



# SREE NARAYANA LAW COLLEGE

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**3<sup>rd</sup>**

## ALL INDIA MOOT COURT COMPETITION 2023

# MOOT PROPOSITION

## SANDEEP AND OTHERS v. UNION OF NYAYASTHAN

1. Nyayasthan is a country having a Constitution as well as legal system identical to that of India. The geography and demography of Nyayasthan is also similar to that of India. Nyayasthan is a member of the United Nations and it has ratified all international treaties which have been ratified by India.
2. Since the year 2000 Nyayasthan emerged as a surrogacy hub for couples from different countries. There were reported incidents of unethical practices, exploitation of surrogate mothers, abandonment of children born out of surrogacy and import of human embryos and gametes. Widespread condemnation of commercial surrogacy in Nyayasthan regularly reflected in different print and electronic media since the year 2000. The Law Reform Commission of Nyayasthan in a major report recommended for prohibition of commercial surrogacy by enacting a suitable legislation. Due to lack of legislation to regulate surrogacy, the practice of surrogacy was misused by the surrogacy clinics in Nyayasthan. This in turn led to rampant misuse of commercial surrogacy and resulted in unethical practices in the said area of surrogacy.
3. With a view to regulate surrogacy services in Nyayasthan and also to prohibit the potential exploitation of surrogate mothers and to protect the rights of children born through surrogacy the Parliament of Nyayasthan passed the Surrogacy (Regulation) Bill, 2021 on 27<sup>th</sup> December 2021. The Bill received the assent of the President of Nyayasthan on 27<sup>th</sup> December 2021. The Act was brought into force by a gazette notification on 25<sup>th</sup> January 2022.
4. In February 2022 the Central Government constituted the National Assisted Reproductive Technology and Surrogacy Board (hereinafter referred to as 'Board') as required by section 17 of Surrogacy (Regulation) Act, 2021. After the Board was constituted, there were widespread allegations that many of the expert members were persons who were not adequately qualified to be members of the Board. Mr. Rajesh who was the Secretary of an organisation named 'Foundation for Ethical Surrogacy' filed an application to the Public Information Office of the Board under Right to Information Act, 2005 seeking copies of the educational certificates and other documents considered by the Central Government while nominating the expert members to the Board. The RTI application was rejected by the PIO on the ground that the information sought was personal in nature and hence need not be disclosed under the RTI Act. The decision of the PIO was upheld by the appellate authorities.

Aggrieved, Rajesh a petition under section 32 of the Constitution of India seeking a direction to the competent authorities to disclose the information sought by him. Rajesh also prayed for a direction to the Board to proactively disclose and publish the copy of the educational certificates of the expert members in the website of the Board.

5. Sandeep, aged 35 and Arya aged 32 exchanged wedding vows on 1<sup>st</sup> August 2020. At the time of marriage, they were working as IT professionals in Tech Park which was an IT park in Harper which was a metropolitan city in Paral State in Nyayasthan. On their first wedding anniversary Sandeep and Arya had two reasons to cheer. Sandeep received a job offer to join a senior position in an IT business in Barol city in Candy State in Nyayasthan and the second was that they were welcoming a new family member. Though Sandeep was reluctant to take up the new position he was compelled by Arya to join the new company. A tragic event befell the family six months after Sandeep joined the new company. After being involved in a car accident, Arya died from her wounds. The death of Arya and the shattering of the family building aspirations had a terrible impact on Sandeep. Despite the efforts of his close friends and family to convince him otherwise, he remained to live in Arya's memories and decided to live alone. However, he couldn't help but be consumed by the urge to become a father. With an intention to become a parent through surrogacy, Sandeep approached Excel Surrogacy on 25<sup>th</sup> March 2022. However, he was informed by the officials at the clinic that it was not legally possible for him to have a child through surrogacy since the newly enacted Surrogacy (Regulation) Act, 2021 did not permit a widower to have a child through surrogacy. Sandeep consulted a lawyer in the matter who advised him to file a petition in the Supreme Court of Nyayasthan challenging the constitutional validity of the provision which denied permission to widowers to have a child through surrogacy. As per the expert legal advice Sandeep filed a petition in the Supreme Court of India
6. On 1<sup>st</sup> February 2005, Satish aged 40 and Sruthi aged 35 who grew up in two orphanages in Karol city in State of Paral in Nyayastahn entered into a wedlock with the support and blessings of certain charitable organizations and philanthropists. After waiting for several years, Satish and Sruthi could not fulfil their dream of having a child. After extensive medical consultations and procedures that lasted for several months, they were informed in February 2022 that they have a medical indication necessitating gestational surrogacy. With an intention to become parents through surrogacy Satish and Sruthi approached Fulfil Surrogacy Clinic in Karol city. However, they were informed by the clinic that they will have to identify a willing woman to act as surrogate mother. Since they were orphans, they did not have any near relatives to help them in this situation. They made all reasonable enquiries so as to identify a

willing woman who can act as a surrogate. Ultimately, they decided to publish an advertisement in a newspaper seeking a woman to act as a surrogate mother. However, they were informed that such an advertisement was prohibited by law. Their desperate search for a willing woman ended in a lady named Shanti. Shanti, aged 30, was a lady who was involved in a 'live-in relationship' with another man. Her first husband had died the previous year in a road accident. She had a child out of that relationship. Shanti was more than willing to be a surrogate mother so as to help fulfill the long-cherished dream of Satish and Sruthi. However, Satish and Sruthi were informed that Shanti could not be a surrogate mother since she did not satisfy the conditions specified in section 4 (iii) (b) (I) of the Surrogacy (Regulation) Act, 2021. They were also informed that since Satish and Sruthi had crossed 55 and 50 years respectively they could not opt for Surrogacy as per the norms laid down in the Surrogacy (Regulation) Act. Satish and Sruthi approached a lawyer to enquire whether there was any legal remedy whereby they could overcome this restriction. The lawyer advised them to challenge the constitution validity of the relevant provisions of the Surrogacy (Regulation) Act, 2021 which required the intending couple to identify a willing woman. They were also advised to challenge the constitutional validity of the relevant provision which laid down an upper age limit for the intending couple at 55 and 50 years. Acting on the advice Satish filed a petition in the Supreme Court of Nyayasthan challenging the constitution validity of the relevant provisions of the Surrogacy (Regulation) Act, 2021. The provision of law which prohibited advertisement seeking surrogate mothers was also challenged by Satish in the petition. In the petition he also sought a direction to the Union of India to establish an independent authority for the purpose of assisting intending couples/intending women in identifying willing women for the purpose of surrogacy. By way of a separate petition, Shanti, as per the instruction of Satish and Sruthi, challenged the constitutional validity of the provision which restricted the option of becoming surrogate mother to only ever married women aged between 25 and 35 years having a child of her own.

7. Since petitions filed by Rajesh, Sandeep, Satish and Shanti involved questions relating to the constitutional validity of various provisions of Surrogacy (Regulation) Act, 2021 the Supreme Court of Nyayasthan decided to hear all the petitions together on the question of admissibility as well as on merits.

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