ABSTRACT

“IS THERE NO PLACE FOR THE QUEER?”
THE INDIAN HOME MINISTRY’S TAKE ON SURROGACY-A SHORT COMMENTARY

** Malavika Rao & Riddhika Shetty

The word ‘surrogate’ has been derived from the Latin word, ‘surrogatus’ which implies and means a substitute, that is, a person appointed to act in the place of another. Therefore, a surrogate mother is a woman who bears a child on behalf of another woman, either through her own egg or from the implantation of a fertilized egg from the other woman, into her womb, when procreation is considered impossible on her behalf.

Through this legal analysis, the commentary wishes to focus on the legal regime pertaining to the phenomenon of surrogacy, the main objective being to look into the regulations which exist in relation to this process, for which no legislation is present till date. The commentary seeks to throw light on the various pros and cons for those individuals who wish to use this route of surrogacy and hence make informed choices which shall work to their advantage. A conclusive understanding of the distinct features of the Assistant Reproductive Technology (Regulation) Bill, 2010 is sought to be achieved through this commentary.
The main issue which the authors wish to address through this commentary is:

“Why should homosexuals and unmarried foreigners be subject to discrimination to the process of surrogacy, in accordance with the latest rule passed by the Indian Home Ministry?”

In scrutinizing into the various articles of the Indian Constitution and that of the Universal Declaration of Human rights, 1948 (hereinafter referred to as UDHR) i.e., Articles 14, 19(1) (g) and 21 of the Constitution and Article 16.1 of the UDHR, it can be inferred that the Union Home Ministry through its guidelines of condemning the rights of “reproductive autonomy” of foreign nationals, fail to uphold the esteemed principles just and equitable procedures of law.

Hence, this commentary shall elaborate upon these issues and the reasons as to why the Government’s guidelines prove to be unconstitutional and against human dignity, in today’s global scenario.