
ETHICAL AND LEGAL DIMENSIONS OF SURROGACY IN INDIA

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ABSTRACT

Once a beacon of hope for childless couples, surrogacy has emerged as a highly debatable social, legal and ethical issue in India. By enacting the Surrogacy (Regulation) Act, 2021, the country took a decisive turn to ban commercial surrogacy and legalize only altruistic ones. However, this paper contends that the bill, in spite of its good intent to shield women and children from various forms of exploitation, stifles participants by limiting membership to unattached individuals (single people, LGBTQ+ individuals, and foreigners) and so raises constitutional concerns vis-à-vis Articles 14, 19, and 21 of the Indian Constitution. This paper examines—critically, through analysis of actual cases, as well as using case law, and academic discourse from around the world—these ethical considerations that may lead surrogacy into from such as coerced consent and the commodification of women’s bodies, to class-based exploitation. It also challenges claims about altruistic surrogacy where emotional or familial coercion may interfere with informed consent. The paper concludes by arguing in favor of a liberal, rights-based regulatory framework rooted in the more ethical and socially fulfilling practice of adoption as a morally and socially superior response to issues of parenthood and parenting in India.

Keywords: Surrogacy, reproductive rights, ethical concerns, constitutional validity, exploitation, adoption, bodily autonomy, women's rights, commercial vs altruistic surrogacy, India

INTRODUCTION

Surrogacy has become a life-changing alternative piece to the fertility puzzle for the men and woman who suffer with infertility, a road to parenthood through assisted reproduction. A practice that blurs issues in medicine, ethics, and law, surrogacy's complexity presents us with what have become difficult questions about bodily freedom, profit motives, and the moral limits of reproduction. It gives hope to so many but also raises serious questions about exploitation of women and the buying and selling of human bodies.

Affordable healthcare services, combined with cutting-edge reproductive technology, turned India into a global surrogacy destination in the early 2000s. That led thousands of couples from abroad to Indian clinics and a booming commercial surrogacy industry. But this expansion proceeded without clear legal regulation, and has led to all kinds of ethical, legal and human rights issues. When stories emerged of surrogate mothers being mistreated, denied appropriate medical treatment or abandoned after they gave birth, there was swift condemnation and demands that the law be changed.

In a bid to solving those challenges, India passed the Surrogacy (Regulation) Act, 2021, a legislation that represented a departure from past legislative position on surrogacy. Commercial surrogacy only altruistic surrogacy where a woman is prepared to be a surrogate without any monetary consideration or reward except for the medical expenses related to the pregnancy of the surrogate and insurance coverage for the surrogate during the pregnancy---is prohibited under the Act. It provides a stringent set of eligibility requirements for intended parents and surrogates, ensuring transparency, safety and ethical treatment.

Although the Act intends to prevent abuse and encourage ethical conduct, it has faced fierce criticism. Limon (2020) restricting the practice of surrogacy to married Indian couples and not to single individuals, LGBTQ+ folks or foreigners invokes concerns of reproductive justice and fairness. Sceptics contend that such restrictions are an interference in individual liberty, and that they may force surrogacy to go underground, exposing women and children to the risk of unregulated and dangerous surrogacy.

This article analyses the models adopted by the legislations of other countries in regulating surrogacy and the reforms introduced by the Surrogacy (Regulation) Act, 2021. Its purpose is to determine the effect of the legislation on adoptive mothers, adopting parents and the rights

of children born by adoption. The paper also grapples with larger issues of gender, autonomy, and justice in the Indian socio-legal context and calls for a more inclusive and fairer regime of regulation.

LITERATURE REVIEW

Indian surrogacy has come under extensive academic and legal analysis given its widespread commercialization and the resulting ethical complexities. Surrogacy has been looked at from an array of legal, ethical, medical, and socio-economic angles by scholars and researchers.

Dr. Praveen Dublish and Seema Lodhi (2021) indicate, in their article "Surrogacy: Ethical and Legal Implication in India," an imperative to enact comprehensive legislation to govern surrogacy operations within India. They find fault with the legal vacuum existing prior to the passage of the Surrogacy (Regulation) Act, 2021 and identify threats of exploitation presented by unregulated commercial surrogacy, especially for economically disadvantaged women. Their article examines differences between formal and informal, altruistic and commercial, and complete and incomplete surrogacy and provides a lucid framework for legal classification.¹

Gerard Pradeep Devnath and Dr. Senthil Kumaran (2020), writing for the *Indian Journal of Forensic Medicine and Toxicology*, present a detailed description of India's transformation into a commercial surrogacy hub. They record how unregulated clinics motivated by business interests have resulted in surrogate exploitation, substandard health monitoring, and no informed consent. The authors also give case studies, such as the unfortunate death of a surrogate mother, to highlight the effects of legal loopholes and lack of proper safeguards.²

Sweta Ghosh (2023), writing "Legal Issues Relating to Surrogacy in India" for the *International Journal of Novel Research and Development*, analyzes constitutional and ethical implications of surrogacy. She contends that despite commercial surrogacy having been legal from 2002, it was unregulated until passage of the Act of 2021. Her article enumerates some major issues including substandard payments for surrogates, gender-selective practices, and lack of strict enforcement measures.³

1. Dr. Praveen Dublish & Seema Lodhi, Surrogacy: Ethical and Legal Implication in India, 2 IJLR 198 (2021).

2. Gerard P. Devnath & Senthil Kumaran, Legal and Ethical Issues Related to Commercial Surrogacy in India, 14(4) Indian J. Forensic Med. & Toxicol. 2342 (2020).

3. Sweta Ghosh, Legal Issues Relating to Surrogacy in India, 8(3) Int'l J. Novel Res. & Dev. 22 (2023).

Aishwarya Chandran, author for *Urdhva Mula* (2018), critiques surrogacy on the grounds of care extractivism, wherein surrogates' reproductive labor is commodified and devalued. Her feminist perspective highlights commercial surrogacy contracts' unequal power relations and advocates for reproductive justice framed by dignity and autonomy.⁴

On an international level, an **International European Parliament-commissioned** study titled "A Comparative Study on the Regime of Surrogacy in EU Member States" (2013) presents an overview of the inconsistent and patchwork legal treatment of surrogacy within the EU. Some legalize altruistic surrogacy, while others prohibit it altogether. The study points to the legal complexity of cross-border surrogacy and seeks harmonization on this issue, especially for securing rights for children resulting from such arrangements.⁵

Together, this body of literature implies an ongoing conflict between reproductive rights of the person and ethical controls of new reproductive technologies. Although scholars applaud the Act of 2021 for closing long-standing loopholes, others claim it could also inadvertently disempower specific groups such as LGBTQ+ persons and solo parents because of its narrow eligibility standards.

This research paper draws on these works to examine the legal and ethical equilibrium which India aims to achieve when regulating surrogacy. It aims to assess whether the established framework under the Surrogacy (Regulation) Act, 2021 suffices to uphold constitutional values of justice, equality, and autonomy.

MEANING AND DEFINITION OF SURROGACY

Meaning

The word "**surrogacy**" originates from the Latin word "**subrogare**", which means "to substitute" or "to nominate in place of." In modern usage, **surrogacy** refers to the act of one person (the surrogate) acting as a substitute, particularly in carrying a pregnancy for someone else who cannot do so themselves.

⁴. Aishwarya Chandran, Surrogacy and Reproductive Labour: A Feminist Critique, *Urdhva Mula*, Vol. 11, April 2018.

⁵. European Parliament, Directorate General for Internal Policies, A Comparative Study on the Regime of Surrogacy in EU Member States (2013).

Thus, surrogacy is about substituting or stepping in for another, specifically in the context of childbearing.

“An agreement in which a woman agrees to carry and deliver a child for another person or couple”.⁶

LEGAL DIMENSIONS OF SURROGACY IN INDIA

Surrogacy in India has undergone statutory regulation through recent legislations. The legislating has occurred in response to increasing concern about exploitation of surrogate mothers, commercialization of reproductive practices, and absence of express legal clarity. While commercial surrogacy for foreigners first appeared in India in the early 2000s, it had not quite experienced any kind of control until recent years, and this introduced various controversies both in India and worldwide.

Commercial surrogacy became legal in India when it became one of the nation's globally to permit compensated surrogacy in 2002. The move, however, was not accompanied by a comprehensive statutory framework. Instead, it relied on general medical ethics and contract law. This absence of regulations made India an international destination for fertility tourism, more so among non-citizens seeking cheap surrogacy agreements. The clinics spread and commercial surrogacy became a multimillion-dollar industry.

The Indian Council of Medical Research (ICMR) had published the National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India in 2005. These standards recognised the need for ethics to govern the ART process and effectuate monitoring and regulation. But the ICMR guidelines were not statutory, thus not legally enforceable. Moreover, ART clinics had already commenced operations without any accountability. The problems regarding informed consent, exploitation of the surrogates, lack of post-delivery support and conflicts regarding custody of the child was not rectified.

Baby Manji Yamada v. Union⁷ of India was the first case that raised the issue of legal status of surrogate children in India. A couple from Japan had hired a surrogate in Gujarat, but they got divorced before the child was born. The biological mother later retracted the agreement;

⁶. Black's Law Dictionary

⁷. *Baby Manji Yamada v. Union of India*, (2008) 13 SCC 518.

and in the absence of specific law on the issue, the newborn was in a legal vacuum. In the end, the child's Japanese grandmother was allowed custody by the Supreme Court. The matter gained worldwide popularity and highlighted the need for laws to protect the surrogate mothers and children born through surrogacy.

An important case was **Jan Balaz v Union of India**⁸, which involved a German couple whose twins were born through a surrogate in India. The German government refused to accept the surrogate as the children's legal mother; hence the children were denied citizenship. Meanwhile, Indian authorities took away their passports portray the twins as stateless. This court case showed how complicated global business surrogacy is. It also caused some trouble in diplomatic relations. These issues highlight how necessary legal laws are for such incidents to happen.

In 2009, the Law Commission of India came out with its 228th Report responding to concerns. It called for a prohibition on commercial surrogacy and a framework for altruistic surrogacy. The report stated that economically vulnerable women are often exploited for reproductive services and that making this work a commodity could harm human dignity. These recommendations formed the basis for future reforms. Further, they directed the government to prepare a law to ensure ethical standards and protect all parties.⁹

Between 2010 and 2015, Media exposes and NGO investigations uncovered disturbing practices in the surrogacy clinics in India. Surrogate mothers are kept under watch and confined to hostels. They are paid very little and do not receive proper medical or emotional treatment. There were cases when agents or people from family forced women to become surrogates. The news shocked the nation and concerned lawmakers as it revealed the dark side of India's flourishing unregulated surrogacy industry.

The Indian government, through a notification from the Ministry of Home Affairs in 2015, stopped foreign nationals, NRIs and PIOs from utilizing surrogacy services in India under mounting domestic and international pressures. This was a turning point when fertility tourism was rejected, reflecting the government's desire that women are not treated like machines by

⁸. *Jan Balaz v. Union of India*, AIR 2010 Guj 21

⁹. Law Commission of India, *228th Report on Need for Legislation to Regulate Assisted Reproductive Technology Clinics & Rights of Parties to Surrogacy* (Aug. 2009)

overseas couples. India's commercial surrogacy industry began to suffer after the ban, culminating in the Surrogacy (Regulation) Act being passed in 2021.

THE SURROGACY (REGULATION) ACT, 2021

The Surrogacy (Regulation) Act, 2021, enacted by the Indian Parliament, came into effect on 25th January 2022, and was meant to regulate surrogacy; banning commercial arrangements and only allowing ethical, altruistic surrogacy under some conditions. The Act's overarching intention is to protect the rights and welfare of surrogate mothers, children born via surrogacy, and intending couples and create a clear and enforceable regulatory framework.

Prohibition of Commercial Surrogacy

The Act defines commercial surrogacy as a surrogacy arrangement where the surrogate mother is paid money in any form, including monetary compensation, monetary reward, monetary benefits, or inducement, with the exception of paying for medical expenses and insurance for surrogacy, in which ensure that the surrogate has the events of surrogacy any direct or indirect payment to a surrogate, as well any form of advertising, agent, brokering or promotion of surrogacy is made illegal with strict punishment in the Chapter VIII in the Act.

Regulation of Altruistic Surrogacy

Section 2(b) of the Act defines “altruistic surrogacy” means the surrogacy in which no charges, expenses, fees, remuneration or monetary incentive of whatever nature, except the medical expenses and such other prescribed expenses incurred on surrogate mother and the insurance coverage for the surrogate mother, are given to the surrogate mother or her dependents or her representative.

Eligibility Criteria for Intending Couple

According to Section 4(ii)(a), a couple intending on acquiring surrogacy has to satisfy the following eligibility conditions:

- They must be Indian citizens and legally married for at least five years.
- Their female partner must be aged between 23 and 50 and their male partner must be

aged between 26 and 55.

- They must be verified by a District Medical Board as having proven infertility.
- They may not have any living biological, adopted or surrogate child, except where the living child is mentally, physically disabled or they have a medical condition that endangers his or her life.

These eligibility criteria reflect an intentionally restrictive and controlled system allowing surrogacy and infertility treatment only to those who can meet the estates specific and controlled criteria.

Eligibility Criteria for Surrogate Mother

Section 4(iii)(b) identifies the essential criteria for a woman to be a surrogate mother. These are:

- She is a married woman, in the 25-35 year age range;
- She has at least one of her own biological children;
- She has not been a surrogate mother before;
- She undergoes a medical and psychological assessment of her fitness;
- She gives informed consent to surrogacy in writing, and she does not contribute her own gametes to the process;

The Act prohibits a woman from acting as a surrogate more than once in her life; the Act reminds all parties that a surrogate arrangement is of a unique and singular nature.

Establishment of National and State Surrogacy Boards

Chapter IV of the Act provides for a National Surrogacy Board (NSB) at the central level and State Surrogacy Boards (SSBs) in all states which will have the following roles and responsibilities:

- advising the Central / State Government(s) in the policy matters relating to surrogacy;
- monitoring and reviewing the implementation of the Act;
- making codes of conduct for surrogacy clinics;
- appraising that the practice of surrogacy is ethical and that there is an awareness about surrogacy among the players in the surrogacy process.

Each of these Boards can regulate all institutions and clinics providing assisted reproductive technology services.

Registration and Regulation of Surrogacy Clinics

All clinics offering surrogacy services must be registered under the Act and are required to adhere strictly to protocols regarding record maintenance, patient confidentiality, consent, and eligibility verification. Non-registered entities engaging in surrogacy are liable for criminal penalties under Section 38.

Protection of Surrogate Mother and the Child

The Act states that:

- The surrogate mother be given medical insurance coverage for a period of 36 months, to cover any medical complications from the surrogacy procedure.
- The baby born from surrogacy shall be classified from birth onwards as the biological child of the intending couple and entitled to all rights and privileges under Indian law.
- At all times, informed consent is required by the surrogate mother, and the requiring party may only withdraw before embryo implantation occurs.

These provisions protect bodily autonomy, legal clarity and the safety of the participants involved.

Penal Provisions

Chapter VIII of the Act provides for onerous penalties for violations. Commercial surrogacy,

inquiring about or advertising surrogacy services or in any way exploiting the surrogate and violating any other provision of the Act can incur:

- Imprisonment for a term which may extend up to 10 years, and/or
- Fines up to ₹10 lakh, depending on the severity of the violation.

The sanctions seem to suggest an attempt by the legislature to achieve compliance/safety and discourage unethical practices.

CONSTITUTIONAL VALIDITY OF THE SURROGACY (REGULATION) ACT, 2021

The Surrogacy (Regulation) Act, 2021 has sparked significant debate over its constitutional validity. Though it aims to prevent exploitation and ensure ethical regulation, critics argue that several of its provisions may violate fundamental rights under Articles 14 (equality before the law), 19 (freedom of expression), and 21 (protection of life and personal liberty) of the Indian Constitution. Legal experts and scholars contend that the Act imposes undue restrictions on reproductive autonomy and personal liberty, potentially conflicting with established constitutional safeguards.

Article 14 – Right to Equality

As a part of the Indian Constitution, Article 14 provides guarantees for all people the equal protection of the laws. However, the Surrogacy (Regulation) Act limits the scope of surrogacy to only Indian heterosexual married couples. This effectively excludes single persons, those in live-in relationships, queer individuals and couples, as well as foreign nationals.

The Critics of this law have pointed out that this form of discrimination is baseless and does not link to the exploitation prevention efforts of the legislation. The Supreme Court's decision on the *Navtej Singh Johar v. Union of India*¹⁰ case upholding equal sovereign rights and decriminalizing same-sex relations, removed the discriminatory equalization clause provided under Section 377 IPC. Denying LGBTQ couples, the right to surrogacy does not grant them equal treatment especially when heterosexual couples are included which directly violates the

¹⁰. *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

substantive equality principle.

In addition, the law is also criticized for treating married women differently from single women, enforcing discriminatory reproductive freedom restrictions which stems from patriarchal dominance. These concepts likely fail the Article 14 criteria of intelligible differentia and rational nexus which can position the Act for a challenge regarding its constitutional validity.

Article 19(1)(g) – Right to Practice Any Profession

Indian constitution provides in Article 19(1)(g) the right to practice any profession or to carry on any occupation, trade or business. Under the Surrogacy (Regulation) Act, not only is commercial surrogacy illegal, but women are not free to engage in voluntary, paid reproductive labour, even if they choose to do so with full knowledge of the implications.

This is of course constitutionally problematic especially considering the Supreme Court's finding in *Indian Hotel and Restaurant Association v. State of Maharashtra*¹¹ that the “economic liberties of the people cannot be cut down on moral or paternal grounds”. By analogy, total prohibition against commercial surrogacy could represent an unjust and disproportionate infringement of the woman's right to livelihood –especially when safe and regulated forms could obtain the purposes of the Act without violating fundamental rights.

Article 21 – Right to Life and Personal Liberty

The Indian Constitution Article 21, which guarantees the right to life and liberty includes reproductive agency and bodily autonomy, and individual choice. In *Suchita Srivastava v. Chandigarh Administration*¹² the Supreme Court held that reproductive decisions “are intrinsic to the personal liberty of a woman”.

This autonomy is significantly limited by the Surrogacy (Regulation) Act, 2021, which:

- Restricting women's choices by making it illegal for a woman to choose to be a commercial surrogate, even if she chooses to do so willingly and with full consent.

¹¹. *Indian Hotel and Restaurant Association (AHAR) v. State of Maharashtra*, (2019) 3 SCC 429

¹². *Suchita Srivastava & Anr. v. Chandigarh Administration*, (2009) 9 SCC 1

- Limiting access to surrogacy based on marital status and sexual orientation.
- Restricting access to assisted reproductive technologies to individuals who fall within a stringent definition of “intending couple”.

Such limitations are unlikely to pass constitutional muster when the Supreme Court of India has already held in *K.S. Puttaswamy v. Union of India*¹³ that the right to privacy protects individuals from interference in making reproductive choices and decisions regarding family life. In this way, the strict, exclusionary structure of the Act arguably unduly burdens – violates – rights to personal liberties guaranteed under Article 21.

ETHICAL DIMENSIONS OF SURROGACY IN INDIA

Surrogacy is not only a medical or legal pact - it is a serious ethical problem that may challenge our very notions of family, motherhood, autonomy, and humanity. When navigating surrogacy in India, this ethical dilemma becomes more complicated, because the country has a legacy of poverty and severe gender stratification, and the cultural pressures that accompany both. In practice - when we look at actual cases, we see that even in situations where the agreement for surrogate motherhood seems legal and/or in line with parental consent, poor regulation can lead to the exploitation or coercion of the surrogate, as well as causing her emotional pain, and ethical problems.

Autonomy and Informed Consent

True ethical surrogacy is founded on the idea of voluntary, informed consent, which requires both true awareness and autonomy. In reality, many Indian surrogates are from economically deprived backgrounds in which financial hardship plays a huge role in surrogacy choice. In Anand, Gujarat, for example, there were hundreds of women housed in clinic-based "baby factories" with dormitory-style accommodation. Many of these women signed contracts without true understanding or control. A shocking number of studies found that instead, 88% of surrogates in Delhi and 76% in Mumbai were unable to understand the terms to which they agreed. The ethical questions here are clear. Can consent ever truly be voluntary, when it is

¹³. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1

based on poverty, or are we dealing with coercion¹⁴ Commodification of the Female Body

When reproductive services are commodified, there is a risk that a woman's body trans-mutates from being honored as a being incarnated within the human condition, to being treated as a utilitarian device. In Delhi-NCR (2024) articles from investigative journalism showcased deeply troubling practices such as clinics forcibly separating surrogates from their newborns immediately after birth, to prevent “refusals,” and coercing women into abortions late into the pregnancies, when commissioning parents would withdraw. Such transactions, breaking maternal attachments, and eliminating pregnancies for non-medical reasons, destroys motherhood as a saleable service ushers in a diminishment of the respect we afford to women's bodily self-determination and humanness.¹⁵

Exploitation and Class-Based Inequality

Surrogacy can reveal stark power imbalances—mostly between wealthy commissioning parents and financially vulnerable surrogates. For example, Pinky Macwan, a single mother from Gujarat, became a surrogate during the COVID-19 lockdown. She had received ₹5–6 lakh, enough to launch a small business. But the dilemma her story presents is whether this financial reward was empowerment or exploitation of financial hardship. Likewise, in Mumbai (2018), a surrogate under pressure to terminate her pregnancy due to the commissioning couple's separation. She was denied full payment and left emotionally scarred. These examples show that when there is a visible consent to gambling, surrogacy arrangements often protect a longer standing underlying inequalities and coercive forces of government and money.¹⁶

Medical Negligence and Lack of Accountability

Surrogates are patients and human beings deserving of care and dignity first. Unfortunately, as a report from Coimbatore in 2009 illustrates, there are severe consequences for such neglect. Easwari, a young surrogate, passed away from postpartum hemorrhage after Iswarya Fertility Clinic refused to provide care for her. The clinic did ask for her husband to get her an ambulance but did not offer protection for the situation requiring immediate care. Tragically,

¹⁴<https://timesofindia.indiatimes.com/city/delhi/surrogate-hides-health-info-dies-bearing-twins/articleshow/71382880.cms>

¹⁵ <https://www.indiatoday.in/india/story/surrogacy-delhi-ncr-fertility-clinics-illegal-human-trafficking-hospitals-2572480-2024-07-27>

¹⁶ <https://time.com/6075971/commercial-surrogacy-ban-india/>

she died in the ambulance before the hospital could help. The facts of this case are a painful reminder of a lack of accountability that medical negligence, in the absence of legal protections, can be deadly. The clinic was able to escape accountability after this incident and reflect the cursory nature of the investigation that occurred afterward,¹⁷ it shows, as seen in Gita Ramesh's experience with the law, a lack of enforceable medical and ethical standards in surrogacy in India.

Child Welfare and Abandonment

Surrogacy challenges us to think beyond contractual frameworks about the rights and vulnerabilities of any child born through that process. The Baby Manji case¹⁸ shows how stark this stuff gets: a Japanese couple commissioned a surrogate pregnancy in India but ended up divorcing before the baby was born. Both commissioning parents and the surrogate refused custody, leaving the newborn in a legal and emotional limbo, until the grandmother stepped in. This alarming episode illustrates how children can be treated like "products" to be discarded when agreements crumble. Ultimately, it demonstrates that without important safeguards put in place, surrogacy could fail the very people it helps bring into this world.

Moral Misuse and Sex-Selective Intentions

Surrogacy can be used in service of regressive and immoral purposes. One of the best-known cases of surrogacy misuse occurred in Mumbai back in 2016. Prakash Bhostekar utilized surrogacy specifically to acquire a male child. It is no surprise that this violates ethical considerations as well as India's legal prohibition on sex selection.¹⁹ This unacceptable case represents only a small portion of the issues raised by opportunistic reproduction, demonstrating the unbelievable potential for reproductive technologies, when left ungoverned, to further gender discrimination and biases. It also exemplifies the important question of governmental malfeasance in allowing those who utilize reproductive technologies to manipulate the law, ethical standards, and moral implications underlying surrogacy; without even acknowledging the implications and potential for surrogacy exploitation.

¹⁷. <https://caravanmagazine.in/reportage/cash-delivery>

¹⁸. *Baby Manji Yamada v. Union of India*, (2008) 13 SCC 518.

¹⁹. <https://scroll.in/pulse/876910>

Altruism vs Emotional Coercion

While the Surrogacy (Regulation) Act allows only altruistic surrogacy, in practice it may become muddled with coerced obligation. In altruistic surrogacies, because the surrogate must be a biological relative, the normal family dynamics may place subtle emotional pressures on the surrogate, meaning refusal is often coupled with feelings of guilt or social shunning. There have been disturbing reports of women who, although nervous and unexcited about the prospect of surrogacy, proceed out of fear of being judged, shamed or ostracized. This raises the critical ethical question of whether altruistic surrogacy can ever be completely voluntary when consent may represent obligation and not truly a choice.

A CRITICAL ETHICAL STAND ON SURROGACY

Despite the Indian parliament moving to arrest the abuse of surrogacy and encourage ethical surrogacy by enacting the Surrogacy (Regulation) Act, 2021, many thorny ethical issues tarry. It's not just about the legality of surrogacy, it's about whether surrogacy is actually right or fair, especially in a country like India, where poverty, inequality and pressure on women are rife.

Perhaps the best moral reason not to engage in surrogacy is that the better and more empathetic alternative is adoption. India has lakhs and lakhs of orphaned and abandoned children who are looking for families. If people are so keen to love and raise a child, why on earth create a new one via surrogacy if there are already so many children in need of care? Opting for surrogacy instead of adoption represents a preoccupation with genetic connection over what it truly means to be a parent — love, shelter, responsibility.

Also, surrogacy often entails hidden pressure. Many surrogate mothers in India are from poor families. They might say “yes” to surrogacy, but for all that, they might feel they have no choice at all. They might be driven by poverty or family members. The context of this kind of situation makes it difficult to say that their consent is meaningfully free. You cannot make wise decisions, of any kind, with fear, force, or pressure.

It is common to equate surrogacy with blood or organ donation. This misconception is far from reality. While blood and organ donors are often motivated by the desire to aid in a person's lifesaving procedure, surrogacy is an extensive and perilous undertaking that takes a woman's body captive for nine months. It impacts her wellbeing on multiple levels and cannot be treated

as mere healthcare. This gaze reduces the intimate nature of such an experience into something transactional which strips away women's dignity.

In many cases we see that for which there is no financial gain, what we term as altruistic surrogacy in fact does raise issues. We see that often a woman carries a child for a relative. But how is she to say no? What if she feels that she has no choice but to agree? This shows that what we put forth as selfless surrogacy includes elements of pressure and sacrifice, very much when it is within the family.

On the other hand, we see that which is related to adoption is out of love and care for a child which is already there. We do not use someone else's body in this. It is open to all married couples, single parents, people of any background and it gives a child a home and future. In support of adoption, we put forth an option which is for the good of the child and the parent also without in any way risk a woman's health, freedom, or dignity.

At present even with the law's intervention in surrogacy issues we are not seeing resolution of the fundamental ethical issues at hand. Until we are sure that no woman is put at risk or is made to feel she has no choice in the decision to be a surrogate we will continue to see large scale moral issues with surrogacy. Adoption is the better, kinder, and more fair solution which we should promote more in our society.

CONCLUSION

Surrogacy in India although now a part of the Surrogacy (Regulation) Act, 2021, is still at the center of ethical debate and constitutional controversy. Although the law puts forth to put an end to exploitation and to promote altruism it is also a fact that it does not do enough to address issues of informed consent, gender inequality, bodily autonomy, and which some would say is the issue of including all. Through the study of real-life cases, legal analysis and moral philosophy we see that what passes for altruistic surrogacy in fact may be a perpetuator of structural injustice and the commercialization of women's bodies. Also, in contrast to this we see that adoption put forth as a very inclusive and ethical alternative. For India to live up to its constitutional tenets of dignity, equality and justice it must reevaluate its reproductive health policies and put in place frameworks that protect women's rights and meet the needs of present children without fail.