

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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SURROGACY IN INDIA: SOCIAL, ETHICAL AND LEGAL ISSUES

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Abstract

Surrogacy has emerged as an important reproductive technology that offers hope to infertile couples, single due to the availability of advanced medical facilities and comparatively lower parents, and individuals who are unable to conceive naturally. In India, surrogacy gained significant attention costs. However, the practice also generated serious social, ethical, and legal concerns regarding the exploitation of women, commercialization of reproduction, rights of surrogate mothers, and welfare of children born through surrogacy. To regulate these concerns, the Government of India enacted the Surrogacy (Regulation) Act, 2021, which permits only altruistic surrogacy and prohibits commercial surrogacy. This paper examines the concept of surrogacy, its development in India, and the major social, ethical, and legal challenges associated with it. The study also analyzes the legal framework governing surrogacy and suggests measures to balance reproductive rights with the protection of vulnerable women and children.

Keywords: Surrogacy, Assisted Reproductive Technology, Commercial Surrogacy, Altruistic Surrogacy, Reproductive Rights, Surrogacy Regulation Act.

Introduction

The desire to have children is a fundamental aspect of human life and family formation. However, infertility affects millions of couples worldwide, creating emotional, psychological, and social distress. Advances in reproductive medicine have provided several alternatives for overcoming infertility, including in vitro fertilization (IVF), artificial insemination, and surrogacy.

Surrogacy refers to an arrangement in which a woman agrees to carry and give birth to a child on behalf of another individual or couple. After the birth, the child is handed over to the intended parents. While surrogacy offers an opportunity for parenthood, it raises numerous social, ethical, and legal questions.

India became a global center for surrogacy during the early 2000s because of affordable medical services and the availability of surrogate mothers. The growth of commercial surrogacy attracted intended parents from different countries. However, concerns regarding exploitation, lack of regulation, citizenship issues, and rights of surrogate mothers led to calls for stricter legal control. Consequently, India shifted from permitting commercial surrogacy to allowing only altruistic surrogacy through legislative intervention.

This paper explores the concept of surrogacy and critically examines its social, ethical, and legal dimensions in the Indian context.

Meaning and Types of Surrogacy

Surrogacy is an arrangement whereby a woman carries a pregnancy and delivers a child for another person or couple who intend to become the child's legal parents.

Surrogacy can be classified into two major categories:

1. Traditional Surrogacy

In traditional surrogacy, the surrogate mother contributes her own egg and is biologically related to the child. Fertilization usually occurs through artificial insemination. This form is less common because it creates legal and emotional complications regarding parentage.

2. Gestational Surrogacy

In gestational surrogacy, the embryo is created through IVF using the gametes of the intended parents or donors and implanted into the surrogate mother. The surrogate has no genetic relationship with the child. This is the most common form of surrogacy practiced today.

Surrogacy may also be categorized as: Commercial Surrogacy

The surrogate mother receives financial compensation beyond medical expenses and insurance coverage.

Altruistic Surrogacy

The surrogate receives no monetary compensation except reimbursement of medical expenses and insurance. The arrangement is generally motivated by compassion and familial support.

Growth of Surrogacy in India

India emerged as a major destination for surrogacy after the legalization of commercial surrogacy in 2002. Fertility clinics expanded rapidly, attracting domestic and international clients. Factors contributing to the growth of surrogacy included:

Advanced reproductive technologies.

Lower medical costs compared to Western countries. Availability of surrogate mothers.

Lack of strict regulation. Increasing infertility rates.

The surrogacy industry generated substantial economic benefits. However, reports of exploitation, inadequate protection of surrogate mothers, and disputes over parental rights highlighted the need for comprehensive legislation.

Several high-profile cases involving foreign couples and abandoned children further exposed legal loopholes in the surrogacy system.

Social Issues Related to Surrogacy

1. Social Stigma and Cultural Attitudes

Indian society traditionally values biological motherhood and family lineage. Surrogate mothers often face social criticism and misunderstanding. Many people view surrogacy as contrary to cultural and religious values.

Women acting as surrogates may conceal their pregnancies from relatives and neighbors to avoid social stigma. Intended parents may also face questions regarding the legitimacy of parenthood.

2. Exploitation of Economically Vulnerable Women

One of the most significant concerns associated with commercial surrogacy is the potential exploitation of poor women. Many women become surrogates due to financial hardship rather than genuine choice.

Economic inequality creates a situation where wealthy intended parents benefit from the reproductive labor of financially disadvantaged women. Critics argue that such arrangements may amount to reproductive exploitation.

3. Impact on Family Relationships

Surrogacy can create emotional and social complexities within families. The surrogate mother's spouse, children, and relatives may experience confusion or emotional stress during the process. Questions regarding the relationship between the surrogate and the child can also affect family dynamics.

4. Psychological Consequences

Pregnancy often leads to emotional attachment between the mother and the unborn child. The

transfer of the child to intended parents after birth may cause psychological distress for surrogate mothers.

Similarly, intended parents may experience anxiety regarding pregnancy outcomes and legal uncertainties.

5. Welfare of the Child

Children born through surrogacy may encounter questions regarding identity, genetic origins, and parentage. In international surrogacy arrangements, issues related to citizenship and nationality can create additional challenges.

Ensuring The Best Interests of The Child Remains A Crucial Social Concern. Ethical Issues in Surrogacy

1. Commodification of Women and Children

One of the strongest ethical objections to commercial surrogacy is that it transforms reproduction into a commercial transaction. Critics argue that paying women for pregnancy reduces motherhood to a market service.

Similarly, children may be viewed as products resulting from contractual agreements rather than human beings with inherent dignity.

2. Reproductive Autonomy

Supporters of surrogacy emphasize the principle of reproductive autonomy. They argue that women have the right to make decisions regarding their bodies and reproductive capacities. From this perspective, a competent adult woman should be free to choose surrogacy if she does so voluntarily and with informed consent.

3. Informed Consent

Ethical surrogacy requires genuine informed consent. However, concerns arise when surrogate mothers have limited education or inadequate understanding of medical procedures and legal consequences.

True consent must be free from coercion, manipulation, and economic pressure.

4. Health Risks to Surrogate Mothers

Pregnancy and childbirth involve significant physical risks, including complications such as

hypertension, gestational diabetes, and cesarean delivery.

Ethical concerns arise when surrogate mothers assume these risks primarily for financial reasons without adequate healthcare and support.

5. Exploitation versus Empowerment Debate

Some scholars argue that surrogacy empowers women by providing income and reproductive choice. Others contend that it exploits vulnerable women and reinforces social inequalities.

This debate remains one of the central ethical controversies surrounding surrogacy.

6. Rights of Intended Parents

Intended parents invest emotionally, financially, and psychologically in the surrogacy process. Ethical dilemmas may arise if the surrogate changes her decision or if complications occur during pregnancy.

Balancing the interests of intended parents with those of surrogate mothers is a continuing challenge.

Legal Issues in Surrogacy

1. Determination of Parenthood

One of the primary legal questions concerns the identity of the child's legal parents. Traditional legal principles often recognize the woman who gives birth as the mother. Surrogacy arrangements require clear legal rules regarding parental rights and responsibilities.

2. Enforceability of Surrogacy Agreements

Questions arise regarding whether surrogacy contracts should be legally enforceable. Courts must determine the validity of agreements involving pregnancy, childbirth, and custody.

Legal systems must balance contractual freedom with human dignity and public policy considerations.

3. Citizenship and Nationality Issues

International surrogacy has generated disputes regarding citizenship. Children born through cross-border surrogacy arrangements may face difficulties obtaining nationality, passports, or legal recognition.

Such cases highlighted the need for clearer legal regulation.

4. Rights of the Surrogate Mother

Legal protection is essential to safeguard surrogate mothers from exploitation and abuse.

Important issues include:

Medical care. Insurance coverage. Compensation.

Informed consent. Protection from coercion.

5. Rights of the Child

The child's welfare must remain paramount. Legal frameworks should ensure: Recognition of parentage.

Citizenship rights.

Access to healthcare.

Protection from abandonment.

6. Cross-Border Surrogacy

Before regulatory reforms, India attracted many foreign intended parents. Cross-border arrangements created complex legal disputes involving immigration, citizenship, and family law.

The absence of uniform international standards complicated the resolution of such cases. Legal Framework Governing Surrogacy in India

Early Regulatory Efforts

Initially, India lacked comprehensive legislation on surrogacy. The practice was largely governed by guidelines issued by the Indian Council of Medical Research (ICMR) in 2005. These guidelines provided basic standards but lacked legal enforceability.

Landmark Judicial Decisions

Baby Manji Yamada v. Union of India (2008)

This case involved a Japanese couple who commissioned a surrogacy arrangement in India. The dispute highlighted legal uncertainties regarding custody and nationality.

The case brought international attention to the need for surrogacy regulation. *Jan Balaz v. Anand Municipality* (2009)

The case addressed citizenship issues concerning children born through surrogacy arrangements involving foreign parents.

The decision exposed significant gaps in Indian surrogacy law. The Surrogacy (Regulation) Act, 2021

The Government of India enacted the Surrogacy (Regulation) Act, 2021 to regulate surrogacy and prevent exploitation.

Key Features

1. Ban on Commercial Surrogacy

The Act prohibits commercial surrogacy and permits only altruistic surrogacy.

2. Eligibility of Intended Couple

The law establishes eligibility criteria for intended parents, including medical necessity and age requirements.

3. Eligibility of Surrogate Mother

The surrogate mother must satisfy prescribed conditions and can act as a surrogate only under specific circumstances.

4. Insurance Coverage

The intended parents must provide insurance coverage for the surrogate mother for a specified period.

5. Establishment of Regulatory Authorities

The Act creates National and State Surrogacy Boards to oversee implementation and regulation.

6. Protection Against Exploitation

The legislation seeks to prevent trafficking, exploitation, and commercialization of surrogacy.

7. Penalties

Commercial surrogacy and related violations attract criminal penalties, including imprisonment and fines.

Critical Analysis of the 2021 Act

The Act represents a significant effort to regulate surrogacy and protect vulnerable women. However, several criticisms have been raised.

Positive Aspects

Prevents commercialization of reproduction. Protects economically disadvantaged women. Promotes ethical surrogacy practices.

Strengthens child welfare protections. Provides legal certainty regarding parentage. **Criticisms**
Restricts reproductive autonomy. Excludes certain categories of individuals.

Limits women's freedom to engage in compensated surrogacy. May encourage underground and unregulated practices.

Raises concerns regarding discrimination and equality.

Some scholars argue that regulated commercial surrogacy may offer better protection than a complete prohibition.

Recommendations

To improve the surrogacy framework in India, the following measures may be considered:
Strengthen informed consent procedures for surrogate mothers.

Ensure comprehensive healthcare and psychological counseling. Establish transparent monitoring mechanisms for fertility clinics. Enhance legal awareness among intended parents and surrogates. Protect the rights and welfare of children born through surrogacy. Develop clear guidelines regarding parentage and citizenship.

Encourage ethical medical practices and accountability. Periodically review the legislation to address emerging challenges.

Conclusion

Surrogacy represents a remarkable advancement in reproductive technology and offers hope to individuals and couples facing infertility. In India, surrogacy evolved from an unregulated commercial industry to a legally regulated practice emphasizing altruistic arrangements and protection of vulnerable women. Despite its benefits, surrogacy raises complex social, ethical, and legal questions concerning exploitation, reproductive autonomy, parentage, and child welfare.

The Surrogacy (Regulation) Act, 2021 seeks to address these concerns by prohibiting commercial surrogacy and establishing a regulatory framework. While the legislation has strengthened safeguards against exploitation, debates continue regarding reproductive rights, equality, and personal autonomy. A balanced approach that protects surrogate mothers and children while respecting individual reproductive choices is essential for the ethical and legal

development of surrogacy in India.

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