surrogates have entered into these contracts because of financial necessity, raising concerns about whether the consent obtained was freely and informed. There arose questions whether commercial surrogacy, constituted lawful object, particularly in the light of ethical concerns surrounding the commodification of reproduction.[13]

The Surrogacy (Regulation) Act, 2021 impacts the enforceability of surrogacy contracts in India by banning commercial surrogacy and allowing altruistic surrogacy. Under the new law, any surrogacy agreement involving financial compensation other than medical expenses and insurance is considered as illegal and unenforceable. This is to prevent the exploitation of surrogate mothers, who under coercion undergo commercial surrogacy for economic gains. In altruistic surrogacy, contracts are important for setting responsibilities of the surrogate and intending parents, but lacks financial renumeration and complicates the issue of its enforceability. The Act makes it mandatory for the surrogacy agreements to be registered with appropriate authorities, and all the disputes arising from surrogacy agreements can be adjudicated by the Surrogacy boards established under the Act.[14] The contract act is not well-equipped with the post-delivery essentials of the contract focussing on the mental well-being of a surrogate.

The Constitution of India offers essential rights and guiding principles for regulating surrogacy agreements and guaranteeing the preservation of social justice, family welfare and individual autonomy. Articles 14 and 21 are important clauses that are directly related to surrogacy regulation.

Article 14- Right to Equality

Article 14 of the Constitution of India reads as, '*Equality before law and equal protection of law*' suggests that, "*The State shall not deny to any person equality before law or equal protection of law within the territory of India*".[15] Surrogacy laws impose differential burden on surrogate mother while privileging the intended parents. The restrictions on compensation, stringent eligibility criteria and lack of post-delivery care may raise concerns under right to equality. The unreasonable restrictions without adequate safeguards may sound

[12] Section 10 of The Indian Contract Act, 1872.
[13] Graham, Patricia. "Ethics and Commercial Surrogacy: A Review", BIOETHICS JOURNAL, Vol. 16, No. 1, 2019.
[14] Ishikawa, K. "Surrogacy Regulations: Lessons from the UK and US", COMPARITIVE LAW JOURNAL, Vol. 19, No. 2, 2021.
[15] Article 14 of The Constitution of India.

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arbitrary. Surrogacy is a gendered labour. A woman bears physical and psychological burden of gestation, many surrogates come from economically marginalized backgrounds, which raise concerns about coercion and exploitation. An equalized approach which addresses the vulnerabilities of surrogates in the post-delivery period is to be provided.

Article 21- Right to life and personal liberty

The Article 21 of the Constitution of India ensures, "*the State shall not deprive any person of his life and personal liberty without the procedure established by law*".[16] Article 21 guarantees the right to life and personal liberty which includes right to dignity, privacy and bodily autonomy. In *B.K. Parsarthi v. Government of Andhra Pradesh*[17], it was held that right to reproductive autonomy form a part of right to privacy. Any encroachment on right to reproduction or procreation is an encroachment to privacy. The right to make decisions regarding procreation includes the right to participate in assisted reproductive technology including surrogacy. In the cases like Suchita Srivastava v. Chandigarh Administration[18] and Justice K. S. Puttaswamy v. Union of India,[19] the Supreme Court of India made it clear that the reproductive autonomy, privacy and freedom to make decisions are all parts of right to life and personal liberty under Article 21 of the Constitution of India. This reproductive autonomy must include surrogate women, if the intended parents enjoy constitutional protection for their reproductive desires, then the surrogate women must equally possess autonomy over their bodies, psychological and mental well-being and their post-partum health. Any regulation which treats surrogate women merely as instruments of procreation is violating the provisions of Article 21.

The right to live with dignity is a fundamental right of an individual, in surrogacy the risk lies in commodifying the surrogate's body and emotional labour. After the delivery, the surrogate's legal relevance ceases thus, undermining her dignity. Post-partum separation, pain, grief cannot be overlooked. It is essential to recognize emotional and moral well-being of a surrogate to maintain her dignity. Mandatory counselling, extended insurance, and post-partum support become constitutional imperatives rather than policy preferences.

The right to privacy encompasses decisional autonomy in reproduction and family life. A surrogate should retain privacy rights over her medical information, psychological health records, identity disclosure, media exposure post-delivery. Post-delivery publicity may infringe privacy. A surrogate is expected to seek counselling and maintain limited contact within her autonomy.

Article 23- Freedom from exploitation

Article 23 reads, "*Prohibition of traffic in human beings and forced labour*".[20] The act of voluntary surrogacy may not amount to forced labour, coercion and economic compulsion. Lack of post-partum care and financial security may indirectly affect exploitative conditions. The State shall implement constitutional safeguards to prevent abandonment of surrogate women once the reproductive labour is completed.

International Human Rights Perspective

The psycho-legal and post-partum rights of women in International human rights law occupies a critical space. Though the international terms don't define the psycho-legal factors, the protection of mental health, bodily integrity, maternal care collectively construct a normative framework addressing psychological and post-delivery experiences of women. Hormonal changes, physical recovery, emotional attachment and separation, socio-cultural stigma creates complex psychological realities. The international human rights law recognizes reproductive health including mental well-being and should extend the State's obligation beyond childbirth to encompass post-natal care and psychological support.

[16] Article 21 of The Constitution of India.
[17] 1999 (3) A.P.L.J. 127.
[18] (2009) 9 SCC 1.
[19] 2017 10 SCC 1.
[20] Article 23 of The Constitution of India.

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Right to health: Physical and mental integrity

Article 12 of The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes "*the right of everyone to the enjoyment of highest attainable standard of physical and mental health*".[21] It includes reproductive and maternal health services are integral to this right. The right to health is not limited to child-birth but includes: Pre-natal and post-natal healthcare, access to mental health services, prevention and treatment of post-partum depression, access to counselling and psycho-social support. The general comment No.14 of ICESCR states that health includes mental well-being and that states have obligation of availability, accessibility, acceptability and quality. Failure to provide post-delivery psychological care may constitute breach of this obligation. The World Health Organization recognizes post-partum as the 'fourth trimester' as a critical phase, which requires monitoring the woman and making her physically and mentally fit to continue smooth motherhood.

Article 12 of The Convention on Elimination of all forms of Discrimination against Women (CEDAW) obliges State to eliminate discrimination against women in health care and provide appropriate services in pregnancy, and post-natal period.[22] The term post-natal refers to maternal rights beyond the child-birth.

Article 7 of The International Covenant on Civil and Political Rights (ICCPR) prohibits cruelty, inhuman treatment.[23] A woman denial of maternal health care and support or forced separation is subjected to psychological trauma due to lack of informed consent, this may raise concerns under Article 7.

The Supreme Court in its recent judgement in *Arun Muthuvel v. Union of India*,[24] has identified the rights of women post-delivery care and support redefining surrogacy laws in India. It emphasized that surrogate mothers are entitled to comprehensive post-birth medical care under Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The Court mandates that intended parents are legally obligated to provide financial support to the surrogate mother for a reasonable post-delivery period to ensure recovery and stability. Recognizing the emotional toll of surrogacy, the judgment includes provisions for mandatory psychological counselling for surrogate mothers post-delivery, under the Mental Healthcare Act, 2017. Thus, the Supreme Court's decision marks a pivotal shift in India's approach to surrogacy, emphasizing the need for a humane and equitable framework.

Post-partum rights of a surrogate mother

Surrogacy entails a woman agreeing to give birth to another couple's baby for benefit of others. She handovers the baby to the couple post birth. Carrying a baby inside one's own womb and handing over to others take a mental, psychological toll to the surrogate.[25] It's crucial to understand a surrogate mother's emotional state and give her some rights for her well-being.

1. Right to post-partum healthcare

Right to post-partum healthcare refers to a woman's birthing right to receive medical, physical, mental healthcare post-delivery.[26] It is a broader part of right to health. Post-partum healthcare refers to the fourth trimester post delivery which includes- monitoring recovery from delivery, treatment for complications, pain management, breastfeeding support, family planning, mental health screening and newborn care and support.

[21] Article 12 of The International Covenant on Economic, Social and Cultural Rights.
[22] Article 12 of The Convention on Elimination of all forms of Discrimination against Women.
[23] Article 7 of The International Covenant on Civil and Political Rights.
[24] 2025 INSC 1209.
[25] Supra N. 3.
[26] Julie, Moldenhauer, "*Overview of post-partum care*" , MSD MANUAL, February 01, 2025, https://www.msdmanuals.com/home/women-s-health-issues/postpartum-care/overview-of-postpartum-care, (visited on February 8, 2026).

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2. Right to psychological counselling

Psychological counselling is essential post-partum as it refrains a woman from falling into depression. Trauma counselling and reintegration support is required for surrogates to restart their lives as normal individuals in the society.

3. Right to compensation continuity

During surrogacy, a woman suffers economic losses. The recovery period requires additional compensation. In an altruistic pattern, loss of income during recovery must be addressed.

4. Right to privacy and protection from exploitation

Privacy is that personal space of a person where any interference is unacceptable. The surrogate must posses right to privacy, non-disclosure of her identity, medical reports, and no publicity of the surrogacy taking place to protect her life and the child's life in future.[27]

5. Right to informed and ongoing consent

The surrogate must be informed about the ART taking place, the intended couple, the time duration, recovery period etc. Consent should be dynamic. It should not follow misconception, falsehood or coercion.

Comparative Jurisprudence on Post-Delivery Rights of Surrogate- India, United Kingdom, Us, And Canada.

The comparative jurisprudence on how different legal systems treat post-delivery rights of surrogate mothers, intended parents and child draws an analysis on statutory frameworks, judicial decisions and legal commentary across India, United Kingdom, USA, Israel, Canada.

India

The Surrogacy (Regulation) Act, 2021, permits altruistic surrogacy i.e., only medical and insurance expenses are to be paid. The surrogate to be a close relative of intended parents and meets strict eligibility criteria.[28] In India, there are no actual post-delivery rights given to the surrogate. Once a child is born, the intended parents are recognized as legal parents. The surrogate doesn't retain any parental rights. The surrogate has right to medical care and psychological support post-delivery and the insurance is provided for 36 months post-delivery to cover health issues arising from surrogacy. In India, intended parenthood is prioritized over gestational connection, and surrogate is defined as a "vessel" for gestation with no claim over the child post-delivery.

United Kingdom

In United Kingdom, the surrogacy contracts are not enforceable, they just act as records of intent. The surrogate mother is the legal mother at birth, if she is married, her spouse is second legal parent. This status continues regardless of any genetic connection. A surrogate retains the child after birth, because the agreement itself doesn't create enforceable rights of the intended parents. The legal method to transfer rights is an application by intended parents for a 'Parental Order'.[29] The parental order granted, makes intended parents

[27] *Ibid.*
[28] Harleen Kaur, LAWS AND POLICIES ON SURROGACY COMPARITIVE INSIGHTS FROM INDIA,1st ed. 2021.

[29] Charlotte Kilcar, "*What is a parental order in Surrogacy?*", RWK GOODMAN, May 27, 2025, https://www.rwkgoodman.com/info-hub/what-is-a-parental-order-in-surrogacy/, (visited on February 9, 2026).

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the legal parents of the child. The law has emphasized on autonomy and non-enforceability of contracts to protect surrogate's autonomy. Parental order reassigns parental status post-birth.

United States

There is no uniform federal statute on surrogacy in the United States, the States differ. In states where the surrogacy agreement is recognized, intended parents may obtain pre-birth and post-birth parentage order declaring them as legal parents. California has well-equipped surrogacy laws endorsing clear parentage orders often before delivery. Some states treat surrogacy arrangements as unenforceable or even void, here the surrogate may retain parental status at birth until judicial orders are obtained. The parentage orders if issued, the intended parents become the legal parents leaving surrogate without parental rights. If orders are not issued, the surrogate remains the legal mother and could assert rights in custody the Court, prioritizes child welfare as supreme.[30] The US jurisprudence relies on contract law and family law mechanisms for the post-birth rights.

Canada

Under the Assisted Human Reproduction Act (AHRA), Canada permits only altruistic surrogacy where the surrogate is paid only for her medical expenses not for carrying a baby.[31] In Canada, surrogate is initially listed as the legal mother on the birth certificate, later the intended parents by parentage order replace her name. The parentage order if obtained, the surrogate's legal rights come to an end.

Suggestions and Recommendations Regarding Psycho-Legal and Post-Delivery Rights of Surrogates

The psycho-legal and post-delivery rights of surrogate mothers must be within constitutional and human rights framework equipped with dignity, autonomy, equality and justice. The regulatory framework should neither reduce surrogacy to a pure contractual exchange nor impose excessive restrictions undermining reproductive agency. A right-based model is needed that integrates medical ethics, family law, constitutional mandates together. The recommendations for a structured framework are as follows:

Statutory recognition of Psycho-legal recognition

The legislation must codify the surrogate's right to bodily autonomy throughout pregnancy, she should be provided with her right to psychological counselling before, during and after pregnancy, the right to post-partum medical care for 12-24 months post-delivery. A surrogate must be protected against coercion, undue influence and economic exploitation.[32]

Mandatory legal representation

A surrogate should be provided an independent legal counsel not in sharing with the intended parents. She should be aware of the legalities of the surrogacy contract. This helps to ensure that the consent is clear, without any coercion, undue influence or fraud.

Post-delivery safeguards

The surrogate must be provided with insurance coverage covering her physical and psychological complications for an extended post-natal period. Compensation for long-term health impediments are directly attributable to the pregnancy. A surrogate shall have direct access to state governed mental health clinics. Thus, a contract featuring post-delivery health care welfare mandates must be provided.

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[30] Martinez-Lopez JA, et.al., "Surrogacy in the United States: analysis of sociodemographic profiles and motivations of surrogates", REPRODUCTION BIOMED ONLINE, Vol. 49, No. 4, 2024.

[31] Fantus Sophia, "A report on the supports and barriers of Surrogacy in Canada", JOURNAL OF OBSTETRICS AND GYNAECOLOGY, Vol. 42, No. 6, 2020.

[32] Lamba, N., et.al., "The psychological well-being and prenatal bonding of gestational surrogates", HUMAN REPRODUCTION, Vol. 33, No. 4, 2018.

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Post-birth consent

A structured post-birth consent confirmation should be preserved which acknowledges the psychological impact of childbirth. It prevents pre-birth contractual waivers from being irrevocable. It balances child welfare with maternal dignity.

Surrogacy welfare fund

A state regulated fund financed by intended parents and clinics could provide long-term psychological assistance, disability support, if needed and emergency medical assistance.

Right balancing test

The courts should adopt a structured test adjudicating disputes involving surrogates assessing their bodily integrity and decisional autonomy. There must be contractual intent to surrogacy and it should be for the best interests of the child.

Recognition of Psychological harm

Judiciary to recognize postpartum depression, attachment trauma, emotional distress arising out of forced separation. Rehabilitation options must be provided for the surrogates to overcome grief, separation from the child.

Protection against medical intervention

The surrogate must protect herself from forced medical interventions. It should be her own decision regarding medical procedures, intended parents cannot compel her for abortion, normal/ caesarean delivery. The judicial clarity on this issue strengthens bodily autonomy.

Mandatory psychological screening

The psychological screening pre-surrogacy for the surrogate and intending parents is mandatory. A surrogate must be counselled throughout pregnancy. There must be post-delivery follow-ups for a specific duration to refrain her from depression.

National Surrogacy Registry and Monitoring

A centralized registry to monitor post-delivery health of the surrogates is essential. It shall monitor compliances with insurance and welfare obligations. Collection of records is essential to keep a track and improve long-term accountability.

CONCLUSION

The psycho-legal and post-delivery rights of surrogates reveals fundamental transformation in reproductive jurisprudence from a contract dominated to a constitutional and human right oriented framework. Surrogacy is defined as a legally and ethically complex phenomenon implicating bodily autonomy, psychological integrity, dignity, equality and child welfare. The psycho-legal arena of surrogacy undermines that surrogacy is not just a biological act but an emotionally significant experience. Pregnancy leads to physiological risk, hormonal imbalance and psychological vulnerability. Pregnancy cannot be confined to just birth of a baby but the focus should continue on the surrogate post-delivery. Post-delivery consequences include physical recovery, post-partum depression, emotional separation trauma, and long-term health issues extend beyond the birth of the child.

The constitutional perspective to psycho-legal and post-delivery rights of surrogates derive legitimacy from principles of dignity, privacy, bodily integrity and equality. A surrogate's consent must be continuous, thus

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cannot be reduced to one-time contractual waiver. The legal system must safeguard the stability and welfare of the child born through surrogacy. A jurisprudence balancing autonomy with accountability is to be balanced. This requires pre-conception counselling, post-delivery healthcare guarantees, independent legal representation. It should be mandatory that the surrogate's psychological welfare be integral to ethical legitimacy of surrogacy arrangement. Thus, the future of surrogacy laws depends upon integrating reproductive justice principles with right-based constitutionalism, ensuring that surrogate mothers are not just passive vessels but as right bearing individuals whose legal and psychological interests persist beyond delivery.

Ultimately, the legitimacy of surrogacy as a reproductive practice rests upon the ethical treatment given to the surrogate. A just legal framework must affirm that gestational labour does not extinguish personhood at birth. The psycho-legal and post-delivery rights of surrogates represent not peripheral concerns but foundational elements of a humane and constitutionally coherent surrogacy regime.

REFERENCES

1. Parashar, Varalika, et.al., "Surrogacy in India: Constitutional challenges, ethical concerns, and comparative legal perspectives", JOURNAL OF INFORMATICS EDUCATION AND RESEARCH, Vol. 5, No.4, 2025.
2. Uma, "Surrogacy in India: An Indian legal perspective on intended parents and surrogate mothers", INTERNATIONAL JOURNAL OF LAW, POLICY AND SOCIAL SCIENCES, Vol. 7, No. 2, 2025.
3. Sharma, Ashok, THE LAW AND BIOETHICS OF SURROGACY ARRANGEMENTS DISCERNING THE RIGHTS OF SURROGATE SUCKLING, 1st ed. 2024.
4. Nikke, et.al., "Judicial contestation of the Surrogacy (Regulation) Act, 2021: Navigating Constitutional rights in Indian courts", INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW, Vol. 4, No. 3, 2025.
5. ICMR (2005).
6. Banga, Anjali, "Surrogacy in India: Legal framework and mental health implications", INDIAN JOURNAL OF LAW AND LEGAL RESEARCH, Vol.7, No.3, 2025.
7. Supra N.2.
8. Bashiri, A., "Surrogacy: An important pathway to parenthood. A call for international standardization", JOURNAL OF REPRODUCTIVE IMMUNOLOGY, Vol. 163, 2024.
9. Winston, Robert., et.al., "The importance of early bonding on the long-term mental health and resilience of children", LONDON JOURNAL OF PRIMARY CARE, Vol. 8, No.1, 2016.
10. Carter, C. Sue., "Oxytocin and love: Myths, metaphors and mysteries", COMPREHENSIVE PSYCHONEUROENDOCRINOLOGY, Vol. 9, No. 1, 2021.
11. Arvindsson, Anna., et.al., "Surrogate mother- praiseworthy or stigmatized: a qualitative study on perceptions of Surrogacy in Assam, India", GLOBAL HEALTH ACTION, Vol. 10, No. 1, 2017.
12. Section 10 of The Indian Contract Act, 1872.
13. Graham, Patricia. "Ethics and Commercial Surrogacy: A Review", BIOETHICS JOURNAL, Vol. 16, No. 1, 2019.
14. Ishikawa, K. "Surrogacy Regulations: Lessons from the UK and US", COMPARITIVE LAW JOURNAL, Vol. 19, No. 2, 2021.
15. Article 14 of The Constitution of India.
16. Article 21 of The Constitution of India.
17. 1999 (3) A.P.L.J. 127.
18. (2009) 9 SCC 1.
19. 2017 10 SCC 1.
20. Article 23 of The Constitution of India.
21. Article 12 of The International Covenant on Economic, Social and Cultural Rights.
22. Article 12 of The Convention on Elimination of all forms of Discrimination against Women.
23. Article 7 of The International Covenant on Civil and Political Rights.
24. 2025 INSC 1209.
25. Supra N. 3.

ISSN 2278-2540 | DOI: 10.51583/IJLTEMAS | Volume XV, Issue VIII, August 2026

26. Julie, Moldenhauer, "*Overview of post-partum care*" , MSD MANUAL, February 01, 2025, https://www.msdmanuals.com/home/women-s-health-issues/postpartum-care/overview-of-postpartum-care, (visited on February 8, 2026).
27. *Ibid.*
28. Harleen Kaur, LAWS AND POLICIES ON SURROGACY COMPARITIVE INSIGHTS FROM INDIA,1st ed. 2021.
29. Charlotte Kilcar, "*What is a parental order in Surrogacy?*", RWK GOODMAN, May 27, 2025, https://www.rwkgoodman.com/info-hub/what-is-a-parental-order-in-surrogacy/, (visited on February 9, 2026).
30. Martinez-Lopez JA, et.al., "Surrogacy in the United States: analysis of sociodemographic profiles and motivations of surrogates", REPRODUCTION BIOMED ONLINE, Vol. 49, No. 4, 2024.
31. Fantus Sophia, "A report on the supports and barriers of Surrogacy in Canada", JOURNAL OF OBSTETRICS AND GYNAECOLOGY, Vol. 42, No. 6, 2020.
32. Lamba, N., et.al., "The psychological well-being and prenatal bonding of gestational surrogates", HUMAN REPRODUCTION, Vol. 33, No. 4, 2018.