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Case Comment: Baby Manji Yamada v Union of India: A Case That Shaped India's Surrogacy Landscape

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INTRODUCTION

Commercial surrogacy, often labelled as 'wombs for rent,' has been a booming industry in India, attracting both domestic and international intended parents due to low costs and accessible medical services. Critics have described it as a form of 'baby boom consumerism' or 'outsource parenthood,' raising concerns over the ethical implications of treating childbirth as a transactional agreement. These debates have played a key role in shaping India's legislative response, including the shift from unregulated commercial surrogacy to a more restrictive model through the Surrogacy (Regulation) Act 2021¹, which now permits only altruistic surrogacy under stringent conditions. This case brought to light the legal, ethical, and humanitarian challenges faced by cross-border surrogacy.

The case of Baby Manji Yamada v Union of India² is a landmark case that stands significant in the evolving landscape of Family Law and Genetics, and Reproductive Rights in India. When the Artificial Reproductive Technique (ART), especially surrogacy, was flourishing,

¹ Surrogacy Regulation Act 2021

² *Baby Manji Yamada v Union of India* (2008) 13 SCC 518

this case highlighted the legal, ethical, and moral void surrounding issues of reproductive autonomy, genetic lineage, and the status of children born through surrogate mothers. Baby Manji Yamada v Union of India & Others is the first case in which the Supreme Court issued a judgment concerning surrogacy. It highlighted the significance and importance of legislation in the developing landscape of surrogacy.

FACTS OF THE CASE

Dr. Yuki Yamada and Dr. Ikufumi Yamada, a Japanese couple, travelled to India in November 2007 seeking a surrogate mother as surrogacy is not allowed to be practised in Japan. During their visit, they approached a well-known reproductive clinic in Anand, Gujarat. Anand has earned its name as a surrogacy hub in India³. The region became famous and gained significant recognition because of its well-developed medical infrastructure and IVF centres, and is internationally recognised for commercial surrogacy services. The biological father of the child, Dr. Ikufumi Yamada, provided the sperm used in the fertilisation process. The egg was donated by an anonymous Indian woman, and the surrogacy process was used, and the foetus was implanted in the surrogate's womb. In June 2008, the commissioning couple encountered marital discord, which ultimately led to their divorce. Dr. Yuki Yamada, the intended mother, declined to take responsibility for the child, citing her lack of biological relationship and legal connection to the baby. Dr. Ikufumi Yamada, the biological father of the child, demanded the custody of the baby. However, he was asked to return to Japan as his visa had expired. Meanwhile, the child, Baby Manji, was born on July 25, 2008, in a hospital in Gujarat, shortly after the couple's divorce. In response, Ms. Emiko Yamada, the baby's paternal grandmother, travelled to India to assume care of the infant. In August 2008, the Anand Municipality issued a birth certificate to the baby listing the name of the biological father.

Later that month, the NGO M/s SATYA filed a Habeas Corpus writ petition.⁴ Commonly treated as a public interest litigation (PIL), alleging that the child was being abandoned and that the process of surrogacy amounted to commercial exploitation and trafficking before the Division Bench of the Rajasthan High Court, Jaipur Bench. It was directed to the Union of

³ 'Anand Gujarat Surrogacy India: Pioneering Clinics And Medical Infrastructure' (*World Fertility Services*, 10 May 2025) <<https://worldfertilityservices.com/blog/anand-gujarat-surrogacy-india/>> accessed 01 July 2025

⁴ Constitution of India 1950, art 226

India, Ministry of Home Affairs, the State of Rajasthan, via the Principal Secretary, the Director General of Police, the Government of Rajasthan, the Superintendent of Police, Jaipur City (East), Jaipur. In response to a writ petition filed by the NGO, the Division Bench of the Rajasthan High Court issued specific directions regarding the custody of the child Manji Yamada in the contested judgment.

Following this, Ms. Emiko Yamada, the child's paternal grandmother, filed a writ petition before the Supreme Court under Article 32⁵, challenging the Rajasthan High Court decision. In this petition, the NGO M/s SATYA was named as Opposite Party No.3.

ISSUES RAISED

1. Whether the PIL is maintainable in a matter concerning private reproductive arrangements and child custody.
2. Whether commercial surrogacy is legally permissible in India in the absence of a statutory framework.
3. What is the Nationality and Legal status of a child born through international surrogacy arrangements in India?
4. Whether custody be granted to the grandmother, a foreign national, in the best interest of the child.

ARGUMENTS FROM BOTH SIDES

Arguments on Behalf of Appellants: The petitioner argued that M/s SATYA, the NGO that filed the PIL, had no legal standing (*locus standi*) in the matter. It was claimed that the NGO had no direct involvement or connection with the child or the parties concerned, and thus could not legitimately approach the court in what was essentially a private custody.

It was submitted that while the NGO raised the issue of custody, no one was shown to be in illegal or wrongful possession of the child. The baby was being cared for by her paternal grandmother, and there were no allegations of abuse, neglect, or unlawful containment, which are essential for maintaining a writ of habeas corpus.

⁵ Constitution of India 1950, art 32

The petitioner contended that the PIL was improperly used in this case. They argued that there was no public interest involved, as the matter concerned the custody of a single child in a private surrogacy arrangement. The use of PIL, they asserted, was an attempt to bring a broader social issue into a matter that should be addressed individually and legally.

The petitioner also requested that the passport for Baby Manji be issued without delay, to enable her to travel to Japan. In addition to that, a visa extension for Ms. Emiko Yamada, the grandmother of the baby, was also sought so she could remain in India legally while legal formalities were completed.

Arguments on Behalf of Respondent: The respondent argued that India lacked a clear legal framework to govern surrogacy, which led to widespread irregularities and misuse of the system. In the absence of statutory control, commercial surrogacy practices flourished unchecked, raising serious ethical and legal concerns.

It was contended that the practice of surrogacy in India had degenerated into a money-making business, exploiting poor women for reproductive purposes. The respondent alleged that fertility clinics and intermediaries were profiting by commodifying both motherhood and children under the guise of medical treatment.

The respondent strongly emphasised the urgency of implementing strict and specific legislation to regulate surrogacy arrangements in India. They called for statutory safeguards to ensure the protection of the surrogate mother, the child, and to prevent trafficking and exploitation under the garb of assisted reproduction.

JUDGEMENT AND RATIONALE

In the *Baby Manji Yamada v Union of India* (2008), the Supreme Court held that commercial surrogacy was not illegal in India at the time, even though it remained largely unregulated. The court clarified that there was no law prohibiting surrogacy arrangements, hence such agreements could not be considered void.

The court rejected the allegation of human trafficking, stating that the child was not in illegal custody, and there was no evidence of coercion or exploitation in the surrogacy process. Emphasising child welfare, the court allowed the paternal grandmother to take custody of

Baby Manji, ensuring she would not be left parentless or stateless. The judgment also highlighted the urgent need for a clear legal framework to regulate surrogacy in India, with a focus on balancing reproductive autonomy, the dignity of women, and the best interests of the child.

The Court referred to the Commission for Protection of Child Rights Act 2005, which provides for the protection of children's rights and establishes child rights commissions and special courts for related offences. It was emphasised that any complaint regarding the child's welfare, passport, or visa should be made to this statutory body, rather than through public interest litigation (PIL).

The Court stated that it was not necessary to go into the locus standi or the bona fides of the NGO (Respondent No. 3), as the matter should have been pursued before the appropriate authority under the Act. The judgment underlined the need for comprehensive surrogacy laws in India to ensure proper regulation and to protect the rights of intended parents, surrogate mothers, and children born through ARTs.

ANALYSIS OF THE JUDGEMENT

The Supreme Court acknowledged that surrogacy, especially commercial surrogacy, was not illegal in India at the time. The judgment did not invalidate the surrogacy agreement even though there was no specific legislation regulating it. This reflected the Court's flexible and realistic approach toward evolving reproductive practices in India.

The Court's central concern was the welfare of the child by allowing the paternal grandmother to take custody and return to Japan. This reaffirmed that the best interest of the child must prevail.

The Rajasthan High Court's direction to produce the child arose from an NGO's PIL raising allegations of child trafficking. However, the Supreme Court dismissed these claims, noting that there was no illegal detention, coercion, or evidence trafficking. This emphasised that surrogacy cannot be equated with trafficking merely because it involves monetary compensation, unless there's proof of coercion or abuse.

Instead of Judicial overreach, the Court sensibly deferred broader concerns about surrogacy and child protection to the Commission for Protection of Child Rights, a statutory body

created under the Commission for Protection of Child Rights Act 2005⁶. This delegation showed judicial restraint and acknowledgement that policy issues require specialised mechanisms.

Though the judgment did not create a new law, it explicitly called for comprehensive legislation on surrogacy to prevent misuse, exploitation, and ethical violations. It recognised that without legal regulation, the dignity of women, the rights of children, and ethical medical practices could be compromised.

A certificate was issued for Baby Manji to facilitate her travel to Japan. This aspect was later referred to in the case of *Jan Balaz v Anand Municipality and Ors*, which dealt with the nationality status of twin children born to an Indian surrogate mother, where the egg donor was anonymous and the sperm was provided by the intended father, Jan Balaz.

CONCLUSION

The Supreme Court's judgment in the Baby Manji Yamada case was progressive, sensitive, and legally significant. It upheld individual reproductive rights, safeguarded the welfare of the child, and struck a balance between legal permissibility and ethical concerns. Most importantly, the judgment triggered a national debate on surrogacy and laid the foundation for legislative reform in India's reproductive health laws.

The judgment acted as a catalyst for legislative reform, pushing the Indian government to draft laws to regulate the surrogacy industry. This culminated in the enactment of the Surrogacy (Regulation) Act, 2021, which now permits only altruistic surrogacy and prohibits commercial arrangements, with strict eligibility criteria for intending couples and surrogate mothers.

⁶ Commission for Protection of Child Rights Act 2005