
LEGAL AND ETHICAL CHALLENGES IN SURROGACY LAWS IN INDIA: A CRITICAL ANALYSIS

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INTRODUCTION

Surrogacy, a practice where a woman carries and delivers a child on behalf of another individual or couple, has become a significant reproductive option for those facing infertility, medical conditions, or various personal circumstances. As a global phenomenon, surrogacy raises complex legal, ethical and societal issues that are often influenced by cultural, religious and economic factors. In India, surrogacy gained prominence in the late 20th and early 21st centuries due to its relatively low costs, widespread availability of advanced medical technologies and less stringent regulations compared to many Western countries. As a result, India became a global hub for international commercial surrogacy, drawing clients from across the world, particularly from Western countries. However, this rapid expansion of the surrogacy industry led to increasing concerns over the commercialization of reproduction, exploitation of surrogate mothers and the regulation of cross-border surrogacy arrangements.

The Indian government responded to these concerns with the enactment of the **Surrogacy (Regulation) Act, 2021**, which fundamentally changed the legal landscape. The new law prohibits commercial surrogacy, only permitting altruistic surrogacy for Indian heterosexual married couples who meet specific eligibility criteria. This move aimed to curb the growing commercialization of surrogacy and protect surrogate mothers, but it also introduced a range of legal and ethical challenges. The **Assisted Reproductive Technology (Regulation) Act, 2021**, passed alongside the Surrogacy Act, governs assisted reproductive practices like in-vitro fertilization (IVF) and aims to regulate clinics, ensure the safety of gamete donors and prevent exploitation. However, these new regulations, while well-intentioned, have raised concerns about their inclusivity and effectiveness in addressing the complex issues surrounding surrogacy.

One of the key ethical challenges in surrogacy is the potential for the exploitation of surrogate

mothers, particularly from marginalized and economically disadvantaged backgrounds. In the context of commercial surrogacy, there were widespread concerns about the commodification of women's bodies and reproductive labor. Surrogates, often from low-income communities, were financially incentivized to carry pregnancies for others, leading to questions about whether they were making truly informed choices or were simply coerced by economic necessity. The shift to altruistic surrogacy under the new legal framework aims to address this concern, but it raises new questions about the adequacy of compensation and support for surrogate mothers, as well as the practicality of altruistic surrogacy in a capitalist society.

Another major ethical dilemma revolves around the rights of the child born through surrogacy. Issues related to legal parentage, citizenship and inheritance have been contentious. India has had high-profile cases, such as the **Baby Manji case** in 2008, where questions arose about the legal status of a child born through surrogacy and who had the right to claim parental custody. While the Surrogacy (Regulation) Act, 2021, attempts to clarify parental rights, challenges persist regarding cross-border surrogacy arrangements, where children born to foreign parents may face complications in terms of citizenship and nationality.

In addition to ethical concerns, the legal framework governing surrogacy in India has its own set of challenges. The Surrogacy (Regulation) Act, 2021 limits surrogacy to only married Indian heterosexual couples, thereby excluding single parents, LGBTQ+ couples and foreign nationals. This exclusionary approach has been criticized for its lack of inclusivity, as it disregards the diverse family structures present in modern society. Furthermore, the law does not provide clear guidelines for the enforcement of surrogacy contracts, leaving room for legal disputes between surrogates and intended parents. The absence of a robust legal framework for handling such disputes creates an environment where surrogates' rights may be overlooked and the intended parents may find themselves in lengthy and costly legal battles.

The socio-economic implications of the ban on commercial surrogacy are significant. Commercial surrogacy was a source of income for many women, especially from economically disadvantaged communities. With the legal restrictions on commercial surrogacy, there has been a shift towards underground or unregulated surrogacy practices, where surrogate mothers may not receive adequate medical care, compensation, or legal protection. Additionally, the ban may drive international surrogacy arrangements to countries with less stringent regulations, leading to potential issues of cross-border surrogacy, where the rights and interests of all parties

involved, especially the child, may be neglected.

While the new laws in India reflect an attempt to balance ethical concerns with legal protections, they have been met with criticism for being overly restrictive and failing to address the complex realities of surrogacy. The exclusion of certain groups from surrogacy arrangements, particularly LGBTQ+ individuals and single parents, raises questions about discrimination and the right to build a family. The lack of clear provisions regarding the welfare of surrogate mothers, the enforcement of contracts and the protection of children born through surrogacy compounds the challenges facing the surrogacy industry in India. Moreover, there is a need for greater public awareness and education about the ethical, legal and psychological aspects of surrogacy, to ensure that all parties involved are fully informed and protected.

This paper aims to critically analyze the legal and ethical challenges posed by surrogacy laws in India, focusing on the impact of the **Surrogacy (Regulation) Act, 2021** and the **Assisted Reproductive Technology (Regulation) Act, 2021**. It examines the historical evolution of surrogacy in India, the current legal framework and the ethical dilemmas that arise from the practice. Furthermore, the paper explores the socio-economic impact of surrogacy regulations and suggests potential reforms to ensure that the legal framework adequately protects all stakeholders involved, surrogates, intended parents and children. Ultimately, the paper argues for a more inclusive, balanced and pragmatic approach to surrogacy laws in India, one that recognizes the complexities of modern reproductive practices while safeguarding the rights and dignity of all individuals involved.

Definition of Surrogacy

Surrogacy is a medical arrangement in which a woman carries and gives birth to a child for another person or couple, often called the intended parents. Surrogacy has become an important and sometimes controversial method for individuals and couples who are unable to conceive or carry a pregnancy to term. In its simplest form, surrogacy involves an agreement where a woman, referred to as the surrogate, agrees to bear a child for someone else, usually for a pre-determined period, with the intent of handing over the child after birth to the intended parents.

The process involves in-vitro fertilization (IVF), where an embryo is created outside the body by combining an egg and sperm from the intended parents or donors. The embryo is then implanted in the surrogate's uterus, where she will carry the pregnancy to term.

While the act of surrogacy is simple in concept, its emotional, legal and ethical dimensions make it a complex practice. Surrogacy arrangements may arise for many reasons, including infertility due to medical conditions, same-sex couples seeking to start a family, or individuals who have faced unsuccessful attempts at traditional pregnancy. It is a form of assisted reproductive technology (ART), which includes a wide range of medical procedures used to address infertility.

Surrogacy can be particularly important for people who, for medical reasons, are unable to carry a pregnancy themselves. This could include women with health complications that make pregnancy unsafe, those without a uterus (due to congenital absence or previous surgeries), or women who have had multiple miscarriages and are unable to sustain a pregnancy to term. For same-sex couples, surrogacy provides an avenue to become biological parents, as they can utilize an egg donor or a sperm donor and have the embryo carried by a surrogate.

Given its medical, ethical and legal complexities, surrogacy raises numerous questions regarding the rights of the surrogate, the intended parents and the child, making it a topic of considerable societal debate.

Types of Surrogacy (Traditional vs. Gestational)

There are primarily two types of surrogacy: **traditional surrogacy** and **gestational surrogacy**. The fundamental difference between these two lies in the genetic connection between the surrogate and the child.

Traditional Surrogacy

In traditional surrogacy, the surrogate is genetically related to the child. This is because the surrogate's own egg is used for fertilization with the sperm of the intended father (or a sperm donor). The fertilized embryo is then implanted in the surrogate's uterus and she carries the pregnancy to term. Essentially, in traditional surrogacy, the surrogate acts as both the genetic mother and the carrier of the child.

Because the surrogate is genetically linked to the baby, traditional surrogacy often involves more emotional and legal challenges. In some cases, surrogates may feel a stronger bond with the child and this could lead to disputes regarding parental rights. The legal framework for traditional surrogacy can be more complicated, particularly in jurisdictions where parentage

laws are not clear. Since the surrogate has a genetic connection to the child, there is always the potential for legal battles regarding custody and the rights of the intended parents.

Traditional surrogacy, while still practiced in some countries, has become less common in favor of gestational surrogacy due to the emotional, legal and psychological challenges it can present. Additionally, many countries or regions that regulate surrogacy prefer gestational surrogacy because it avoids some of the genetic and custodial issues associated with traditional surrogacy.

Gestational Surrogacy

Gestational surrogacy is the more commonly used form of surrogacy today. In this arrangement, the surrogate is not genetically related to the child she carries. Instead, an embryo created through IVF using the intended mother's egg (or an egg donor) and the intended father's sperm (or a sperm donor) is implanted in the surrogate's uterus.

Gestational surrogacy eliminates many of the emotional and legal complications tied to traditional surrogacy because the surrogate does not have a genetic link to the child. In this case, the intended parents have full legal parental rights to the child and the surrogate's role is purely to carry the pregnancy. Gestational surrogacy is often preferred by intended parents because it ensures that the baby is genetically theirs, thus avoiding complications that may arise with traditional surrogacy.

The key benefit of gestational surrogacy is that it allows for a clearer legal structure and a reduced risk of emotional attachment from the surrogate. As such, it is often the preferred choice for both the surrogate and the intended parents.

Altruistic vs. Commercial Surrogacy

Surrogacy can be classified into two broad categories based on the financial arrangement: **altruistic surrogacy** and **commercial surrogacy**. These terms differentiate surrogacy arrangements based on whether or not the surrogate mother receives financial compensation for her services.

Altruistic Surrogacy

Altruistic surrogacy refers to a situation where the surrogate agrees to carry and give birth to a

child for the intended parents without receiving any financial compensation other than reimbursement for medical and other related expenses. The primary motivation for altruistic surrogacy is typically a desire to help others build a family. This type of surrogacy is seen as an act of selflessness and the surrogate does not financially profit from her involvement.

In many jurisdictions, altruistic surrogacy is the only legally recognized form of surrogacy. Laws in countries such as the UK and Canada restrict surrogacy to altruistic arrangements, prohibiting any financial compensation to the surrogate beyond covering medical expenses. The ethical argument for altruistic surrogacy is that it reduces the risk of exploitation, as the surrogate is not motivated by financial gain. However, this form of surrogacy can also present challenges, as the surrogate may not receive adequate compensation for the physical, emotional and psychological demands of carrying another person's child.

Despite its altruistic nature, there are concerns that even altruistic surrogacy may involve some level of exploitation. Surrogates, often from economically disadvantaged backgrounds, may feel pressured to participate due to financial hardship, leading to concerns over coercion. Thus, while altruistic surrogacy is framed as an act of kindness, it still requires careful regulation to ensure that surrogates are not unduly influenced by financial constraints.

Commercial Surrogacy

Commercial surrogacy, on the other hand, involves the surrogate receiving financial compensation for her services. This can include payment for carrying the child, as well as reimbursement for medical expenses, lost wages and other related costs. The intended parents typically enter into a contract with the surrogate, which outlines the financial terms, the responsibilities of both parties and the expectations throughout the pregnancy.

Commercial surrogacy is often seen as a way to compensate the surrogate for her time, effort and the risks associated with carrying a pregnancy. In some countries, commercial surrogacy is legal and widely practiced, as it allows for a more formalized arrangement between the intended parents and the surrogate. It is argued that commercial surrogacy can be beneficial for both parties, as the surrogate is fairly compensated and the intended parents receive the assistance they need to have a child.

However, commercial surrogacy has sparked significant ethical debates. One of the key

concerns is the potential for exploitation, particularly of economically vulnerable women who may be coerced into becoming surrogates due to financial pressures. Critics of commercial surrogacy argue that it commodifies women's reproductive capacities and exploits poor women, turning the act of bearing children into a transaction. These concerns have led to calls for stricter regulations on commercial surrogacy, particularly to ensure that surrogates are fully informed of the risks and are not coerced into participating.

In India, commercial surrogacy had been a thriving industry, attracting foreign couples due to its affordability. However, the Surrogacy (Regulation) Act, 2021, effectively banned commercial surrogacy, restricting surrogacy to altruistic arrangements for Indian heterosexual married couples. This has raised concerns about the impact on surrogates and the potential for underground surrogacy arrangements that are less regulated and more prone to exploitation.

HISTORICAL EVOLUTION AND LEGAL CONTEXT IN INDIA

Surrogacy, a practice that has found increasing global prominence in recent decades, has a complex and nuanced history. In India, the development of surrogacy has evolved within the intersection of traditional values, modern medicine and the global legal landscape. The history of surrogacy in India provides a compelling narrative of how an ancient cultural understanding of family and reproduction has collided with contemporary technological advancements and legal concerns. The journey of surrogacy in India is marked by significant shifts, from early scriptural references to the growth of commercial surrogacy in the late 20th century and the legal battles that followed.

Ancient and Scriptural References

The concept of surrogacy, in some form, can be traced back to ancient texts and practices. While the word “surrogacy” itself was not used, the idea of one woman bearing a child for another has been embedded in Indian traditions and religious texts. In the Hindu tradition, ancient scriptures contain references to practices of childbearing that resemble surrogacy. For example, in the ancient text of the Mahabharata, the story of Kunti, the mother of the Pandavas, illustrates a form of divine intervention for having children. Kunti, unable to conceive in the conventional manner, uses a blessing from a sage to invoke gods to bear her children, which is somewhat analogous to the modern understanding of assisted reproduction.

Another important reference comes from the Rigveda, where women could have children through the divine intervention of gods. These scriptural accounts, although far removed from modern-day surrogacy, represent early societal attempts to understand reproduction, infertility and the role of women in ensuring the continuation of family lines. The concept of infertility and childlessness, thus, was not new to the cultural and religious discourse in ancient India and the need for alternative means of conception may have contributed to the seeds of what we now know as surrogacy.

While there were no explicit mentions of surrogacy in these texts, the moral and philosophical questions surrounding parenthood, the role of women in childbearing and the ethics of reproductive assistance were discussed in various forms. These ancient references form a backdrop to understanding the cultural context in which modern surrogacy practices emerged in India.

Growth of Commercial Surrogacy (1990s–2010s)

India entered the modern phase of surrogacy in the 1990s with the rapid growth of the country's medical tourism sector and advances in assisted reproductive technologies (ART). By the turn of the millennium, India became a popular destination for international couples seeking affordable surrogacy services. The country's medical infrastructure, coupled with the cost advantages over Western nations, made India an attractive destination for commercial surrogacy. The relatively low cost of medical care, combined with India's favorable legal and cultural environment, played a significant role in the boom of the surrogacy industry.

During this period, India became one of the world's largest markets for commercial surrogacy. The country's fertility clinics offered services that included in-vitro fertilization (IVF), sperm and egg donation and gestational surrogacy, all at a fraction of the cost in Western countries. Commercial surrogacy also gained momentum due to the relatively relaxed legal environment at the time. The Indian government did not have explicit laws regulating surrogacy, which led to a situation where surrogacy could be practiced with minimal oversight.

At its peak, India's surrogacy industry was not only catering to Indian couples but also attracting a significant number of international clients, particularly from countries like the United States, the United Kingdom and Australia. The motivations for these international couples ranged from high infertility rates, the inability to carry a pregnancy themselves (such

as in cases of same-sex couples), or simply the desire for a more cost-effective alternative to surrogacy in their home countries. It was during this period that India witnessed a dramatic rise in fertility clinics, with many doctors and entrepreneurs entering the surrogacy market.

However, while the growth of commercial surrogacy in India presented significant economic benefits, it also raised various ethical and legal concerns. The lack of regulatory frameworks led to exploitation, with surrogates often coming from economically disadvantaged backgrounds and receiving inadequate protection under the law. The absence of a clear legal contract also resulted in disputes over the parental rights of the intended parents and surrogates, often leaving surrogates in vulnerable situations.

Key Judicial Cases (Baby Manji, Jan Balaz cases)

The legal landscape surrounding surrogacy in India began to shift in the 2000s as cases involving surrogacy came to the forefront. These judicial cases were critical in shaping the way India viewed surrogacy and its legal ramifications.

One of the landmark cases in this regard is the **Baby Manji Yamada case** (2008). This case involved an international couple from Japan who sought a surrogate mother in India. After the child was born, the couple divorced and the mother's visa expired, leaving the baby stranded in India. The case brought to light several legal challenges in surrogacy arrangements, such as the status of the child when the intended parents were not legally married and the implications of parental rights under Indian law. The Baby Manji case was pivotal in demonstrating the need for clear legal guidelines regarding surrogacy, particularly concerning international surrogacy arrangements and the rights of children born through surrogacy.

Another significant case was the **Jan Balaz case** (2012), which involved a Czech couple who used an Indian surrogate to have a child. In this case, the couple faced challenges when it came to the child's citizenship, as there were no clear laws in India regarding the nationality of children born through surrogacy to foreign parents. The Jan Balaz case highlighted the gaps in Indian law, specifically concerning the recognition of the rights of the child born through surrogacy and the legal status of foreign intended parents. This case, alongside Baby Manji, raised significant concerns about the rights of children, the legal status of surrogates and the role of international parents in surrogacy agreements.

Both of these cases were instrumental in pushing the Indian government to consider the regulation of surrogacy more seriously. The Baby Manji and Jan Balaz cases, along with several others, highlighted the urgent need for legislation to address the ambiguities surrounding surrogacy arrangements. These judicial cases eventually led to the introduction of the **Surrogacy (Regulation) Bill, 2020**, which aims to regulate surrogacy, protect the rights of surrogates and ensure ethical standards in the practice.

CURRENT LEGAL FRAMEWORK IN INDIA

In response to the rapid growth of surrogacy and assisted reproductive technologies (ART), India has established a regulatory framework to address the ethical, legal and social issues surrounding these practices. This framework aims to ensure the protection of surrogates, intended parents and children born through surrogacy arrangements. The enactment of two key laws, the **Surrogacy (Regulation) Act, 2021** and the **Assisted Reproductive Technology (Regulation) Act, 2021**, represents a significant step toward regulating surrogacy and ART in India. These laws aim to provide clear guidelines, protect human rights and ensure ethical practices in this sensitive domain.

The Surrogacy (Regulation) Act, 2021

The **Surrogacy (Regulation) Act, 2021**, passed by the Indian Parliament, is one of the most comprehensive pieces of legislation in the country aimed specifically at regulating surrogacy practices. The act was introduced after a series of concerns related to the commercial exploitation of women and the exploitation of surrogates emerged. The primary goal of the act is to ensure that surrogacy remains an altruistic practice, focusing on the welfare of the child, the surrogate mother and the intended parents.

Under the Surrogacy (Regulation) Act, commercial surrogacy, which allows for financial compensation beyond medical expenses, is prohibited. Instead, the law permits only **altruistic surrogacy**, where a woman carries a pregnancy for another couple or individual without monetary compensation (except for medical expenses and insurance). The intended parents must be Indian citizens, married for at least five years and the surrogate mother must be a close relative of the intended parents. Moreover, the act mandates that surrogates be between the ages of 25 and 35 and have already given birth to at least one child.

Another key feature of the law is the establishment of a **National and State Surrogacy Boards**, which are tasked with monitoring surrogacy arrangements and ensuring compliance with the law. The act also aims to prevent exploitation by placing stringent criteria on fertility clinics and agencies. Fertility clinics must register with the National Assisted Reproductive Technology and Surrogacy Board and they are required to maintain transparency in their operations. Additionally, the law provides a framework for ensuring that surrogate mothers have access to insurance and medical care during the pregnancy.

One of the most controversial aspects of the Surrogacy (Regulation) Act is its ban on **foreigners, single parents and LGBTQ+ couples** from accessing surrogacy services in India. This provision has faced criticism, particularly from international communities and LGBTQ+ advocates, who argue that it excludes deserving individuals and couples from accessing reproductive technologies.

The Assisted Reproductive Technology (Regulation) Act, 2021

The **Assisted Reproductive Technology (Regulation) Act, 2021**, complements the Surrogacy (Regulation) Act by addressing the broader domain of ART, which includes in-vitro fertilization (IVF), sperm and egg donation and the creation of embryos. This act provides a regulatory framework for ART procedures, ensuring that these medical interventions are carried out ethically and safely.

The ART Regulation Act focuses on the regulation and oversight of ART clinics and banks, aiming to ensure that procedures are performed according to standardized medical and ethical guidelines. The law mandates that ART clinics and banks must be registered with the National ART and Surrogacy Board, which is responsible for setting standards and conducting inspections to ensure compliance.

One of the most important aspects of the ART Regulation Act is its emphasis on the **protection of the rights of gamete donors, the intended parents and the children born through ART procedures**. The act prohibits the sale or trafficking of gametes and mandates that donors provide their informed consent and undergo medical screening. It also addresses issues related to the confidentiality of donor identities and establishes a framework for ensuring that children born through ART have access to information about their biological parents if they choose to seek it later in life.

While the ART Regulation Act provides significant protection and oversight in the field of assisted reproduction, it also raises some concerns regarding its restrictive provisions on gamete donation. The law requires that only Indian citizens can be ART donors, which may limit the availability of high-quality gametes, especially for individuals or couples who may struggle to find suitable donors within the country.

COMPARATIVE LEGAL ANALYSIS WITH OTHER COUNTRIES

India's surrogacy and ART laws are relatively new in comparison to those in many Western countries and their provisions are more restrictive than those in some jurisdictions. A comparative analysis with the laws in countries like the United States, the United Kingdom and Canada highlights some of the key differences in legal approaches to surrogacy and assisted reproduction.

In the **United States**, surrogacy laws vary by state, with some states allowing both commercial and altruistic surrogacy, while others impose restrictions. For example, California and Illinois have favorable legal frameworks for surrogacy, where both commercial and altruistic surrogacy arrangements are permitted. The U.S. also has more liberal laws around the eligibility of intended parents, allowing single individuals, foreign couples and LGBTQ+ people to pursue surrogacy.

In contrast, the **United Kingdom** has a more regulated approach to surrogacy. While altruistic surrogacy is legal, commercial surrogacy is prohibited and surrogates can only be reimbursed for reasonable expenses. Additionally, UK law requires that intended parents apply for parental orders to gain legal parenthood of a child born via surrogacy. This process ensures that the legal parents are recognized as the intended parents, rather than the surrogate mother.

Canada has laws similar to the UK, where only altruistic surrogacy is allowed. Commercial surrogacy is illegal and surrogates can only receive compensation for medical expenses. Canada also has strong protections for surrogates and intended parents, including restrictions on the exploitation of women in the surrogacy process.

India's **Surrogacy (Regulation) Act** stands out for its strict limitations on the eligibility of intended parents. Unlike the U.S., the UK and Canada, which allow foreign nationals and same-sex couples to access surrogacy services, India restricts surrogacy to Indian citizens, married

couples and bans single parents and LGBTQ+ individuals. This provision has drawn criticism for its restrictive nature, especially considering the international demand for surrogacy services in the country.

Additionally, India's legal approach has been criticized for being overly conservative, particularly regarding the rights of the surrogate mothers. While the laws aim to protect surrogates, the ban on commercial surrogacy may inadvertently create a situation where surrogates are not adequately compensated for their contributions to the process. This contrasts with more liberal legal frameworks, where surrogates are allowed to receive fair compensation for their time and effort.

Ethical Challenges in Surrogacy

Surrogacy, though a beacon of hope for many couples struggling with infertility, raises several ethical concerns that require careful consideration. The primary ethical challenges revolve around the exploitation of surrogate mothers, the rights of children born through surrogacy, the debate between altruism and commercial interest and the societal and religious stigma that surrounds the practice.

Exploitation of Surrogate Mothers

One of the most significant ethical concerns in surrogacy is the potential for the exploitation of surrogate mothers. Often, surrogates come from marginalized or economically disadvantaged backgrounds and may be pressured into agreeing to become surrogates due to financial desperation. While the Surrogacy (Regulation) Act, 2021 aims to address these concerns by restricting commercial surrogacy and promoting altruistic surrogacy, there remains a risk that women may be coerced into surrogacy arrangements under less-than-ideal conditions. These women may not fully understand the implications of the surrogacy process or may face financial pressure from intermediaries or intended parents to proceed with the pregnancy. The practice of offering surrogate mothers compensation only for medical expenses, while removing the possibility of significant financial rewards, can also leave them vulnerable to exploitation.

Child Rights and Parentage Issues

The question of parentage and the rights of children born through surrogacy is another ethical

issue that comes into play. In surrogacy arrangements, the legal parentage of the child may not always align with the biological parentage, leading to complex legal battles. Children born through surrogacy may face difficulties in establishing their identity, particularly in situations where there is a dispute about who should be considered the legal parent. The Surrogacy (Regulation) Act provides for the establishment of a legal framework for intended parents, but these legal processes can be cumbersome, lengthy and emotionally taxing. The ethical implications of a child being brought into the world under conditions where their identity and legal rights are disputed cannot be ignored.

Ethical Debate: Altruism vs. Commercial Interest

A central ethical debate surrounding surrogacy is whether it should remain an altruistic practice or whether commercial surrogacy should be allowed to continue. Altruistic surrogacy involves a woman carrying a child for another couple without compensation, except for medical expenses. Proponents of altruistic surrogacy argue that this model protects the surrogate from exploitation and ensures that surrogacy remains a compassionate, selfless act. On the other hand, proponents of commercial surrogacy argue that it provides a fair and transparent agreement between all parties involved and that financial compensation for surrogates is essential, especially considering the risks and sacrifices involved. The question of whether surrogacy can be ethical when there is a financial transaction remains a divisive issue.

Societal and Religious Stigma

In many cultures, surrogacy is still seen as a controversial practice, subject to societal and religious stigmas. In India, for example, surrogacy is often considered a taboo, particularly in rural and conservative communities. Religious and cultural views on reproduction, motherhood and family structures can complicate the acceptance of surrogacy. Religious beliefs may conflict with the idea of a woman carrying a child for another family, especially if the process is seen as unnatural or morally wrong. Surrogate mothers may face social ostracism, judgment, or rejection from their communities, which can make it difficult for them to reintegrate into society after the surrogacy arrangement is over. The stigma surrounding surrogacy can affect the mental and emotional well-being of the surrogates and also hinder the practice from being more widely accepted in certain societies.

LEGAL CHALLENGES AND GAPS

While India's legal framework for surrogacy has evolved significantly, there remain several legal challenges and gaps that need to be addressed to ensure better protection for all parties involved, especially the surrogate mothers and children born through surrogacy.

Inconsistencies and Ambiguities in the Law

One of the primary legal challenges in India's surrogacy law is the **ambiguities and inconsistencies** in the Surrogacy (Regulation) Act, 2021. While the law regulates surrogacy in many ways, certain provisions are not fully detailed or are open to interpretation, leading to confusion. For example, the definition of who qualifies as an intended parent is restrictive, especially with the exclusion of single parents and LGBTQ+ couples. The law is also silent on issues like the long-term welfare of the child, the process of legal parentage transfer and the procedure for cross-border surrogacy arrangements. These gaps in the legal framework often lead to complications, especially when surrogacy arrangements involve foreign nationals or same-sex couples, groups that the current law does not fully recognize.

Lack of Rights for LGBTQ+ and Single Parents

Another significant gap in India's surrogacy laws is the exclusion of **LGBTQ+ individuals** and **single parents** from accessing surrogacy services. The Surrogacy (Regulation) Act, 2021 allows only heterosexual married couples to enter surrogacy agreements, which has been widely criticized for its discriminatory nature. LGBTQ+ couples, single parents and unmarried individuals, who may face infertility or other reproductive challenges, are denied the opportunity to use surrogacy as a means to have children. This exclusion raises questions about equality and the right to build a family. Countries like the United States, the United Kingdom and Canada have more inclusive surrogacy laws, allowing a broader range of individuals and couples to access surrogacy services.

Cross-Border Surrogacy and Citizenship Issues

Cross-border surrogacy poses another complex legal challenge. India has long been a hub for international surrogacy, attracting intended parents from countries where surrogacy is either illegal or tightly regulated. However, the legal status of children born through surrogacy for foreign nationals can be complicated, especially concerning their citizenship. The Surrogacy

(Regulation) Act, 2021 prohibits foreign nationals from entering into surrogacy arrangements in India, which has created legal uncertainties for intended parents and children born through such arrangements. This has led to legal battles in the past, as parents from other countries struggle to obtain citizenship and legal recognition for their children. The issue of citizenship and the legal status of children born via surrogacy remains a challenging area in India's surrogacy laws.

Contractual Enforcement Issues

Enforcement of **contracts** in surrogacy arrangements is another legal challenge in India. Surrogacy agreements are often negotiated between the surrogate mother, the intended parents and fertility clinics, but the enforcement of these contracts can be problematic. In some cases, surrogate mothers may face exploitation or non-compliance with agreed terms, such as medical expenses or compensation. Additionally, there have been instances where intended parents have abandoned the surrogate or the child after birth, leaving the surrogate without legal recourse. The lack of clear guidelines for resolving contractual disputes and enforcing agreements can undermine the integrity of surrogacy arrangements and leave the parties involved vulnerable.

SOCIO-ECONOMIC IMPLICATIONS

Surrogacy, particularly in India, has broad socio-economic implications. These implications are felt by all parties involved, including the surrogates, intended parents, the surrogacy industry and broader society.

Impact on the Surrogacy Industry

The surrogacy industry in India has experienced significant growth, particularly during the late 20th and early 21st centuries. However, the **Surrogacy (Regulation) Act, 2021**, has altered the landscape of this industry by limiting commercial surrogacy and focusing on altruistic practices. As a result, the demand for surrogacy services may decrease and some fertility clinics may find it difficult to operate under the new legal restrictions. At the same time, the industry must adapt to the regulatory changes and some experts believe that the legal and medical professionals in the sector will need to focus on ethical practices and ensuring better protection for surrogates.

Economic Impact on Women from Marginalized Communities

Women from **economically disadvantaged** backgrounds are often the primary candidates for surrogacy arrangements. In many cases, these women see surrogacy as a way to earn a significant sum of money, often in an economy where they have limited access to well-paying jobs. However, the regulation of commercial surrogacy may limit their ability to participate in the industry. While altruistic surrogacy may provide some opportunities, the lack of financial compensation can reduce the appeal for women in marginalized communities. This economic disparity raises ethical concerns regarding the exploitation of impoverished women for the benefit of wealthier individuals or couples seeking surrogacy.

Black Markets and Unregulated Surrogacy

The ban on commercial surrogacy has led to the rise of **black markets** and **unregulated surrogacy arrangements**, where surrogates may be paid under the table and subjected to exploitation without any legal protections. In such situations, the surrogate may face unsafe medical practices, lack of adequate healthcare and emotional distress. Furthermore, the lack of regulation in the black market makes it difficult to ensure the welfare of the child born through such arrangements. The absence of a robust monitoring system and transparent agreements can result in exploitation and harm to all parties involved.

Reforms and Recommendations

In light of the challenges posed by the surrogacy industry, several reforms and recommendations can help improve the current legal and ethical framework.

Inclusive and Balanced Surrogacy Policies

India's surrogacy laws should be more **inclusive**, extending the opportunity for surrogacy to **LGBTQ+ individuals** and **single parents**. Surrogacy should be available to all who wish to become parents, regardless of their marital status or sexual orientation. In addition, surrogacy policies should provide a **balance** between ensuring the protection of surrogate mothers and allowing fair compensation for their contributions.

Better Enforcement and Monitoring Mechanisms

There should be improved **enforcement and monitoring mechanisms** to ensure compliance

with surrogacy laws and regulations. The government should establish a dedicated body to oversee surrogacy arrangements, fertility clinics and agencies, ensuring that all parties are treated ethically and fairly. Regular audits and inspections of clinics should be mandated and penalties for non-compliance should be stringent.

Public Education and Awareness Campaigns

A key recommendation is the need for **public education and awareness** campaigns to educate both potential surrogates and intended parents about the legal, medical and emotional aspects of surrogacy. These campaigns can provide valuable information to reduce stigma, improve understanding and ensure that surrogacy practices are ethical and informed.

Legal Recognition for All Family Structures

Finally, India's surrogacy laws should be amended to offer **legal recognition for all family structures**, including single parents, same-sex couples and others who wish to pursue surrogacy. Providing equal access to surrogacy can help promote social justice and equality while allowing more people to create the families they desire.

CONCLUSION

In conclusion, surrogacy is a deeply complex and multifaceted practice that has garnered both admiration and criticism in the global context, especially within the Indian legal and cultural framework. As a solution to infertility and an opportunity for intended parents to experience parenthood, it has undoubtedly brought joy to many families. However, its ethical, legal and social dimensions present significant challenges that require careful balancing.

The historical evolution of surrogacy in India, from its ancient scriptural references to its emergence as a commercial industry in the 1990s, showcases the changing societal attitudes toward reproduction and motherhood. While surrogacy was initially seen as an act of charity or altruism in some circles, the commercial surrogacy boom in India led to both positive and negative implications. On the one hand, it provided an economic opportunity for many women, often from disadvantaged backgrounds, who found surrogacy to be a means of improving their lives. On the other hand, it exposed vulnerabilities in the system, particularly with regard to the potential exploitation of surrogate mothers and the lack of regulatory oversight.

The legal framework surrounding surrogacy in India has seen significant development, particularly with the introduction of the **Surrogacy (Regulation) Act, 2021** and the **Assisted Reproductive Technology (Regulation) Act, 2021**. These laws aimed to address some of the most pressing issues, such as exploitation, the welfare of the child and the rights of the surrogate mother. However, the restrictive nature of these laws, especially the exclusion of LGBTQ+ individuals and single parents from surrogacy, remains a critical flaw. The **legal ambiguities** and **gaps** in these frameworks, particularly concerning issues like cross-border surrogacy and citizenship, highlight the need for clearer guidelines to ensure fairness and protection for all parties involved.

The ethical concerns surrounding surrogacy, particularly the exploitation of surrogate mothers, child rights and societal stigma, add complexity to the debate. Surrogacy raises significant questions about autonomy, consent and the commodification of reproduction. While commercial surrogacy can offer financial compensation and opportunities for surrogate mothers, it can also lead to situations where women from marginalized communities are coerced into surrogacy out of financial desperation. These ethical challenges are compounded by societal stigma, with surrogate mothers often facing judgment and social ostracism. Moreover, the child's rights and parentage issues often add further layers of complexity, with the potential for legal disputes over parenthood and citizenship.

Socio-economic implications of surrogacy in India have been both positive and negative. On the one hand, the surrogacy industry has provided employment and economic opportunities to many women, especially from rural or impoverished backgrounds. On the other hand, the **black market** for surrogacy and **unregulated practices** have emerged as significant concerns, leading to exploitation and unsafe conditions for both surrogate mothers and children. These issues reflect a broader challenge of how to balance the benefits of surrogacy with the risks of exploitation and harm. The industry's growth has created a demand for **ethical, regulated and inclusive** surrogacy practices, but it also requires a shift in societal perceptions and legal structures.

Reforms and recommendations for the surrogacy system in India point to the need for a more inclusive, transparent and ethically sound approach. Laws should be amended to provide equal access to surrogacy for all individuals, including single parents and LGBTQ+ couples. Additionally, greater enforcement mechanisms should be established to ensure that surrogacy

agreements are upheld and that surrogates are protected from exploitation. Public education and awareness campaigns should be launched to address the stigma surrounding surrogacy and to ensure that all parties involved have a clear understanding of their rights and responsibilities. The welfare of surrogate mothers, children and intended parents must remain the central focus of any legal and ethical reforms.

The ethical debate between altruism and commercial surrogacy is likely to continue as both sides present compelling arguments. Altruistic surrogacy advocates argue that surrogacy should remain a selfless act, with no financial compensation beyond medical expenses, while commercial surrogacy supporters argue that financial compensation ensures fairness and transparency in the practice. Both sides recognize the potential for exploitation and thus, a more regulated, transparent system that ensures ethical practices while providing adequate protections for all parties is essential.

In addressing these ethical and legal challenges, it is important to remember that surrogacy, at its core, is a deeply human issue and it involves profound emotional, psychological and physical implications for everyone involved. For intended parents, surrogacy offers the hope of building a family. For surrogate mothers, it can provide a path to financial independence and the ability to support their families. But for surrogacy to be ethically sound, it is imperative that the practice is regulated in a way that minimizes exploitation, ensures informed consent and protects the rights and well-being of all involved, particularly the children born through these arrangements.

The future of surrogacy in India lies in creating a legal and ethical framework that strikes a balance between individual rights, social justice and human dignity. There is an urgent need for policymakers, medical professionals and social activists to come together and collaborate on crafting policies that address the diverse needs and concerns surrounding surrogacy. Only through such comprehensive reforms can surrogacy truly become a humane, ethical and sustainable practice that benefits all parties involved.

In the end, surrogacy should not only be about building families but also about ensuring that those who make it possible, the surrogate mothers, children and intended parents, are treated with dignity, fairness and respect. For this to happen, surrogacy laws must evolve to reflect the complexities of modern family structures and the need for equality, justice and protection for all involved.

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