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Moot Proposition

1. The Republic of Ambind is a democracy that is progressively developing towards protection and realization of human rights. The Constitution of Ambind includes various human rights, and the nation of Ambind is a party to key international human right treaties, including International Covenant on Civil and Political Rights (ICCPR) and Convention on the Rights of Persons with Disability (CRPD). To fully realize these rights, The Republic of Ambind has enacted legislations such as the Mental Health Act, 2017 and The Surrogacy Regulation Act, 2020. The Republic of Ambind is a host country to a bustling population which practices diverse cultures and customary beliefs. Despite the humongous number of local practices amongst diverse communities, one belief that pertains to all religions in Ambind is the purpose of marriage. It is widely believed by the entire religious communities that the purpose of marriage is completely fulfilled when a life is created out of the matrimonial relation of two individuals. The Cultural scenario in Ambind vouches that it is the procreation of new life which consummate the divine purpose of marriage.
2. Amidst the prevailing cultural background of Ambind, it is a fast-developing nation which has opened itself to modern lives and western influences in its medicine and technology. The Government of Ambind in a swift movement to address and fulfill the reproductive rights of infertile individuals and couples who cannot realize these rights due to medical shortcomings enacted the Surrogacy Regulation Act of 2020 which legalised altruistic surrogacy within its boundaries and banned all forms of commercial surrogacy. This legislation was viewed as “groundbreaking” as it reaches above and beyond to give purpose to pre-existing, on paper reproductive rights of Ambind citizens. Additionally, the legal system of Ambind recognises a *living will*, an innate concept of Ambind’s Medical Jurisprudence, given its progressive nature. A Living Will allows individuals to advance directives regarding medical treatment, including withholding life-sustaining measures.
3. Ms. Mahanathi, a 32-year-old female who is a citizen of Ambind, currently diagnosed with severe bipolar disorder, is married for seven years to Mr. Manikandan, a 35-year-old male. On 18.04.2023, After undergoing years of medical treatment, it was declared medically that Ms. Mahanathi was capable of making informed decisions. Ms. Mahanathi expressed her desire to always become a parent but she was advised against conceiving due to potential health hazards. Considering this medical advice, Manikandan suggested to

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procreate life through surrogacy. Ms. Mahanathi, keeping in view her desire to be a parent one day, happily accepted this suggestion of her husband. After learning that surrogacy is legal in Ambind, on 07.06.2023, the couple approached their close friend, Ms. Sangamithra. Expressing their concerns and commitments, the couple placed their request for Ms. Sangamithra to be their altruistic surrogate, which she accepted readily.

4. The couple, while undertaking the legal procedures to officially commence the surrogacy process faced a huge setback. Before the surrogacy process could commence, Ms. Mahanathi suffered a severe relapse and attempted self-harm. This caused immense panic and the situation escalated when Ms. Mahanathi was admitted to the hospital. The doctors informed Mr. Manikandan that his wife had experienced a delirious maniac episode and the recovery period was unknown, even under guided medical treatment. This bipolar episode induced increased aggression, hostility and anger due to the current psychosis of Ms. Mahanathi. The Doctors declared Mahanathi as unfit to make sound decisions during the period of recovery, commencing from 23.09.2023.
5. After learning of the grim health of his wife, Mr. Manikandan was shaken and weak. He informed Mahanathi's parents and family members about her dreadful condition. On 13.12.2023, During the period of Hospitalization, her mother, Ms. Gothavari decided to invoke her *daughter's living will*. This *living will* advanced directions that no extraordinary medical measures must be taken to prolong her life in case of severe relapse. Ms. Gothavari, being an orthodox woman did not encourage the idea of surrogacy to procreate life. This stemmed from her belief that such modern methods of reproducing life take away the divinity of marriage. Ms. Gothavari informed Mr. Manikandan to not commence surrogacy citing the present condition of her daughter. However, Mr. Manikandan strongly felt otherwise.
6. Mr. Manikandan believed that becoming a parent will fully realise his wife's reproductive rights and upon her recovery she will be a great mother to their child; After all, it was her desire to become a parent. Citing her unfitness and unsound mental state, Ms. Gothavari opined that this decision was treacherous. This created a quarrel between both of them. In a fit of rage, Ms. Gothavari invoked her daughter's living will due to her hostility. But Mr. Manikandan challenged this decision, arguing that the living will was created by his wife when she did not anticipate her desire for parenthood. Meanwhile, Ms. Sangamithra

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proceeded with the embryo implantation despite the ongoing dispute, due to the surrogacy agreement between the couple and herself. Upon learning that the surrogate has acted against Ms. Gothavari's decision to invoke Ms. Mahanathi's living will, a petition was filed before the family court seeking to prevent Mr. Manikandan and Ms. Mahanathi from being recognised as the legal parents of the child on 12.01.2024. Gothavari cited the reason behind such a decision was to ensure the worsening state of her daughter does not affect the child's welfare.

7. Mr. Manikandan highly opposed this decision of his mother-in law as it affected the couple's reproductive rights. Further, He stated that the living will was prepared by his wife after her first episode of diagnosed bipolar in their initial stages of Marriage. During the recovery of her first diagnosed bipolar, Mahanathi had expressed that she found no meaning in life and did not wish to continue it in the face of a mental illness. But this was not her current state of mind. Mr. Manikandan opined that stepping into a phase of parenthood gave a newer meaning to the couple's matrimonial life and this decision influenced Ms. Mahanathi's mind positively.
8. Subsequently, after the continuous disagreements between Ms. Gothavari and Mr. Manikandan, The Family Court directed this matter to the Mental health review board (MHRB), constituted under Mental Health Care Act, 2017 to review the mental fitness of Ms. Mahanathi. This redirection was required to determine whether she can be declared as a Sound and Stable Parent to their unborn child. However, In March 2024, the decision of MHRB was contrary to the anticipation of her husband Mr. Manikandan, declaring Ms. Mahanathi as unfit, largely because of her relapsed condition.
9. Thereupon, Mental health review board (MHRB) rendered the judgement on 28th April 2024, in favor of Ms. Gothavari, declaring that the couple cannot be considered as the legal parents of the child, insisting the greater welfare of the child. The court rendered this decision based on the MHRB report coupled with the *living will* of Ms. Mahanathi. The Mental health review board declared the *living will* to be of Bona fide nature and ruled it to be valid, despite Ms. Mahanathi's desire to enter into a phase of parenthood.
10. Aggrieved upon the judgement pronounced by the Mental health review board (MHRB), Mr. Manikandan appealed to the High Court of Madras, and contesting the legal validity

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of the *living will* and prayed to the Hon'ble court to declare himself and Ms. Mahanathi as legal parents of the surrogate child. Ms. Sangamithra's decision to undergo the implantation despite the dispute was challenged by Ms. Gothavari.

11. During the pendency of the appeal, a child rights organization, 'Future Safe Ambind,' filed an intervention petition on 20.05.2024, seeking the appointment of a guardian ad litem to represent the unborn child's welfare. The organization contended that the ongoing dispute predominantly reflected the interests of the adults involved, potentially sidelining the best interests of the unborn child. The Hon'ble High Court of Judicature at Madras analyzed the facts and contentions of all parties, framed the following issues for consideration, and called out the final verdict to be delivered on 03.01.2025.

- I.** WHETHER MS. MAHANATHI'S LIVING WILL IS BINDING IN THIS CASE, GIVEN HER DESIRE FOR PARENTHOOD AND THE SUBSEQUENT SURROGACY AGREEMENT?
- II.** WHETHER INDIVIDUALS WITH MENTAL ILLNESS, SUCH AS MS. MAHANATHI, CAN EXERCISE THEIR REPRODUCTIVE RIGHTS AND BE DEEMED FIT FOR PARENTHOOD UNDER THE LAW?
- III.** WHETHER THE SURROGACY REGULATION ACT, 2020 AND THE MENTAL HEALTH CARE ACT, 2017 ADEQUATELY SAFEGUARD THE REPRODUCTIVE RIGHTS AND HUMAN RIGHTS OF INDIVIDUALS WITH MENTAL ILLNESS? WHETHER THE ROLE OF THE STATE IN BALANCING REPRODUCTIVE RIGHTS AND CHILD WELFARE IS SATISFIED ONLY THROUGH ENACTMENT OF LEGISLATION?
- IV.** WHETHER THE SURROGATE, MS. SANGAMITHRA, ACTED WITHIN HER LEGAL RIGHTS BY PROCEEDING WITH THE EMBRYO IMPLANTATION DURING THE PENDENCY OF THE DISPUTE?
- V.** WHETHER THE UNBORN CHILD'S WELFARE REQUIRES THE APPOINTMENT OF A GUARDIAN AD LITEM DURING THE PENDENCY OF THE APPEAL?

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APPENDIX - 1

WILL OF MS. MAHANATHI

18/08/18

I am writing this will in my own interest and for my own well being and the well being of my caretakers. It is well known that I have suffered from severe bipolar disorder and now I am in a proper mental state ~~to~~ making decisions about life. I am aware that it is possible for myself to get bipolar disorder again and it is also possible for my situation to get severe. I also know that my dear ones will be trying to save me from the disorder. I am making this decision with utmost maturity and consciousness. I don't want to prolong my life in medical treatments which is of no use since it is possible to get back into the difficult phase even after getting cured. In case of severe relapse, I want to live the last phase of my life without any treatments, sufferings and stuffs. I hope my loved ones understand my situation and support me in this decision. I am appointing my mother (Ms. Grothamani) as the testator of this will.

Mahanathi

Co
Testator

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**APPENDIX - 2
SURROGACY AGREEMENT**

**FORM 2
[See rule 7]
Consent of the Surrogate Mother and
Agreement for Surrogacy**

I, Ms. R. SANGIAMITHRA (the woman), aged 29 Years (address) No. 2, Paul Street West Tambaram, Chennai (Aadhar Number), having 1 (Number of children) child/children 6 (age in years) of my own have agreed to act as a surrogate mother for Intending couple/intending woman Name Mahanathi Husband Name Manikandan Wife/ Mahanathi Intending woman Age 32 Husband Age 35 Wife/Intending woman Mahanathi had a full discussion with Dr. Ratna Kumari of the Surrogacy clinic on New life clinic in regard to the matter of my acting as a surrogate mother for the child/children of the above couple.

1. That I understand that the methods of treatment may include:

- (a) stimulation of the genetic mother for follicular recruitment;
- (b) the recovery of one or more oocytes from the genetic mother by ultrasound-guided oocyte recovery or by laparoscopy;
- (c) the fertilization of the oocytes from the genetic mother with the sperm of her husband;
- (d) (I) Couple undergoing Surrogacy must have both gamete from the intending couple & donor gametes is not allowed;
(II) Single woman (widow/ divorcee) undergoing Surrogacy must use self eggs and donor sperms to avail surrogacy procedure.
- (e) the maintenance and storage by cryopreservation of the embryo resulting from such fertilization until, in the view of the medical and scientific staff, it is ready for transfer;
- (f) implantation of the embryo obtained through any of the above possibilities into my uterus, after the necessary treatment if any.

2. That I have been assured that the genetic mother and the genetic father have been screened for 'HIV' and hepatitis 'B' and 'C' and other sexually transmitted diseases before oocyte recovery and found to be seronegative for all these diseases. I have, however, been also informed that there is a small risk of the mother or the father becoming seropositive for Human immunodeficiency (HIV) during the window period.

3. That I consent to the above procedures and the administration of such drugs that may be necessary to assist in preparing my uterus for embryo transfer, and for support in the luteal phase.

4. That I understand and accept that there is no certainty that a pregnancy may result from these procedures.

5. That I understand and accept that the medical and scientific staff may give no assurance that any pregnancy will result in the delivery of a normal and living child or children.

6. That I am unrelated or related (relation) Unrelated - Friend to the couple (the would-be genetic parents).

7. That I have worked out medical and other expenses and conditions of the surrogacy with the couple in writing and an appropriately authenticated copy of the agreement has been filed with the clinic,

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which the clinic shall keep confidential. A General health insurance coverage in favor of the surrogate mother from an insurance company or an agent recognized by the Insurance Regulatory and Development Authority established under the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999) has been purchased by the intending couple/woman.

8. That I agree to relinquish all my rights over the child and hand over the child/children to _____, or Mahamathi and Manikandan in case of a intending couple, or to Manikandan in case of their separation during my pregnancy, or to the survivor in case of the death of one of them during pregnancy, or to _____ Grothasari in case of death of both of them, or to _____ in case of guarantor intending couple/ woman, as soon as I am permitted to do so by the hospital or clinic or nursing home where the child or children are delivered.

9. That I have been provided with the written consent of all of those name(s) mentioned above.

10. That I undertake to inform the surrogacy clinic, New Life Clinic of the result of the pregnancy.

11. That I take no responsibility that the child or children delivered by me will be normal in all respects. I understand that the biological parent(s) of the child/ children has / have a legal obligation to accept the child or children that I deliver and that the child or children would have all the inheritance rights of a child or children of the biological parent(s) as per the prevailing law.

12. That I shall not be asked to go through sex determination tests for the child/ children during the pregnancy and that I have the full right to refuse such tests.

13. That I understand that I would have the right to terminate the pregnancy in case of any complication as advised by the doctors, under the provisions of the Medical Termination of Pregnancy Act, 1971 (34 of 1971).

14. That I certify that I have not born any child through surrogacy before.

15. That I have been tested for 'HIV', hepatitis 'B' and 'C' and shown to be seronegative for these viruses just before embryo transfer.

16. That I shall not have intercourse of any kind once the cycle preparation is initiated.

17. That I certify that (a) I have not had any drug intravenously administered into me through a shared syringe; and (b) I have not undergone blood transfusion in the last six months.

18. That I also declare that I shall not use drugs intravenously, or undergo blood transfusion excepting of blood obtained through a certified blood bank on medical advice.

19. That I undertake not to disclose the identity of the party seeking the surrogacy.

20. That In the case of the death or unavailability of the party seeking my help as the surrogate mother, I shall deliver the child/children to Kothandam or Grothasari in this order; I shall be provided, before the embryo transfer into me, a written agreement of the above persons that they shall be legally bound to accept the child or children in the case of the above-mentioned eventuality. (If applicable) (Strike off if not applicable.)

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Endorsement by the Surrogacy Clinic

I/we have personally explained to Ms R Sangamithra and Mankandam Mahavathi the details and implications of his / her / their signing this consent / approval form, and made sure to the extent humanly possible that he / she / they understand these details and implications.

Signed:

R. Sangamithra
(Surrogate Mother)

Signature of intending couple/Woman

Name, address and signature of the Witness from the Surrogacy clinic: Shanmugi Colony, Chennai - 600101

Name and signature of the Doctor : Dr. Ratna Kumari
Dr. R. R. K. R.

Name and address of the Surrogacy Clinic : New Life Clinic

Dated: 10.06.2023

No. 18, Ambedkar Street, Grandhi Nagar,
Aynavaram, Chennai - 600097