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ALTRUISTIC SURROGACY IN INDIA POST-2021: **LEGAL AND ETHICAL IMPACTS**

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ABSTRACT

This paper talks about how surrogacy laws in India changed after the government introduced the Surrogacy (Regulation) Act in 2021. Surrogacy is when a woman (i.e. a surrogate mother) carries a baby for another person or couple who cannot have a child on their own.

The new law only allows "altruistic" surrogacy, which means the surrogate mother cannot be paid for carrying the baby which is only legal after this act came into the picture. She can only do it to help someone out of kindness. The paper looks at the legal rules in this law, the ethical issues (whether it is fair or unfair), and the social impact (how society feels about it).

One big focus of the study is how these laws affect surrogate mothers. It talks about their rights whether they are protected or not, addressing their emotional and physical health issues, and the financial struggles they might face because they are not allowed to be paid for their role.

Finally, the paper looks at the problems with the law, such as how difficult it is to enforce, the fact that fewer women might want to become surrogates, and concerns about fairness and reproductive rights. The paper also suggests improvements to make the surrogacy system in India better and fairer for everyone involved.

Key Words: *Surrogacy Regulation Act 2021, Health issues, Altruistic, reproductive rights, Improvements.*

1. INTRODUCTION

Surrogacy is an important medical option for couples who are struggling with infertility. It involves creating an embryo through in-vitro fertilization (IVF) and implanting it into the uterus of a surrogate mother, who carries and gives birth to the baby. In India, infertility is

often seen as a social stigma, causing emotional distress for couples who are unable to conceive naturally. Many couples prefer surrogacy over adoption because it allows them to have a biological connection with their child. With advances in assisted reproductive technology (ART), surrogacy has become a more accessible and preferred option for intended parents.¹

However, surrogacy has been surrounded by several legal, ethical, social, economic, and medical concerns. In the past, commercial surrogacy (where surrogate mothers were paid) led to exploitation, especially of women from poor backgrounds. Additionally, before the COVID-19 pandemic, India became a global hub for cross-border surrogacy, with foreign couples traveling to the country to hire surrogates, creating a multibillion-dollar industry. Many people, including policymakers and activists, believed that strict legal regulations were needed to control unethical practices and protect the rights of surrogate mothers.

To address these concerns, the Indian government passed the Surrogacy (Regulation) Act, 2021. This law banned commercial surrogacy and allowed only altruistic surrogacy, where the surrogate mother cannot be paid and must carry the baby only to help a close relative. The law was meant to prevent exploitation, but it also created new challenges.

This paper explores how the new surrogacy law affects different aspects of surrogacy in India. It examines the legal provisions, ethical debates, and social impact of the law. A major focus of the study is how these rules affect surrogate mothers, including their legal rights, emotional and physical health, and financial difficulties. Finally, this study looks at the challenges of the Surrogacy (Regulation) Act, 2021, such as the shortage of willing surrogates, enforcement difficulties, and concerns about reproductive rights. It also suggests possible improvements to make surrogacy in India fairer and more balanced for everyone involved.

2. RESEARCH METHODOLOGY

This research is doctrinal and qualitative in nature. It primarily involves an analytical and interpretative approach to studying existing laws, judicial decisions, and academic literature relating to altruistic surrogacy in India post the enactment of the Surrogacy (Regulation) Act,

¹ A Comprehensive Analysis on Reproductive Health and Surrogacy in India: A Study on the Law, Policy, and Practice, SCC Online, <<https://www.scconline.com/blog/post/2023/02/27/a-comprehensive-analysis-on-reproductive-health-and-surrogacy-in-india-a-study-on-the-law-policy-and-practice/>> (April. 9, 2025, 10.31 P.M.)

2021.

3. RESEARCH QUESTION

1. To what extent does the Surrogacy (Regulation) Act, 2021 effectively protect the rights and autonomy of surrogate mothers within the altruistic surrogacy framework?
2. What are the ethical and socio-economic implications of restricting surrogacy to altruistic arrangements for surrogate mothers in India?
3. Does the legal shift towards altruistic surrogacy under the 2021 Act ensure a balanced protection of stakeholders' rights, especially those of the surrogate mother?

1. DEFINITION AND CONCEPT OF SURROGACY

According to *section 2 (zd)* states that Surrogacy means a practice whereby one woman bears and gives birth to a child for an intending couple with the intention of handing over such child to the intending couple after birth². It is a reproductive arrangement in which a woman, known as the surrogate mother, carries and delivers a child for another individual or couple, referred to as the intended parents. This process is often pursued when the intended parents are unable to conceive or carry a pregnancy to term due to medical conditions, infertility, or other personal reasons (American Society for Reproductive Medicine [ASRM], 2020).

Surrogacy can be classified into two main types: traditional and gestational. In traditional surrogacy, the surrogate mother provides her own egg, making her the biological mother of the child. Fertilization is usually achieved through artificial insemination using sperm from the intended father or a donor (Ethics Committee of the ASRM, 2013). In contrast, gestational surrogacy involves implanting an embryo created through in vitro fertilization (IVF) into the surrogate's uterus. In this case, the surrogate has no genetic connection to the child, as the egg and sperm are sourced from the intended parents or donors (European Society of Human Reproduction and Embryology [ESHRE], 2018).

Surrogacy can also be categorized into altruistic and commercial surrogacy. Altruistic surrogacy is when the surrogate mother does not receive any financial compensation beyond covering her medical and pregnancy-related expenses. This type of surrogacy is often arranged among family members or close friends. On the other hand, commercial surrogacy involves

² The Surrogacy (Regulation) Act, 2021, § 2, No. 47, Acts of Parliament, 2021 (India).

financial compensation for the surrogate beyond medical costs. In this case, the surrogate is paid for her role in carrying the pregnancy. While commercial surrogacy provides an opportunity for more women to participate as surrogates, it also raises ethical concerns about potential exploitation and the commercialization of reproduction.

The concept of surrogacy is rooted in historical and legal complexities. While it provides an opportunity for individuals and couples to have biological children, ethical and legal considerations vary across jurisdictions. Some countries fully permit and regulate surrogacy, while others ban or restrict it due to concerns over exploitation and the commodification of women's reproductive labor (International Federation of Gynecology and Obstetrics [FIGO], 2019).

Overall, surrogacy has become a viable reproductive solution for many individuals, including those facing infertility, same-sex couples, and single parents, with advancements in assisted reproductive technologies further supporting its feasibility and accessibility.

2. LEGAL FRAMEWORK

Examining the key provisions of the Surrogacy (Regulation) Act, 2021, and its impact on surrogacy practices.

The new Surrogacy (Regulation) Act of 2021 regulates surrogacy arrangements and establishes a framework for surrogacy's legal and ethical conduct in India. Surrogacy continues to grow in popularity as a solution for infertile couples. However, the absence of regulations in India had sparked concerns about the surrogate's exploitation and the commercialization of the process. Only Indian couples who have been married for five years or more and are unable to conceive are allowed to apply for the surrogacy service, according to the new law. Key Legal Provisions of the Act

2.1. LEGAL PROVISIONS UNDER SURROGACY ACT

Under Section 2(zc), surrogacy is defined as a practice where a woman gives birth to a child for an intending couple and agrees to hand over the child after birth.

The Act permits only altruistic surrogacy as per Section 4(ii)(b)(I)—which means the surrogate mother cannot receive any financial reward except for medical expenses and insurance.

Prohibition of Commercial Surrogacy

Commercial surrogacy is strictly prohibited under Section 3(2), As per Section 3(2)(b), any kind of payment or reward to the surrogate mother or her family is illegal. The Act tries to stop the business-like exploitation of women and ensures that surrogacy is only done for genuine reasons, not profit.

Eligibility of Intending Couple

According to Section 4(ii)(a) and Section 2(g), only married Indian couples can opt for surrogacy, The age criteria are:

- Male: 26–55 years
- Female: 23–50 years, They must also be childless, unless their existing child is suffering from a life-threatening illness or disability (Section 4(iii)(c)).

Eligibility of Surrogate Mother

As per Section 4(iii)(b) and Section 2(zd), the surrogate mother must:

- Be a close relative of the intending couple (though the term “close relative” is not clearly defined),
- Be married and have her own biological child,
- Be aged between 25 and 35 years,
- Surrogate only once in her life,
- Undergo medical and psychological screening.

Registration and Regulation of Surrogacy Clinics

The Act requires all clinics offering surrogacy services to be registered under Section 10. Clinics must follow strict procedures and submit regular reports to ensure transparency and accountability.

Certificate of Eligibility and Essential Conditions

The intending couple must get a Certificate of Eligibility from the appropriate authority under Section 7, and the surrogate must also receive a Certificate of Medical and Psychological Fitness under Section 6.

Establishment of Authorities

The Act sets up a National Surrogacy Board (Section 17) and State Surrogacy Boards (Section 22) to supervise implementation. These bodies will also advise the government and review policies periodically.

Protection of the Child and Surrogate Mother

Under Section 8, the child born through surrogacy is considered the biological child of the intending couple. The surrogate mother is entitled to insurance coverage for 36 months under Section 4(iii)(a)(I), to take care of any health-related issues during and after the pregnancy.

2.2. JUDICIAL PERSPECTIVE AROUND SURROGACY IN INDIA

Before India had any specific law on surrogacy, the courts had to deal with many complicated cases. Two major cases *Baby Manjhi Yamada v. Union of India (2008)* and *Jan Balaz v. Anand Municipality (2008)* played a big role in highlighting the urgent need for legal regulation in this area. These cases not only raised emotional and legal concerns but also made the judiciary realize how important it is to protect all parties involved, especially the child and surrogate mother.

2.2.1. Baby Manjhi Yamada v. Union of India (2008)³

In this case, a Japanese couple came to India for surrogacy. They found a woman from Gujarat to be the surrogate mother. Gujarat was a popular place for surrogacy at the time, and many women were willing to become surrogates.

However, before the baby was born, the couple had marital issues and ended up getting divorced. This led to a major legal problem: who would take care of the baby girl? According to Indian adoption laws, a single father is not allowed to adopt a girl child. The child was now stuck in a legal limbo, even though she had been born through a legal arrangement between the couple and the surrogate.

The Supreme Court stepped in and allowed the baby's grandmother to take custody. The court understood that the child's welfare was the most important thing. It also recognized the gap in Indian laws about surrogacy and adoption, especially in cross-border cases. This judgment

³ Baby Manji Yamada v. Union of India, 13 S.C.C. 518, 521 (S.C. 2008), where the key discussion on custody and surrogacy begins, (Apr.10, 2025, 3.41.P.M.)

became an eye-opener. It made it clear that India needed proper laws for surrogacy to protect the rights of the child, surrogate mother, and the intending parents.

This case shows that surrogacy involves real lives and emotions, not just legal paperwork. It highlighted how vulnerable a surrogate child can become in the absence of clear laws. The court had to take a humanitarian approach, and it worked in the best interest of the child. But this case also exposed how outdated and unprepared our legal system was to handle such issues.

2.2.2. **Jan Balaz v. Anand Municipality (2008)**⁴

In this case, a German couple used surrogacy in India, and the surrogate mother gave birth to twins. The couple worked in the UK and wanted to take their babies back with them. But a new problem came up, the children didn't have Indian passports, and their country (Germany) didn't recognize surrogacy. This created a legal deadlock because the twins couldn't leave India without travel documents, and Germany wasn't ready to accept them as citizens right away.

The Indian authorities refused to give the babies passports because there was no clarity on their citizenship status. The matter went to court. Finally, the Supreme Court allowed the children to leave India on a special travel document. Later, German authorities permitted the couple to adopt the children, giving them legal recognition and a family.

This case shows how complicated international surrogacy can be. Even though everything seemed legal in India, the lack of matching laws between countries created huge problems. It also proved that children born through surrogacy often suffer the most when there are no proper legal protections. The courts did their best to resolve it, but such issues would keep repeating unless a proper law was made.

These two cases played a huge role in pushing the Indian legal system to think seriously about regulating surrogacy. The Supreme Court took a sensitive and practical approach in both situations, trying to protect the child's welfare above everything else. But more importantly, these cases acted as a trigger for the government to finally introduce the Surrogacy (Regulation) Act, 2021. Without these cases, we might still be stuck with confusion and injustice in such deeply personal matters

⁴ Jan Balaz v. Anand Municipality, A.I.R. 2009 Guj. 21, 25 (Guj. 2008), where the court begins substantive discussion on surrogacy and citizenship, (Apr.09, 2025, 4.30.P.M.)

2.2.3. Navtej Singh Johar V. Union Of India⁵

In this case the court establishes a constitutional requirement to strike down laws that reflect discriminatory stereotypes or hamper reproductive choices. Despite these landmark judgements, the surrogacy act 2021 excludes certain classes of women from the benefits of surrogacy. As per the provisions of the Act, unmarried women, a single man, couple in live-in relationship, couples belonging to LGBTQI community are excluded from availing the benefits of surrogacy. The act is violative of Article 21, Article 14 and Article 15. These fundamental rights guarantee a life with dignity of an individual. These are Right to life which includes right to livelihood, right to get basic necessities of life, equality ensures there's no discrimination among citizens and every is treated equally in a similar situation.

The Surrogacy (Regulation) Act, 2021 has brought major changes in how surrogacy is practiced in India. Earlier, there were very few rules, and this led to the misuse of the process. With this new law, the government wants to make surrogacy more ethical, safe, and fair for everyone involved.

One big change is that only altruistic surrogacy is now allowed. This means the woman who carries the baby (the surrogate) cannot be paid, except for medical expenses and insurance. Commercial surrogacy, where women were paid to become surrogates, is now banned. This helps prevent poor women from being exploited or forced into surrogacy just for money.

Another impact is that only Indian couples who are legally married and have no biological or adopted children (with some exceptions) can opt for surrogacy. This means single parents, LGBTQ+ couples, and foreigners are no longer allowed to go for surrogacy in India. While the law aims to protect traditional family values, it also raises concerns about being too restrictive and not inclusive of modern families.⁶

The Act also creates a strict system of approvals and screening, including medical and psychological fitness checks for both the intended parents and the surrogate. This adds safety but also makes the process lengthier and more bureaucratic.

⁵ Navtej Singh Johar v. Union of India, 10 S.C.C. 1, 6 (S.C. 2018), The Act permits only altruistic surrogacy and restricts access to legally married Indian couples, excluding single individuals, LGBTQ+ couples, and live-in partners, raising constitutional concerns under arts. 14, 15, and 21, (Apr. 9, 2025, 10.00.A.M)

⁶ Impact of the New Surrogacy (Regulation) Act, 2021 on Surrogacy Arrangements in India, A.K. Legal & Assocs., <<https://aklegal.in/impact-of-the-new-surrogacy-regulation-act-2021-on-surrogacy-arrangements-in-india/>> (April. 10, 2025, 12.00 A.M.)

In short, the Surrogacy Act tries to protect women from exploitation and make surrogacy a more transparent and ethical process. However, it has also limited access to surrogacy for many people, and critics argue that it may be too strict and not in line with changing social realities.

3. ETHICAL AND SOCIAL PERSPECTIVES

Examining the rights of surrogate mothers, informed consent, child welfare, societal acceptance of surrogacy, cultural beliefs, and the stigma faced by surrogates and intended parents.

Surrogacy, though offering hope to many families, raises complex ethical and social concerns that demand thoughtful regulation. One of the most pressing ethical issues is the protection of surrogate mothers' rights including their right to bodily autonomy, medical care, emotional support, and fair treatment. Many women who act as surrogates come from economically disadvantaged backgrounds and may feel compelled to participate due to financial need. This raises concerns about whether their consent is truly informed and voluntary, or influenced by coercive social and economic pressures.

3.1. *Informed consent* is not just a legal requirement but an ethical necessity. It requires that surrogates fully understand the physical, emotional, and legal consequences of the arrangement. However, in many cases, the gap in education, power dynamics, and lack of counseling may compromise this process, leading to consent that is legally valid but ethically questionable.

3.2. *Another important aspect is child welfare.* The child's right to identity, family structure, and emotional security must be protected. There is an ongoing moral debate about whether children born through surrogacy should be told about their origins. While some advocate for transparency, others fear this could lead to confusion or stigma. Either way, the child's best interests must remain central.

3.3. *Societal acceptance of surrogacy* is still evolving in India. Many communities view it with suspicion or disapproval, considering it to be unnatural or immoral. Both surrogate mothers and intended parents may face social stigma, with surrogates often accused of "selling their wombs" and parents judged for not having children "naturally." These cultural attitudes can lead to emotional distress and isolation for all parties involved.

3.4. Traditional cultural beliefs surrounding motherhood and family structure also complicate surrogacy's social acceptance. In many societies, motherhood is closely linked to childbirth and genetic ties, making the division between gestational and social motherhood difficult for people to accept. This disconnection challenges long-held notions of parenting and raises questions about the legitimacy of the parent-child bond formed through surrogacy.

In sum, while surrogacy holds great potential for addressing infertility, it exists within a sensitive ethical and social framework. Addressing issues like the surrogate's rights, meaningful consent, child welfare, societal bias, and cultural taboos is essential to ensure that surrogacy is practiced with dignity, fairness, and compassion for all involved.⁷

4. IMPACTS ON SURROGATE MOTHER⁸

surrogacy affects women in India who become surrogate mothers. It focuses on their physical and emotional health, financial situation, and how society treats them. After the Surrogacy (Regulation) Act, 2021, only altruistic surrogacy is allowed in India. This means women can't be paid for being a surrogate mother—only medical expenses and insurance are covered. While the law aims to prevent exploitation, it also brings several challenges for surrogate mothers.

4.1. Health Risks

Surrogates go through several medical procedures like hormone injections and embryo transfer, which can cause complications such as infections, multiple pregnancies, and miscarriages. Many are forced to deliver through C-sections for convenience, not medical necessity. These surgeries carry long-term health risks. Unfortunately, many surrogates don't get proper medical care after delivery, putting their health in danger.

4.2. Emotional Challenges

Carrying a baby for nine months and then handing it over can be emotionally painful. Surrogates are told not to get attached to the baby, but this is hard in reality. Many women feel sadness, guilt, or depression after giving up the child. There's also a lack of emotional support

⁷ Aditi Singh, Surrogacy in India: A Critical Analysis, ResearchGate, https://www.researchgate.net/publication/377411084_SURROGACY_IN_INDIA_A_CRITICAL_ANALYSIS >(April. 9, 2025, 11.23 P.M.)

⁸ Yiyang Zhao, Effects of Surrogacy on Surrogate Mothers in India, in Proceedings of the 2022 6th International Seminar on Education, Management and Social Sciences 1403 (2022), https://www.researchgate.net/publication/368502038_Effects_of_Surrogacy_on_Surrogate_Mothers_in_India > (April. 6, 2025, 11.31.P.M.)

or counseling for them.

4.3. Lack of Financial Compensation

Before the 2021 Act, women used surrogacy as a way to earn money and support their families. But under the new law, they are not allowed to receive any payment. As a result, women now face financial stress. Some even feel their time, effort, and pain are not being fairly acknowledged or rewarded.

4.4. Societal Stigma

Surrogate mothers often face judgment and shame from their families and communities. Many people don't understand or accept surrogacy. Women are sometimes accused of selling their bodies or being involved in immoral acts, which adds to their emotional burden.

4.5. Legal Restrictions

The Surrogacy Act only allows close relatives to be surrogates and bans foreigners and single parents from hiring surrogates. This reduces the number of people who can legally access surrogacy. It also limits women's choices and can discourage them from participating altogether.

5. RECOMMENDATIONS

To improve the legal and ethical framework of altruistic surrogacy in India, several key reforms are suggested. Firstly, the strict limitation that only close relatives can act as surrogates should be relaxed. Allowing willing unrelated women, with proper safeguards, can address the shortage of surrogates. Secondly, while maintaining the non-commercial nature of altruistic surrogacy, the law should permit reasonable compensation to cover the surrogate's medical expenses, lost income, and emotional burden. Further, establishing a dedicated regulatory authority is crucial to ensure transparency, monitor clinics, and protect the interests of all parties. Post-birth support for surrogate mothers including healthcare, insurance, and counseling should be mandated to safeguard their physical and mental well-being.

Public awareness campaigns are also essential to educate stakeholders about the legal provisions and ethical considerations of surrogacy. Lastly, the Surrogacy (Regulation) Act, 2021 should undergo periodic review to adapt to evolving social, medical, and technological realities. Incorporating voices of surrogate mothers, intended parents, and experts will make

the law more balanced and effective.

6. CONCLUSION

The Surrogacy (Regulation) Act, 2021 was introduced with the aim of making surrogacy in India more ethical and less exploitative. By allowing only altruistic surrogacy and banning commercial arrangements, the law seeks to protect poor women from being used for profit. However, while the intention behind the law is noble, it brings several challenges especially for the women who become surrogate mothers. These women face physical health risks from the medical procedures involved in surrogacy, and often lack access to proper aftercare. Emotionally, they go through a difficult journey of carrying a baby for nine months and then giving it up, which can lead to feelings of sadness, guilt, or depression. The lack of proper counseling adds to their mental distress. Financially, the new law stops surrogate mothers from being paid, which removes an important source of income for many women. This creates a situation where their efforts and sacrifices are not fully recognized or rewarded. Socially, surrogate mothers often face judgment and stigma from their families and society. People may see them negatively or misunderstand their role. This affects their dignity and can cause emotional isolation.

Legally, the Act restricts surrogacy to married Indian couples and close relatives, leaving out single parents, LGBTQ+ individuals, and foreigners. This raises questions about equality and reproductive rights. To make surrogacy truly fair and inclusive, there needs to be a better balance between protection and empowerment. Surrogate mothers should have stronger legal, emotional, and financial support so that their rights and dignity are upheld throughout the process.

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