
REPRODUCTIVE AUTONOMY OF SURROGATE MOTHERS: A CONSTITUTIONAL PERSPECTIVE

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ABSTRACT

Assisted Reproductive Technology has grown rapidly worldwide and mostly in India from the year of 2002. India was the largest provider of commercial surrogacy services in the world³. Surrogacy is the service in which the surrogate mother carries a child on behalf of the intending parents. There are two types which are traditional and gestational surrogacy. Commercial surrogacy is the one which includes monetary remuneration given to the surrogate mothers. For the past two decades commercial surrogacy was an unregulated industry. The Surrogacy (Regulation) Bill 2019 aimed to regulate the surrogacy industry. The Bill banned the commercial surrogacy instead allowing only altruistic surrogacy. The bill has significantly created huge controversy due to the paternalistic view of the government and a state intervenes on the rights of reproductive autonomy of the women's. The whole Bill is contradicting the constitutional rights of the surrogate mothers.

This paper will point out the lacunae's of the newly enacted Act and also highlight the issues there in the Act. Also suggest new inclusion to incorporate in the provisions of the Act as well. The constitutional perspective related to the reproductive autonomy will also be discussed.

Keywords: Surrogate mothers, Commercial surrogacy, Intended parents, Babies, Assisted Reproductive Technology (ART).

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³ <https://gpj.hkspublications.org/2020/06/19/the-indian-ban-on-commercial-surrogacy/> accessed on 31-10-2022

1. INTRODUCTION:

In India, a mother is highly expected *to continue the descendance of the family* which is of high importance. In a patriarchal society, procreation is a function that is controlled by men. So, a surrogacy policy in which commercial surrogacy has been banned recently has been formed by men who do not even know the experience of reproductive freedom. Surrogacy is completely a women's right to choose and have self-determination over her reproductive body. It is a reproductive choice. Surrogacy is a process in which another woman carries the child on behalf of intended parents who wants to have a child. With the help of Assisted Reproductive Technology (ART) surrogacy arrangements have increased rapidly and it became common among couple who wants to conceive. In *K.S Puttaswamy v Union of India*⁴, *the Supreme Court of India in a nine-judge bench affirmed privacy as a fundamental right under Constitution. In the International Conference on Population and development (ICPD) 1994*⁵, *emphasized on the fundamental role of women's interest in deciding about their reproductive rights. Also the assistance to the couples to have their child in case of any infertility issues that interest must be achieved too*⁶. *In India commercial surrogacy has been legal from 2002 where the baby producing industry were growing rapidly and also cross border surrogacy arrangements*⁷.

In this article the main aim will be to see the reproductive rights based on surrogacy practice and the policy which has been framed recently with reference to our Constitution.

2. SURROGACY REGULATION IN INDIA:

In India, the most controversial baby business is being referred to surrogacy practice. It is termed as infertility business because it exploits the vulnerable women since India became the “world capital of commercial surrogacy”⁸. Slowly and steadily India became a hub of surrogacy because of cheap rate in the industry specially the westerners from the foreign country likely to adapt surrogacy in India and the practice started to grow here. India became a hub of commercial surrogacy with the entry of financial arrangements in exchange of a baby

⁴ Union of India ((2017) 10 SCC 1)

⁵ <https://www.unfpa.org/events/international-conference-population-and-development-icpd> accessed on 16-09-22

⁶ Program of Action of the 1994 International Conference on Population and Development (Chapters I-VIII). (1995). Population and Development Review, 21(1), 187–213. <https://doi.org/10.2307/2137429>

⁷ Priya Shetty, India's unregulated surrogacy industry, *The Lancet*, Volume 380, Issue 9854, 2012, Pages 1633-1634, [https://doi.org/10.1016/S0140-6736\(12\)61933-3](https://doi.org/10.1016/S0140-6736(12)61933-3).

⁸ Rozée V, Unisa S (2015) Surrogacy as a Growing Practice and a Controversial Reality in India: Exploring New Issues for Further Researches. *J Womens Health, Issues Care* 4:6. Accessed on 20-09-22

where the main complications started to arise between the surrogate mothers, the intended parents and the baby born out of surrogacy. But in this hustle bustle commercial surrogacy became popular amongst the poor woman who wants money to live a good life in exchange of the money received by delivering the babies of foreign couples. This was a new way of source of income for the women's and definitely it became a path and hope to see a better future for their families and children's who were hitting the rock just to live a poverty free life. In words of Dr. Nayana Patel, the commercial surrogacy isn't a business rather it is a form of a donation in which the surrogate mothers gives a child to the couples who are in desperate need of a child but cannot have one in exchange of money which thus helps the surrogate mothers in ample form in the future.

The commercialization of the surrogacy market also has raised the fear of illegal markets and also baby black market. There was lack of regulations and it was estimated that commercial surrogacy to be a 2 billion industry and it could rise up to 8 billion dollars by 2018 predicted by Indian Council of Medical research⁹. Since 2002, commercial, foreign and overseas surrogacy was being allowed in India. In 2005 Indian Council and Medical Research¹⁰ had come up with the first guidelines for ART (Assisted Reproductive Technology) clinics as how to arrange for commercial surrogacy and also had discussed about other provisions in the guidelines. The next guidelines was The Assisted Reproductive Technologies (Regulations) Bill 2008¹¹ which is the first legislative draft bill which allowed the gestational, commercial, overseas and foreign surrogacy arrangements in India. Then comes The Assisted Reproductive Technology (Regulation) Bill 2010¹² which provided the monetary compensation for surrogacy for overseas and foreign intended parents. While The Home Ministry Guidelines 2012¹³ had allowed on foreign heterosexual couples married for 2 years for surrogacy in India and prohibited foreign single citizen and same sex couples to practice surrogacy in India. After that

⁹ Manya Gupta and Shiromi Chaturvedi, The Indian Ban on Commercial Surrogacy, available at <https://gpj.hkspublications.org/>

¹⁰ Indian council of Medical Research, Point 3.5.4 Chapter 3 - Code of Practice, Ethical Considerations and Legal Issues, National Guidelines for Accreditation, Supervision & Regulation of ART Clinics in India ICMR, available at http://icmr.nic.in/art/art_clinics.htm

¹¹ Ministry of Health and Family Welfare, Government of India, Indian Council of Medical Research, The Assisted Reproductive Technology (Regulation) Bill- 2008(Draft) available at http://www.prsindia.org/uploads/media/vikas_doc/docs/1241500084~DraftARTBill.pdf

¹² Ministry of Health & Family Welfare Govt. Of India, & Indian Council of Medical Research New Delhi, The Assisted Reproductive Technologies (Regulation) Bill - 2010 (Draft), available at <http://icmr.nic.in/guide/ART%20REGULATION%20Draft%20Bill1.pdf>

¹³ 7Government of India Ministry of Home Affairs (foreign Division) F. No. 25022/74/2011- F-1 General Instructions for Registration by the Foreigners, B. - Surrogacy Cases , Ministry of Home Affairs , Delhi available at http://icmr.nic.in/icmrnews/art/MHA_circular_July%2009.pdf

The Surrogacy (Regulation) Bill 2016¹⁴ the objective of the bill was to legislate surrogacy regulations to curb the exploitation of surrogate mothers and the unethical practices and also for protection of children born out of surrogacy, by prohibiting commercial, foreign or overseas surrogacy. In 2019 Surrogacy (Regulation) Bill¹⁵ it has banned commercial surrogacy but altruistic surrogacy is permitted which does not include any monetary compensation other than medical expense and insurance coverage during pregnancy. Surrogacy Regulation Bill 2020 was a significant improvement of the 2019 bill. Any “willing women” can be a surrogate now rather than limiting the eligibility of the surrogacy to only altruistic type of surrogacy. However, there are many other clauses that are debatable and which do not give protection to the surrogate mother.

3. SURROGACY (REGULATION) BILL 2021:

After several years of legislative discussions and delays, the **Surrogacy (Regulation) Act, 2021** was finally enacted by the Indian Parliament and received Presidential assent. The main aim of this Act was to regulate surrogacy practices in India, particularly to assist women who are unable to conceive naturally by providing them with a lawful and ethical route to experience motherhood. Simultaneously, the Act also claimed to protect the rights and welfare of surrogate mothers, many of whom come from economically disadvantaged backgrounds.

However, despite these intentions, the Act has been criticized for containing several **legal, ethical, and constitutional gaps**. A major concern is that the Act **completely bans commercial surrogacy**, allowing only **altruistic surrogacy**, where the surrogate mother is not compensated beyond basic medical expenses and insurance. This effectively **removes the possibility for women to earn a livelihood through surrogacy**, which was previously a source of income for many underprivileged women. It denies women the **autonomy to make reproductive decisions and control over their own bodies**, which is a core component of bodily and reproductive rights.

Rather than creating a regulatory framework for commercial surrogacy to ensure ethical practices and proper compensation, the Act has taken a prohibitive stance. This **ban is likely to push surrogacy into unregulated and underground markets**, increasing the risk of exploitation and unsafe conditions for surrogate mothers. Several activists and scholars argue

¹⁴ Surrogacy (Regulation) Bill 2016, Bill No. 257 of 2016. Introduced in Lok Sabha on November 21, 2016

¹⁵ <https://prsindia.org/billtrack/the-surrogacy-regulation-bill-2019> Accessed on 27-09-2024

that such a restriction **violates the right to reproductive choice**, which is protected under **Article 21 of the Indian Constitution** as part of the **right to life and personal liberty**.¹⁶

Another important issue is **who is allowed to access surrogacy** under the Act. The law **permits only heterosexual married couples** to opt for surrogacy. This excludes **LGBTQ+ individuals, single men, and couples in live-in relationships**, thereby raising concerns under **Article 14 of the Constitution**, which guarantees **equality before the law**. The Act appears to discriminate based on **marital status, sexual orientation, and gender identity**, making it inconsistent with the broader spirit of constitutional equality and inclusiveness.

Further, the Act mandates that the **intended couple must provide a medical certificate of infertility**, and the **surrogate must disclose her identity, marital status, and consent through official procedures**. While this may be justified as part of a regulatory process, it **raises serious privacy concerns**. The right to privacy, which has been upheld by the Supreme Court as part of Article 21, is compromised when individuals are required to disclose intimate personal and medical information to the government.

Lastly, by restricting surrogacy to an altruistic model and **prohibiting any form of compensation**, the Act **undermines women's right to work and earn** as guaranteed by **Article 19(1)(g) of the Constitution**. It potentially creates a situation where **women, particularly those within extended families**, may be **coerced into acting as surrogates out of familial obligation**, and yet receive no financial support or security in return. This opens up space for **emotional and social pressure**, particularly when the surrogate mother is related to the intended couple, further limiting her freedom and agency¹⁷.

In conclusion, while the **Surrogacy (Regulation) Act, 2021** aims to prevent exploitation and ensure ethical practices, it ends up **restricting reproductive autonomy, excluding marginalized groups**, and potentially **creating new avenues for exploitation**. Instead of banning commercial surrogacy outright, a better approach might have been to **regulate it through transparent, rights-based safeguards** that protect both the surrogate mother and the intended parents.

¹⁶ Government of India. (2021). *The Surrogacy (Regulation) Act, 2021* (No. 232118). *The Gazette of India*. Accessed on October 12, 2024, from <https://egazette.nic.in/WriteReadData/2021/232118.pdf>

¹⁷ PRS Legislative Research. (2022, September 27). *The Surrogacy Regulation Bill, 2019*. Accessed on September 27, 2024, from <https://prsindia.org/billtrack/the-surrogacy-regulation-bill-2019>

4. THE CONCERN OF AUTONOMY:

The primary concern of the Act is that, only heterosexual married couples, legally married Indian man and women above 21 years and 18 years respectively are being recognized for having children and to avail the surrogacy services. It excludes the LGBTQ+ community, single men and live-in couples from having children through ART methods or surrogacy. The Constitutional bench recently has decriminalized homosexuality¹⁸ which held that bodily autonomy is individualistic and choice of partner is the part of the fundamental right to privacy. The legislators have chosen to avoid the fundamental right of reproduction with the passing of this Acts as forming a family of own is no longer available to them.

The Act neglects the various aspects of personal autonomy and has created regulations which are not fair, just or reasonable considering the constitutional validity. The Act also excludes the society of unmarried females who wish to experience the motherhood but are unable to conceive. The fact that even in embracing the modernisation of the society, we are still failing to reduce the orthodox mentality and taboo against embracing motherhood without a legal marriage. Also, couples who might be medically unfit or having chronic diseases are being excluded to avail the service of surrogacy as well. The National Assisted Reproductive Technology and Surrogacy Board will specifically give permission to which the couples with prone diseases will be allowed under certain conditions. In *Baby Manji Yamanda vs. Union of India* (2008)¹⁹, the Supreme Court for the very first time had dealt with surrogacy and had given an importance to embrace the parenthood by the surrogacy practice and parent can be anyone either single or a homosexual couple which is being accepted by the Supreme Court in the case. Therefore it is very important in today's world to give that privilege of having an offspring to the homosexual couples and non-binary sections also and not only to the heterosexual couples.

5. COMMERCIAL SURROGACY AND ITS PROHIBITION:

Commercial surrogacy were made legal since 2002 and since then it bloomed the baby market for cheap reproductive labour and IVF services and due to lack of regulations it was getting out of control in which the surrogate mothers were being exploited in various ways²⁰. The Law Commission of India in 2009 had come up with 228th report²¹ to curb the exploitation of

¹⁸ Navtej Singh Johar vs. Union of India , (2018) 10 SCC

¹⁹ 13 SCC 518 at 521

²⁰ <https://www.hindustantimes.com/india/moms-market/story-4V8X4IoEqLMRO82K3x50XI.html> accessed on 17-10-2024

²¹ <https://lawcommissionofindia.nic.in/> accessed on 17-10-2024

commercial surrogacy and to regulate the unregulated surrogacy practices. The reason behind the success and blooming market of surrogacy earlier were because the surrogates in India were poor and was in poverty for which becoming a surrogate mother was a way to upgrade their livelihood from that poverty line, to safeguard their and their family's interest.

Here in 2021, after all the earlier bills of Surrogacy (Regulation) Bill, the Act of 2021 was being passed by the Parliament and with Presidents assent. The main highlight of the Act is that it banned the Commercial surrogacy practices and allowed only the Altruistic Surrogacy. Commercial surrogacy happens when the surrogate mother is being given monetary compensation, reward, fees, remuneration or cash for bearing the child on behalf of the intending couples. While Altruistic surrogacy is one of the process in which there is no reimbursement given to the surrogates but only the medical insurance or the expenditure prescribed to her. The question is why commercial surrogacy is being banned instead of regulating the process. It is easily predictable that keeping the surrogates in mind, they could be easily exploited now that it is banned. Surrogates will be more prone to illegal activities because the monetary compensation keeps a value to them in making their lives a tad bit less easy than their current whatever jobs they are holding. But in this Act section 38(ii) makes the practice of commercial surrogacy a punishable offence for which can be imprisoned up to five years and a fine up to five lakhs rupees. The imprisonment may extend up to ten years while the fine may go up by ten lakhs rupees.

Since the Baby Manji Yamanda case²², the Supreme Court held that Surrogacy agreement was valid in India. The Verdict has established that the stance of the Court in favour of pro-surrogacy contract. In B.K. Parthasarathi v. Government of Andhra Pradesh²³, the Andhra Pradesh High Court upheld the “the right of reproductive autonomy” of an individual and also the aspect of “right to privacy” of an individual and also agreed with the decision of the U.S Supreme Court in Jack T. Skinner v. State of Oklahoma²⁴ which characterized the right to reproduce as “one of the basic civil rights of man”. In the case of Jan Balaz vs. Anand Municipality & others²⁵, the child which was in question was denied by the Germany to recognize the parentage of the parents since surrogacy was illegal instead the Gujarat High Court decided to give the child the nationality of India seeing that the mother of the child was of Indian nationality. So in both the above case laws the courts take a very pro-contract stand

²² AIR 2009 SC .84

²³ AIR 2000 P 156

²⁴ 316 U.S. 535

²⁵ AIR 2010 Gul 21

possibly as a way of encouraging commercial surrogacy, which contributes millions of dollars to India's economy. In *Suchita Srivastava vs. Chandigarh Administration*²⁶ Supreme Court had recognized the bodily integrity in taking decisions about pregnancy and abortion. By banning commercial surrogacy it is also lessening the scope of personal liberty of women's reproductive choices. The fundamental right to give birth to a child is being violated. But there are instances where the situation becomes do or die. Thus in the present scenario it is a great way for a living to those women's and their families.

By banning the commercial surrogacy the new Act also restricts the 'right to privacy' as well. In *Puttuswamy's judgement*²⁷, the Supreme Court had recognized that everybody has the right to autonomy in taking decisions that pertain to their body. Hence, the problem is to prevent any type of exploitation of the surrogates. As to achieve this, an apt monetary remuneration should be given to try and focus regulating the services of surrogacy rather than banning it to its whole.

It is a fact that legalizing commercial surrogacy would hugely prevent an illegal market in which the surrogate will be most vulnerable and would be put in dangerous situations²⁸. In *Johnson vs. Calvert*²⁹ the court recognized the economic necessity for an individual person who opts for commercial surrogacy arrangements. Also this surrogacy arrangement does not make surrogate mothers or the surrogacy services indecent or undignified in any way. So dignity of a woman in this paid service of surrogacy which is commercialised has been settled in the above case. Commercial surrogacy if made legal it will create a living standard of those women's and would be able to secure their position in the society financially and much better position than they are now. The illegal means of surrogacy will also be in check if commercial surrogacy is legalised unlike the ban of commercial surrogacy which will just increase the illegal means in place of regulation and control of surrogacy. The income that the surrogate women's are receiving through commercial surrogacy can be supported for next four to five years. Thus poverty is more undignified and indecent than the commercializing of surrogacy practices³⁰.

²⁶(2009) 9 SCC 1

²⁷ (2017) 10 SCC 1

²⁸ <https://theleaflet.in/lacunae-in-the-surrogacy-regulation-act-2021/#:~:text=The%20person%20seeking%20commercial%20surrogacy,up%20to%20ten%20lakh%20rupees.>
Accessed on 18-10-2024

²⁹ 5 Cal. 4th 84, 19 Cal. Rptr. 2d 494, 851 P.2d 776 (1993)

³⁰ Anleu, S. R. (1992). Surrogacy: For Love but Not for Money? *Gender and Society*, 6(1), 30–48.
<http://www.jstor.org/stable/189910>

6. INCORPORATION OF TRADITIONAL SURROGACY:

When a woman who carries and delivers a child or a baby on behalf of another couple are called as surrogates and when the surrogate is inseminated with the semen of the husband of the intended couple, the procedure is known to be as traditional surrogacy or straight surrogacy. The other type of surrogacy is called gestational surrogacy in which the sperm and ovum from a couple is fertilized by IVF and transferred to a surrogate also known as genetic gestational surrogacy³¹. The new Act of 2021 has only allowed gestational surrogacy and prohibited any women going for commercial surrogacy by giving her gametes. Traditional surrogacy has been given importance by the Supreme Court in the case of Baby Manji Yamanda because of “straight method” used by the intending couples.

The question could arise why traditional surrogacy? To that the answer is that traditional surrogacy is an easiest process than the gestational one. It could be option for the LGBTQ+ couples, single men, intended mothers and the non-binary people. To the women's who cannot produce healthy eggs traditional surrogacy will be effective as surrogate mothers eggs will be used and it will not take heavy medical procedures to put the intended mother's eggs into surrogate mothers womb as surrogates eggs can be used itself. It is cost-effective and less has fewer hurdles as well.

In traditional surrogacy the surrogate mother will have a link to the child born and that will reduce or limit the chances of close relative or friend becoming a surrogate to the intending parents. Also the surrogate mother will have a right to be connected with the children to bring up the children.

7. IN DEFENSE OF COMMERCIAL SURROGACY IN INDIA: ETHICAL, ECONOMIC, AND RIGHTS-BASED ARGUMENTS:

Commercial surrogacy in India has long been a subject of debate—applauded for enabling parenthood and economic empowerment, yet condemned for potential exploitation. While the Surrogacy (Regulation) Act, 2021 effectively bans commercial surrogacy in favor of altruistic-only arrangements, this legislative shift has generated concerns about **women's autonomy, reproductive justice, and socio-economic opportunity**. This section presents a structured

³¹ Lasker, Shamima. (2016). Surrogacy. 10.1007/978-3-319-05544-2_409-1. Accessed on 31-10-2024

argument in **favor of legalizing and regulating commercial surrogacy**, demonstrating that it can function ethically, equitably, and efficiently under the right legal safeguards.

Commercial surrogacy was implicitly legalized in India in 2002, following guidelines issued by the Indian Council of Medical Research (ICMR). With low medical costs, well-established IVF infrastructure, and a large pool of economically disadvantaged women, India quickly became a global surrogacy hub, reportedly accounting for over \$400 million annually at its peak (Pande, 2017)³². Fertility clinics flourished, particularly in Gujarat and Maharashtra, and thousands of Indian women entered surrogacy agreements.

Contrary to narratives of exploitation, several empirical studies reveal that many surrogate mothers exercised agency, often choosing surrogacy as a better alternative to informal labor or domestic servitude (Pande, 2011; Sharma, 2023)³³. Some earned in one year what would take decades in regular employment, improving housing, children's education, and debt repayment.

Opposition to commercial surrogacy often rests on paternalistic moralism—the idea that women's reproductive capacities should not be commodified. However, this view fails to respect bodily autonomy and informed consent. If a woman, fully informed and voluntarily, chooses to become a surrogate in exchange for compensation, such a decision should be respected as an act of agency, not exploitation (Gola, 2021)³⁴.

Moreover, the Surrogacy (Regulation) Act, 2021 allows women to carry children for others—but only for free. This is a contradictory stance: why is a woman permitted to endure the physical and emotional toll of surrogacy, but not allowed to be compensated for it? Critics argue that banning payment is not ethical regulation—it is denial of economic justice (Kashyap & Tripathi, 2023)³⁵.

Commercial surrogacy provided a significant economic lifeline to poor and lower-middle-class women. In India, where gender-based employment gaps persist, surrogacy offered one of the

³² Pande, A. (2011). *Transnational commercial surrogacy in India: Gifts for global sisters?* *Reproductive BioMedicine Online*, 23(5), 618–625. <https://doi.org/10.1016/j.rbmo.2011.07.007> accessed on 31-10-2024

³³ Sharma, R. (2023). *Changing Regulations in India*. *Indian Journal of Law and Legal Research*. https://heinonline.org/hol/cgi-bin/get_pdf.cgi?handle=hein.journals/injllw11§ion=585 accessed on 31-10-2024

³⁴ Gola, S. (2021). *Autonomy, Agency, and Surrogates in the Indian Surrogacy Regulation Bill 2019*. *International Journal of Law in Context*. <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/D0268347FE62AB727890D12C31545A6E/S174455232100001Xa.pdf> accessed on 31-10-2024

³⁵ Kashyap, S., & Tripathi, P. (2023). *The Surrogacy (Regulation) Act, 2021: A Critique*. *Asian Bioethics Review*. https://pmc.ncbi.nlm.nih.gov/articles/PMC9816354/pdf/41649_2022_Article_222.pdf accessed on 31-10-2024

few well-paid, one-time labor opportunities accessible to women with limited formal education.

Studies show that surrogates often used their earnings for children's schooling, building homes, and clearing debts (Pande, 2014; Banerjee & Kotiswaran, 2021)³⁶. By denying women the right to earn from surrogacy, the state strips them of a viable livelihood while offering no alternative means of upward mobility.

The altruistic model also places disproportionate emotional burden on surrogate mothers without any financial benefit, perpetuating the notion that women should sacrifice without reward. This reinforces patriarchal expectations rather than dismantling them.

Globally, many countries permit commercial surrogacy under regulated frameworks—including parts of the United States (California, Illinois), Ukraine, Georgia, and Russia. In these countries, contracts are legally enforceable, surrogate rights are protected, and monetary compensation is normalized. India's blanket ban pushes intended parents abroad, while Indian women lose access to income.

Additionally, India's ban encourages a black market for surrogacy, where deals are made off-record, putting women at greater risk with no legal protection. A regulated commercial surrogacy model with enforceable contracts, psychological screening, insurance, and medical safeguards would better protect all parties than an outright ban.

Rather than banning commercial surrogacy, the government should adopt a regulated commercial model, similar to:

Licensing of surrogacy agencies and clinics

- Caps on payments to avoid commodification
- Mandatory legal contracts, health insurance, and psychological counselling
- Minimum age, consent, and reproductive history requirements for surrogates

Such a model, inspired by best practices from jurisdictions like California, would ensure transparency, fairness, and safety—balancing the interests of surrogate mothers, intended

³⁶ Banerjee, S., & Kotiswaran, P. (2021). *Divine Labours, Devalued Work: The Continuing Saga of India's Surrogacy Regulation*. *Indian Law Review*, 5(1), 1–28, <https://doi.org/10.1080/24730580.2020.1843317> 31-10-2024

parents, and children.

The outright ban on commercial surrogacy under the Surrogacy (Regulation) Act, 2021, though well-intentioned, results in new forms of injustice by denying surrogate mothers agency, economic opportunity, and legal protection. A rights-based, regulated commercial surrogacy framework—grounded in autonomy, consent, and welfare—would be ethically preferable and socially just. It is time for India to move beyond paternalistic restrictions and adopt a feminist legal model that centres choice, dignity, and compensation.

8. CONCLUSION:

The new Surrogacy Regulation Act has to be improved for the betterment of the surrogates and other stakeholders to prevent any injustice to any of the parties involved in the surrogacy arrangements. The Act is a result of paternalistic view where instead of removing or regulating the problem, commercial surrogacy got banned without any solutions or regulations. The illegality of the surrogacy will put restrictions on availing the surrogacy services. Since there is money involved in the commercial surrogacy, it is forgotten that money is needed for the surrogates to provide her a standard of living and help her in the livelihood for a time being. And perhaps commercial surrogacy is to be regulated than completely ban it.

In the Act as well there are various lacunae's which has to be improvised. The Act is not inclusive in nature in term of different parts of the society which is not included in the act. There has to be clarity over the authority as well for the stakeholders for efficient and smooth functioning of the surrogacy arrangements. Assisted reproductive technology needs an effective infrastructure so that it prevents any injustices to the stakeholders. A better control over the surrogacy market is important to stop the exploitation of surrogates as well.

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