
A SURROGACY REGULATION ACT 2021: AN ANALYSIS

Shubhangini Bhardwaj, Law College Dehradun

Hadiya khan, Law College Dehradun

ABSTRACT

On January 25, 2022, the Surrogacy (Regulation) Act 2021 went into force. The Act permits selfless surrogacy while trying to outlaw commercial surrogacy. The surrogate mother is paid for her services in commercial surrogacy in addition to being reimbursed for her medical costs. In an uneven society, the way remuneration is structured may allow intended parents and surrogate mothers to be exploited. The only financial benefit received by the surrogate mother in an altruistic surrogacy is for the insurance and medical costs incurred throughout the pregnancy. While charitable surrogacy is permitted, commercial surrogacy is prohibited by the Act.

Keywords: Surrogacy, Altruistic surrogacy, commercial surrogacy

CONCEPT & HISTORY OF SURROGACY IN INDIA

“The practice by which a woman named as a surrogate mother becomes pregnant, bears a child to give birth in order to give it to someone who cannot have children,” according to the Merriam-Webster dictionary, describes surrogacy¹.

The word "substitute" comes from the Latin word "surrogate," which refers to a replacement that is assigned to another person. Black's Law Dictionary defines a replacement as someone who transports and distributes a child to an individual. Therefore, a substitution arrangement is one in which a woman who typically bears a child for someone else is used as a replacement mother².

Genesis of Surrogacy

Although the concept of substitutes is relatively new, as we now know, it has been applied since the time of the Bible, the Middle Ages, and the Modern Era. The first account of surrogacy was found in the story of Abraham and Sarah, a couple who were unable to have a boy through natural means. Sarah requested her assistance in having Hagar become Abraham's child's mother. An example of a traditional substitute, when the replacement utilizes its egg to carry the child to its designated parents. Abraham and Sarah both claimed the child was their own, even though Sarah did not refer to it as their biological child.

Although there has always been customary substitution, the creation of gestational substitution was far more recent. By talking about how surrogacy practices have changed throughout time, it may be tracked³.

The first ethical IVF embryo transfer was completed in 1975. Attorney Noel Keane helped to establish the first legally recognized replacement arrangement in surrogacy history in 1976. A traditional surrogate did not pay the surrogate for the birth. Keane used this experience to establish a centre that would play a significant role in the history of surgical care in the United

¹ Available at <https://surrogate.com/about-surrogacy/surrogacy-101/surrogacydefinition/> (Last Visited on April 21, 2023).

² Available at https://shodhganga.inflibnet.ac.in/bitstream/10603/123925/7/07_chapter%201.pdf (Last Visited on April 21, 2023).

³ Nikita Kaushik, "Law in Surrogacy", 30-43 *IJHML*, Vol. 2(1) (2019).

States and that would cure hundreds of childlessness through replacement pregnancies in a single year. The first child born by in vitro fertilization was born in 1978⁴.

The first offset substitution agreement was made between expecting parents and traditional surrogate parents in 1980. An extra \$10,000 was gained by Elizabeth Kane, as she went by. She had completed it at the same time and welcomed a child into her family for adoption. Later, after realizing how hard it had been to replace her, Kane published her novel "Birth Mother," which detailed her experiences⁵.

The first legal impediment to surrogacy appeared around 1984–1986. One of the most well-known surrogacy cases in history is the one involving baby "M" and conventional substitution. Bill and Betsy Stern enlisted Mary Beth, a white woman, to fill in for them in 1984. Through artificial insemination, Whitehead became the biological mother of a kid through the use of her eggs. Mary Beth declined and requested guardianship of infant Melissa Stern ("Baby M") once the baby was born, with the Whitehead serving just as a symbol of her parental rights. The development of some of the stricter surrogacy regulations in the United States was made possible in large part by the guardianship decisions. After ruling that the surrogacy agreement between Whitehead and the Sterns was unlawful, the New Jersey Supreme Court reinstated Whitehead's parental rights. The White head was given access privileges and Bill Stern was placed under custody⁶. Due to the case, which turned into a major turning point in the history of substitutions, many substituting practitioners began to use gestational substitutes in order to avoid legal issues.

Then, when baby 'M' was being taken, the first gestational surrogacy was finished in 1985, clearing the path for future surrogacy⁷. A parenting decree, which can be issued before or after birth, is often how planned parents would protect their parental rights. This is why substitutes have been subject to several restrictions, and attorneys and legislators have begun to identify these methods. In order to help expectant parents and potential surrogates learn and participate, replacement businesses and practitioners have also grown in popularity and expertise.

⁴ Sonali Kusum, "Commercial Surrogacy & Feministic Perspective", 1-15 *KLJ*, Vol. 4 (2013).

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

The Special Assisted Reproduction Program was created in 1999 (SPAR). A man living with HIV can now be the biological father of his children without risk of HIV transmission thanks to this program.

In the United States, around 5000 children were born through surrogacy between 2004 and 2008⁸.

2011 saw the 61-year-old oldest substitute mother take away a grandchild⁹.

It is evident by studying the history of surrogacy that, from being a little-known occurrence a millennium ago, surrogacy has grown significantly to become a rapidly expanding and realistic option for having children. These days, it is simpler for intended parents to complete their family and for potential surrogates to assist others because to a combination of quickly developing medications and the variety of surrogacy options available.

TYPE OF SURROGACY

The Indian Supreme Court has classed the Substitution process in the case of *Baby Manji Yamada v. Union of India & Anr*¹⁰. It was discovered that surrogates, or substitutes, are a well-known method of reproduction in which a woman decides to become pregnant and give birth to a child that she will not raise but will instead give to a contracting individual. The most popular technique of substitution is using the infant's genetic mother; alternatively, a gestation carrier could be used. Parents that desire their biological child may find themselves with no other choice than to use substitutes.

A few categories of surrogacy include:

I. Traditional Surrogacy

In a traditional surrogacy, the surrogate mother substitutes her egg for the intended contributor's sperm and is artificially inseminated. It is frequently referred to as genetic replacement or partial surrogacy due to its biological ties to the child it bears.

⁸ Available at <https://surrogate.com/about-surrogacy/surrogacy-101/history-of-surrogacy/> (Last Visited on April 22, 2024).

⁹ Michael Boucai, "Talking about Talking about Surrogacy", 56 *BLR* Vol. 71 (2023).

¹⁰ AIR 2009 SC 84

Since she is the baby's biological mother, the surrogate mother must thereafter renounce her parental rights so that the intended parents can raise her. Conventional surrogacy is not as common. Because they require an egg donor, women who are unable to generate healthy eggs may choose to use traditional egg substitutes.

In a traditional surrogacy, the intended parents are meant to remain unaware of the donor; the surrogate's eggs are utilized instead. After that, until a traditional replacement is found, legal contracts must be drafted and signed. In order for the prospective parents to have a legitimate claim to the child, it is imperative that the draft be made necessary. The process of artificially inseminating the surrogate mother through the use of the intended father's sperm is known as intrauterine insemination, or IUI. This technique involves inserting sperm into the uterus of the woman to facilitate fertilization¹¹. IUI is a less complicated, less expensive, and less invasive treatment option that can be used repeatedly before a pregnancy is achieved. Following that, the surrogate bears the child just like a regular pregnancy would. With traditional replacements, it is possible to create the child using recently frozen sperm through home artificial insemination or through IUI or ICI (intra-cervical insemination), which leads to the fertility clinic¹².

Here are a few benefits of traditional surrogacy:

- a) Compared to gestation and other methods of substitution, conventional substitutes are typically less expensive.
- b) Because their eggs are not processed for the creation of embryos, the moms voluntarily do not need to seek medical attention.

Traditional surrogacy has the following drawbacks:

- a) Conventional alternatives are illegal in several places.
- b) The child's biological mother serves as a substitute in traditional surrogacy. In this case, the intended family will have to apply for custody in court if she changes her mind and

¹¹ Available at <https://americanpregnancy.org/getting-pregnant/intrauterineinsemination> (Last Visited April 22, 2024).

¹² *Ibid.*

refuses to surrender the child to the selected parents in the future.

- c) In these situations, the intended parents might need a stepparent adoption in order to be recognized as the child's legal parents. Many surrogates would rather use gestational surrogacy than traditional surrogacy, and few surrogacy professionals offer traditional surrogacy.
- d) It is not possible for intended moms to have a biological relationship with their children through traditional surrogacy.

II. Gestational Surrogacy

In gestational surrogacy, the surrogate bears a kid by means of embryonic transfer with a fetus for whom she is not a mother. She needs to have made plans to give it to a father, adult unrelated to the child, or the baby's original mother. The gestational carrier is another name for the mother surrogate¹³.

By using donor or parent eggs and sperm, which are subsequently transferred to the replacement through in vitro fertilization (IVF), the foetus in gestational substitution is not solely dependent on the mother—who is commonly referred to as a gestational carrier. In most cases, the child shares genetic material with at least one parent. Because it does not call for stepparent or second-parent adoption, the gestational substitution is legally less complex than other substituting problems. The most likely candidates for this kind of substitution include sterile individuals, optimistic single parents, and gay couples who do not want their child to have a genetic connection to a replacement. The intending parents might look for an independent surrogate and find their surrogacy chance with an experienced attorney who specializes in assisted reproductive law. In contrast, the majority of potential parents opt for a full-service option that helps them locate a testing carrier. Until the legal procedures are finished and the substitution payment is decided, the IVF and embryo transfer process is overseen in a fertility clinic.

The procedure to create an embryo and transfer it to the surrogate will be one of the following:

1. The sperm and eggs of the potential parents, in situations where the child shares

¹³ *Supra* note 10.

genetics with all of the potential parents.

2. a donated egg fertilized with the sperm of the intended father, in which case the child bears the genetic heritage of the proposed father.
3. In that case, the mother's egg—which is intended to be fertilized with donor sperm—will be genetically associated with the child.
4. An embryo can be donor or created with donor sperm and eggs, in which case the child's parents are not genetically related. From there, the surgeon cares for the baby as though it were a normal pregnancy, and when the child is born, the intended parents welcome them and assume full custody.

The following are some advantages of gestational replacement:

- a) It assists LGBTQ people, single parents, and infertile couples in completing their families.
- b) The intended parents are able to maintain the genetic bond with their kid through gestational substitution. It is the least complicated type of surrogacy legally because the gestational carrier is not involved.

Some of the drawbacks of gestational replacement include the following:

- It could be a time-consuming and demanding process.
- The intended mother needs to undergo fertility and other medical procedures because the surrogacy process involves her eggs.

Because the pregnancy is carried by someone else, the parents meant to cede some control.

III. Commercial Surrogacy

The Hon'ble Apex Court defined commercial substitution as a type of substitution where a carrier receives payment for carrying a child into the womb; this type of substitution is commonly used by wealthy, sterile couples who can afford the costs or by individuals who have saved money and have a loan to fulfil their desire to become parents. Numerous countries,

like as India, have legalized this medical procedure, which has become more well-liked due to the nation's excellent healthcare system, high global demand, and easy access to mediocre substitutes. Terms like "baby farms," "outsourced births," and "wombs for sale" are loaded with emotions and can even be confrontational when applied to commercial replacement¹⁴. All substitute care arrangements in which the mother's substitute is compensated for her services instead of medical expenses are considered commercial substituting. If individuals collaborate with surgeons to locate an alternative, the surgical procedure is a business transaction. The ethics of commercial substitutes are contested. Opponents claim it commodifies human life, abuses the reproductive system, and helps weaker women. On the other hand, some argue that a woman cannot reasonably bear a child for another person and receives little in return. Proponents contend that in order to control and safeguard the rights of every person, certain activities should be allowed without restriction. This technique of substitution to safeguard women and children is restricted and outlawed in a number of countries, including the United States. However, it has consequences, and as a result, the rights of the intended parents and substitute mothers remain unprotected. However, company equivalents are quite costly and expensive. Not all countries respect the surrogacy rules that safeguard mothers, intended parents, and children. In certain nations—like Germany, France, Spain, and Italy—all forms of substitution are forbidden; yet, in other nations—like the UK, Australia, and Denmark—altruistic substitutes are allowed. These restrictions on substitute status prevent many couples from pursuing parenthood, which forces others to exchange replacement status when it is feasible. Among the most popular countries are India and Thailand, where potential parents are searching for inexpensive commercial groceries¹⁵. However, replacement plans are often not governed by a distinct legislative framework in countries like Thailand and India. This implies that intended parents and surrogates are not sufficiently cosseted, which makes it challenging for surrogate children to learn about their citizenship and legal parenthood. Critics of surrogacy agreements think that disadvantaged people in wealthy countries are being misused, which is why they have also called it "womb leasing" or "fertility tourism"¹⁶. Commercial alternative services are permitted in some states in the United States, but only charitable substitutes are allowed in other nations, and some governments do not support substitutes. For instance, California has some of the best defined substitution policies in the world, and the state's

¹⁴ *Ibid.*

¹⁵ Available at: https://shodhganga.inflibnet.ac.in/bitstream/10603/406552/9/12_%20chapter%202.pdf (Last Visited on April 22, 2024).

¹⁶ *Ibid.*

popularity as a destination for substitutes highlights the significant need for substitutes throughout the world. The practice of commercial surrogacy has numerous benefits, including:

- It helps surrogates understand that they must give up the child after birth and receive fair compensation for the anguish they endure when taking an infant.
- In nations where commercial substitution is feasible, the entire process is standardized and far more professional.
- There is no room for additional emotional or other issues given the large number of participants and the conditions.
- It is preferable to carry out the process alone, without the assistance of friends and family members who are not the intended parents.

Commercial surrogacy does, however, have many drawbacks, including:

- Since trade replacements demand additional expenses for each individual involved in the intended parent's operation, they are more expensive than altruistic substitutes.
- Opponents claim it takes advantage of poor and insecure women.
- Some states prohibit commercial surrogacy, which makes it more difficult for the intended parents because they must fly abroad and there are additional legal ramifications¹⁷.

Thus, it can be concluded that intended parents and surrogates can benefit much from commercial surrogacy provided it is carried out within the correct legal framework and with the guidance of an expert in the field.

IV. Altruistic Surrogacy

The Hon'ble Apex Court of India states that altruistic surrogacy occurs when the surrogate receives no financial compensation for her pregnancy or for the return of the child¹⁸. Altruism

¹⁷ Available at <https://surrogate.com/about-surrogacy/types-of-surrogacy/what-is-commercial-surrogacy> (Visited on April 26, 2024).

¹⁸ *Supra* note 10.

is the selfless consideration of or commitment to the well-being of others. It is difficult to define altruistic surrogacy because many surrogacy supporters contend that all surrogacy is altruistic. Altruistic surrogacy refers to surrogacy agreements where the surrogate is paid only for acceptable pregnancy-related expenses and medical fees, with no further compensation for her services. Many of these agreements are made between close friends or family members and are executed as independent surrogacy. The patterns of altruistic and commercial surrogacy are comparable. Altruistic surrogates are typically friends, family, or siblings of the intended parents who volunteer to be surrogates. As the intended parents found a surrogate before contacting a surrogacy agency, this type of surrogacy is also known as recognized substitution.

Using a surrogacy agency's matching service is not required for this kind of surrogacy. Because the intended parents do not compensate their substitute, surrogacy is consistently less expensive than commercial substitution. The intended parents must, however, pay certain costs. These include medical costs related to artificial insemination or embryo transfer, fertility injections, labor and delivery costs, endowment costs in the event that a sperm or egg benefactor is required, legal expert fees, counselling fees, travel expenses, and agency fees.

Among the benefits of altruistic surrogacy are the following¹⁹:

1. When compared to commercial surrogacy, it is less costly.
2. Because it is legal in some US states and countries where commercial surrogacy is forbidden, it is a more widely accessible option for prospective parents.
3. Throughout the pregnancy, altruistic surrogacy enables the intended parents to experience greater mental clarity and a deeper feeling of spiritual understanding.

Some drawbacks of selfless surrogacy include the following²⁰:

- The surrogate must endure physical and psychological strain in addition to not receiving payment for bearing another person's child.
- Since there is no agency involved, the terms and circumstances are frequently unclear

¹⁹ Aneesh V Pillai, "Surrogate Mother & its challenges to Indian Legal System", 89-93 *TLA*, vol.1(2) (2011).

²⁰ *Ibid.*

in this type of surrogacy.

- The surrogate has the right to change her mind at any time and refuse to give the child up.

Though it is the greatest and most amazing gift a woman can offer another, selfless surrogacy may be quite fulfilling if done right.

V. Agency Surrogacy

In order to complete the entire procedure for their surrogacy requirement, prospective parents might use agency surrogacy, which involves approaching an agency. Surrogacy is inherently an extremely difficult procedure. There are always a lot of arrangements to make, which calls for a lot of organization and planning. Experts from surrogacy agencies regularly collaborate with intended parents. Since contracts and legal requirements are essential to substitute, it's also crucial to comprehend and be aware of the legitimate aspects of surrogacy. With attorneys skilled in Assisted Reproductive Technology, the organization facilitates contact between the legal experts and the program administrator. Along with assisting with insurance coverage and medical providers, the firm also helps arrange for egg donors and surrogates²¹.

VI. Independent Surrogacy

Independent surrogacy refers to the surrogacy procedure in which the intended parents decide to pursue the full surrogacy process independently rather than working with an agency. As a result, they are left to do all the paperwork and preparations themselves, including case management, coordination, matching and screening services, and surrogacy planning²².

VII. Identified Surrogacy

Before starting the process with an identified surrogacy specialist, the proposed parents and surrogate find one another. It is less expensive to employ recognized surrogacy because matching services are not necessary²³.

²¹ *Supra* note 15.

²² *Ibid.*

²³ *Ibid.*

As a result, we discover that several surrogacy models have emerged over time, and intended parents can select from a variety of models based on their unique needs.

THE SURROGACY (REGULATION) ACT, 2021

The Surrogacy (Regulation) Act, 2021 was passed by Parliament last year to introduce and regulate the surrogacy procedure, following years of battle by activists. Following the Union Government's announcement in the Official Gazette, the Act went into effect on January 25²⁴. In order to protect the rights and dignity of the surrogate mother while also enabling women who are unable to conceive despite trying numerous fertility treatments, legislation governing surrogacy has been passed in India.

Apart from a few holes that we shall address later, the Act does, however, leave open certain important questions. By proposing changes where necessary to act in the people's best interests, I hope to draw attention to the need for the Act to become more transparent and inclusive. The Act has been criticized primarily for its ambiguous language, the exclusion of non-binary gender, the prohibition of commercial surrogacy, the need to include traditional surrogacy, and the challenges that medical professionals may encounter in providing surrogacy services.

The practice of surrogacy may have gained popularity in India recently, but its origins may be found in our mythological history. In order to keep Devaki's brother Kansa away from her, Balaram, the brother of Lord Krishna and the seventh child of Devaki and Vasudeva, was placed within the womb of Rohini, Vasudeva's first wife. In this instance, Rohini served as the intended parents' surrogate (Devaki and Vasudev)²⁵. Indian mythology therefore views surrogacy as a means of establishing or defending families rather than as a practice that should be disapproved of.

Although the Surrogacy (Regulation) Act, 2021 is the first law in India to regulate surrogacy, there is still societal opposition to the surrogacy process, particularly when the intended couple's woman does not have a healthy egg and requires an egg donor for the surrogacy. Due to its shortcomings, the Act has caused a number of worries for medical professionals as well as couples considering surrogacy as a way to adopt a child. The progressive legislation, which

²⁴ Dr. Nitu Tiwari, "Analysis of the Surrogacy Regulation Act 2021", 190 *IJIER&M* 09-03 (2022).

²⁵ Anu Aneja and Shubhangi Vaidya, *Embodying Motherhood: Perspective of Contemporary India* 140-141 (Universal Law Publishing 1st edn., 2016).

seeks to provide surrogacy to individuals unable to conceive, has failed in its very nature to be progressive since it is ambiguous and discriminatory, leaving room for a great deal of discussion and misunderstanding.

THE RECIPIENTS OF THE ACT

Only two groups of people are permitted to use these services under the Act.

1. Intending Couple

According to Section 2(h) of the Act, an intending couple is any Indian man and woman who are legally married and over the ages of 21 and 18, respectively²⁶. According to Section 2(r) of the Act, an intending couple is a couple that plans to use gestational surrogacy to become parents where there is medical evidence that supports this course of action. The age range of the married pair should be 26 to 55 for men and 23 to 50 for women²⁷.

2. An Intending Woman

According to Section 2(s) of the Act, a widow or divorcee who is between the ages of 35 and 45 and plans to use this service is considered an intended woman. Section 4(ii)(a) of the Act requires the National Assisted Reproductive Technology and Surrogacy Board, which was established under Section 17, to provide a certification of recommendation to the intended lady and the intending couple in this case. Under this Act, no other individual shall be permitted to use surrogacy services except those in the aforementioned categories. A portion of society is left out of this, including single women who want to become mothers but are unable to conceive. Irony here is that this regulation, although purportedly modernizing, nevertheless perpetuates the traditional taboo against accepting motherhood before marriage. Under the Medical Termination of Pregnancy Act, 1971, an unmarried woman who becomes pregnant is punished for becoming pregnant due to sexual relations by being forced to bear the child; additionally, she is not permitted to use surrogacy services if she wishes to become pregnant but is unable to bear a child²⁸. According to the 2021 Act, a couple is defined as a married Indian man and woman who are above the ages of 21 and 18, respectively. This leaves out any man and woman who are living together and want to use these services. By restricting the

²⁶ The Surrogacy (Regulation) Act, 2021 (Act no. 47 of 2021).

²⁷ *Ibid.*

²⁸ Medical Termination of Pregnancy Act, 1971 (Act no. 34 of 1971).

definition of a couple to that found in Section 2(h), the Act supports the institution of marriage. Couples who may be medically unfit or who are coping with chronic illnesses that increase the risk of these problems in the fetus are also excluded by the Act²⁹. While Section 4(ii)(e) permits surrogacy in situations where the National Assisted Reproductive Technology and Surrogacy Board designates a condition or a disease, the Act retains ambiguity regarding the conditions or diseases that permit it, subject to the Board's judgment.

SURROGACY UNDER (REGULATION) ACT, 2021

A woman who is a widow or divorcee between the ages of 35 and 45, or a pair, which is defined as a lawfully married woman and man, may use surrogacy if they have a medical condition that makes it necessary for them to do so, according to the Surrogacy (Regulation) Act, 2021.

Commercial surrogacy is prohibited as well, with a maximum punishment of Rs. 10 lakhs and a maximum jail sentence of 10 years³⁰.

Only selfless surrogacy, in which no money is exchanged and the surrogate mother is genetically related to the intended parents, is permitted by law.

Challenges

- **Taking advantage of the Child and the Surrogate:** One could contend that in order to safeguard the child's right to birth, the state must cease exploiting impoverished women through surrogacy. The existing Act, however, does not adequately balance these two interests.
- **Patriarchal Norms are reinforced:** The Act undermines the long-standing patriarchal standards in our culture, which place little economic value on the labor of women and have a direct impact on women's fundamental right to procreate under Article 21 of the Constitution.
- **Denies Legitimate income to Surrogates:** The number of women who are prepared to surrogate is further reduced by the ban on commercial surrogacy, which also denies the

²⁹ *Supra* note 26.

³⁰ *Ibid.*

surrogates a legal source of money.

In general, this action deprives the couples who choose to become parents of their children inadvertently.

- **Emotional Complications:** A friend or relative acting as a surrogate mother in an altruistic surrogacy may result in emotional difficulties for the intended parents as well as the surrogate child because there is a significant danger to the relationship during the surrogacy process and after the birth.

Due to the small number of relatives who are willing to participate in the procedure, altruistic surrogacy also restricts the options available to the intended couple when selecting a surrogate mother.

- **No Third-Party Involvement:** An altruistic surrogacy doesn't involve any outside parties. The intended pair is guaranteed to pay for and support the medical and other incidental costs associated with the surrogacy procedure when a third party is involved.

In general, a third party facilitates communication between the intended couple and the surrogate mother during the convoluted process—something that might not be feasible in the event of selfless surrogacy.

Legal Provisions

By establishing the National Assisted Reproductive Technology and Surrogacy Board, the ART (Assisted Reproductive Technology Act) Regulation 2021 offers a framework for the application of the surrogacy statute³¹.

The Act seeks to prevent abuse, provide safe and moral delivery of ART services, and regulate and oversee ART clinics and banks of assisted reproductive technologies.

Shortcomings:

- **Exclusion of Unmarried and Heterosexual Couples**

³¹ *Supra* note 24.

The Act prohibits transgender people, married or cohabiting homosexual couples, unmarried males, divorced men, widower men, unmarried but cohabiting heterosexual couples, and transgender people from receiving ART services.

This omission is significant since the Surrogacy Act prohibits the aforementioned individuals from using surrogacy as a means of reproduction.

- **Minimizes the Options for Reproduction**

Additionally, only infertile commissioning couples—those who have failed to conceive after a year of unprotected coitus—are eligible under the Act. As a result, its application is restricted, and individuals who are excluded have fewer reproductive options.

- **Unregulated Prices**

There is no regulation over the service costs, however this is easily fixed with some straightforward instructions.

The Surrogacy (Regulation) Act, 2021 stipulates that any pair engaging in commercial surrogacy faces up to five years in prison and a fine of up to Rs. 50,000 for their first offense, and up to ten years in prison and a fine of up to Rs. one million for their second offense. Any individual, group, or clinic found to be profiting from the use of surrogate mothers or surrogate infants faces up to ten years in prison and a fine of up to Rs. ten lakhs³².

CONCLUSION

The Act is undoubtedly a step in the right direction, given that India is one of the main centres for these abuses. To guarantee that the law keeps up with the ever-evolving needs of society, morality, and technology, there must be a dynamic oversight.

In order to ensure that the provisions of the Act are implemented effectively and that no parties are harmed, clinics must have a suitable infrastructure in place before the government's 90-day window from the Act's start to obtain the certificate of registration necessary for surrogacy or

³² *Supra* note 26.

assisted reproductive services. The Act allows for the formation of a surrogacy agency in order to avoid surrogate exploitation and to provide the surrogacy market more informed control.

The appointment of authorities is being delayed unnecessarily, which is causing delays in both the Board registration application and the certificate application to use surrogacy services. For the 2021 Act to operate smoothly, effectively, and without difficulty, it must be made more inclusive of the various segments of society that have been left out. It also has to be clear who has the right to make decisions on authority. The Parliament has adopted a paternalistic approach to the issue, choosing to outlaw commercial surrogacy altogether and impose restrictions on using surrogacy services under the guise of promoting societal welfare and interest rather than ending the issues and exploitation brought about by the absence of regulations governing the practice. According to the Supreme Court in *Baby Manji Yamada*, commercial surrogacy is viewed as baby farming or the renting of wombs because financial compensation is involved in addition to basic medical and insurance costs. However, it appears that this is not the case and that the surrogate's income is meant to improve her standard of living.