

A Legal Exploration of Surrogate Motherhood:

Ms. Rithanya M¹, Ms. Pavithra P²

Student, Law, Sastra Deemed University

ABSTRACT:

Surrogacy, a practice where a woman carries and delivers a child for another person or couple, has become an increasingly prevalent reproductive option worldwide. This research paper examines the psychological, social, economic and legal impacts of surrogacy on surrogate mothers. In India, surrogacy has evolved into a booming industry, often attracting economically disadvantaged women due to the financial compensation it offers. While this economic incentive can provide short-term financial relief, the long-term impacts on surrogate mothers are complex and multifaceted. Many Indian surrogates face social stigma, emotional detachment challenges, and limited legal protection, often exacerbated by inadequate healthcare and support systems. The Surrogacy (Regulation) Act, 2021, enacted by the Indian Parliament, aims to regulate surrogacy practices in the country, ensuring ethical and responsible arrangements for all parties involved. This comprehensive legislation prohibits commercial surrogacy, allowing only altruistic surrogacy for eligible couples, including Indian citizens, married for at least five years, and struggling with infertility or medical conditions preventing natural conception. The Act mandates registration of surrogacy clinics, stipulates stringent eligibility criteria for surrogate mothers, and grants them the right to withdraw consent before embryo implantation. Additionally, intending couples must accept custody of the child, with penalties imposed for abandonment. Globally, countries have enacted varying regulations to address surrogacy. In the United States, the Uniform Parentage Act (UPA) recognizes surrogacy, while some states permit commercial surrogacy. The United Kingdom's Surrogacy Arrangements Act 1985 and Australia's Surrogacy Act 2010 prohibit commercial surrogacy, allowing only altruistic arrangements. These laws strive to prevent exploitation, ensure informed consent, and safeguard the rights and well-being of surrogate mothers, intending parents, and children born through surrogacy. Effective regulation necessitates balancing individual reproductive autonomy with state intervention, addressing concerns surrounding consent, exploitation, and the commodification of human life. As surrogacy continues to evolve, policymakers, scholars, and stakeholders must engage in ongoing dialogue to refine and harmonize laws, ensuring the best interests of all parties involved. The findings underscore the need for global standards that ensure the well-being of surrogate mothers, addressing the ethical, legal, and healthcare disparities that exist across different surrogacy practices worldwide.

KEYWORDS- Surrogacy, Surrogate mothers, Social stigma, Emotional detachment, Altruistic Surrogacy, Commercial Surrogacy.

INTRODUCTION:

Motherhood can be seen as crucial aspect in the society. In the present scenario, advanced growth in medicine has allowed surrogacy to be more widespread. There are lot of conflicts regards ethics of surrogacy. Different religions, groups, adoption standards have their own opinion regarding the issues. The article written by Deonandan he mentions highlighted views of various religions about surrogacy. He

laid down that Catholicism deems in vitro fertilization an immoral towards ideal of mother hood. In Judaism and Buddhism they argued artificial insemination can be considered as adultery. But when we look into the theory of Natural selection by Charles Darwin he notify couples who are unable of bearing child are at risk of extinct. In order to save their generation they can proceed with the weapon of surrogacy. In that sense, surrogate motherhood is an important process that brings variability in the human genes. At the same time surrogate mothers faces lot of problems and issues during the process. The role and sacrifice of surrogate mothers were not recognised and valued in the society. In fact human rights of surrogate mothers had been violated, they also suffer psychological harm. They were kept isolated from their family members. They lose their complete mental and emotional support. Because of this issue lot of surrogate mothers were decided to end their lives. After the delivery of the child mental strength of surrogate mothers reduced. They also undergoes various issues such as nausea, heartburn, back pain, swelling sometimes it may leads loss of reproductive organs in certain cases surrogate mothers may be at risk of depression during and after process¹.

RESEARCH QUESTION:

1. How does surrogacy affect surrogate Mothers in various scenarios?
2. What are psychological effects of surrogate mothers handing over the child to intended parents?
3. Whether India has proper surrogacy legislation?

LEGAL FRAMEWORK:

1. Surrogacy (Regulation) Act, 2021:

The Surrogacy (Regulation) Act, 2021, aims to regulate surrogacy practices in India, preventing exploitation and ensuring ethical arrangements. It includes:

- Regulation of Surrogacy Clinics: Mandatory registration for surrogacy clinics.
- Prohibition on Commercial Surrogacy: Strict ban on commercial surrogacy and advertisement.
- Eligibility Criteria: Specific requirements for surrogate mothers and intending couples.
- Right to Withdraw Consent: Surrogate mothers can revoke consent before embryo implantation.
- Child Rights: Children born through surrogacy have equal rights as biological children.

2. Indian Contract Act, 1872: Implications for Surrogacy Agreements

The Indian Contract Act, 1872, governs surrogacy agreements, ensuring enforceability and protecting parties' rights. Surrogacy contracts must comply with contract law principles, including free consent, consideration, and lawful object. However, the Act's implications on surrogacy agreements are limited, as surrogacy contracts are not explicitly recognized.

3. The Juvenile Justice Act, 2015, prioritizes child welfare and protection. For surrogacy, the Act ensures:

- Best Interests of the Child: Primacy of child's interests in surrogacy arrangements.
- Child Protection: Safeguards against exploitation and abuse.
- Adoption and Foster Care: Regulations for adoption and foster care

4. Medical Termination of Pregnancy Act, 1971: Abortion and Reproductive Rights*

The Medical Termination of Pregnancy Act, 1971, allows abortion under specific circumstances. For surrogacy, the Act implies:

¹ <https://academic.oup.com/humrep/article/29/1/90/630815>

- Abortion Rights: Surrogate mothers' right to abortion with consent.
- Reproductive Autonomy: Recognition of reproductive choices and rights.
- Medical Ethics: Adherence to medical ethics in surrogacy and abortion.

SOCIAL EFFECTS FACED BY SURROGATE MOTHERS:

Surrogate mothers in India experience substantial social implications that go beyond the physical aspects of surrogacy. One of the primary challenges is social stigma, where surrogacy is often equated with activities like prostitution, as both involve women using their bodies for money. This stigma leads to ostracization in their communities, as many people view surrogacy as immoral or unnatural, making it difficult for surrogate mothers to maintain their social standing². In a patriarchal society like India, surrogacy challenges traditional gender roles and the expectations placed on women. Women are often seen primarily as caregivers within their families, and the act of becoming a surrogate mother can be viewed as a deviation from this role. This perception is exacerbated by the fact that surrogacy is often associated with economic necessity, signalling to others that the family is in financial distress. As a result, many surrogate mothers experience judgment and isolation not only from their communities but also within their own households³. Furthermore, surrogate mothers struggle with a lack of agency. Although surrogacy provides them with economic compensation, this does not necessarily translate into greater social or cultural capital. The entrenched societal norms and power dynamics often leave them with little control over their own bodies and decisions, reinforcing their marginalized status. The social structures in which they live limit their ability to convert the financial gains from surrogacy into social mobility or improved well-being⁴.

FINANCIAL CONSEQUENCES FACED BY SURROGATE MOTHERS:

Surrogate mothers in India face significant economic impacts due to various structural and legal challenges. The **Surrogacy (Regulation) Act, 2021**, which prohibits commercial surrogacy, has had mixed consequences. On one hand, the law seeks to protect women from exploitation by allowing only altruistic surrogacy, which does not involve financial compensation beyond medical expenses and insurance coverage. While this limits the potential for exploitation, it also diminishes an important income source for women, particularly those from economically disadvantaged backgrounds⁵. Historically, commercial surrogacy offered significant financial advantages to numerous women in India, particularly those living in rural and semi-urban areas.⁶ The economic incentive was a primary motivator in choosing surrogacy, enabling them to fund their children's education or alleviate financial hardship. However, the transition to altruistic surrogacy under the new legislation has stripped many women of this income-generating option.⁷ Furthermore, surrogate mothers often have to forgo other employment opportunities during pregnancy, which can result in a significant loss of earnings. The pregnancy-related complications and restrictions on physical activity further contribute to the economic strain faced by these women. While

² <https://www.iasexpress.net/surrogacy-in-india/>

³ <https://blogs.lse.ac.uk/internationaldevelopment/2022/12/01/a-struggle-for-agency-why-indian-surrogate-mothers-remain-in-poverty/>

⁴ <https://triumphias.com/blog/surrogacy-sociological-understanding-implications-in-indian-societies/>

⁵ <https://www.iasexpress.net/surrogacy-in-india/>

⁶ <http://feministlawarchives.pldindia.org/wp-content/uploads/SAMA-birthing-a-market-.pdf>

⁷ <https://www.indiatoday.in/india-today-insight/story/how-the-new-surrogacy-bill-impacts-both-surrogates-and-parents-1886894-2021-12-12>

insurance is now mandated for a period of 36 months to cover medical complications, it does not account for the loss of regular income during and after the surrogacy process.⁸

In addition to the direct financial loss, surrogate mothers may also face social and economic repercussions within their communities. Stigmatization often leads to social ostracization, which can impact their ability to seek employment or maintain economic stability.⁹

EMOTIONAL AND PSYCHOLOGICAL IMPACTS:

Surrogate mothers may experience a range of psychological effects after handing over the child to the intended parents, including:

1. Emotional distress: Feelings of sadness, grief, and loss. They will start to question themselves, always isolated from their own family members in few cases.
2. Attachment issues: Bonding with the child during pregnancy era. Not able to accept the reality. Forced to take unwanted decisions. Not able to do their work on time, always disturbed.
3. Guilt and shame: Feeling responsible for "giving away" the child.
4. Identity issues: Changes in self-perception, role Identity and started to doubt themselves. Feeling use less.
5. Trauma: In some cases, the experience can be traumatic, leading to PTSD symptoms.

Another scenarios

1. Relief: Feeling relieved that the pregnancy and handover are complete. Can relive from their commitment
2. Pride and fulfilment: Feeling proud of helping create a family. And nourishing their happiness. Feeling overwhelmed
3. Anxiety and worry: Concerns about the child's well-being and future. Whether the child will be treated well
4. Depression: Increased risk of depression, particularly if support systems are lacking. Arguments and quarrels with their loved ones
5. Self-doubt: Questioning one's decision to become a surrogate.

Surrogate mothers often face social taboo and stigma.

1. Family and community rejection: Surrogate mothers may face rejection or criticism from family and community members who disapprove of surrogacy.
2. Societal shame: Surrogacy is often viewed as shameful or immoral, leading to feelings of guilt and shame.
3. Lack of support: Surrogate mothers may lack emotional support from friends, family, and community due to the stigma surrounding surrogacy.
4. Judgment and criticism: Surrogate mothers may face judgment and criticism from others who view surrogacy as unnatural or selfish.
5. Secrecy and hiding: To avoid stigma, surrogate mothers may feel forced to keep their surrogacy journey a secret, leading to feelings of isolation.

⁸ <https://blogs.lse.ac.uk/humanrights/2021/04/21/indias-new-surrogacy-regulation-bill-falls-short-of-protecting-bodily-autonomy-and-guaranteeing-reproductive-liberty/>

⁹ <https://www.indiatoday.in/india-today-insight/story/how-the-new-surrogacy-bill-impacts-both-surrogates-and-parents-1886894-2021-12-12>

6. Negative media portrayal: Surrogacy is often sensationalized or portrayed negatively in media, perpetuating harmful stereotypes.
7. Cultural and religious beliefs: Surrogacy may be viewed as conflicting with cultural or religious beliefs, leading to additional stress.

Women may be criticized or ostracized for participating in surrogacy, facing assumptions of immorality or accusations of exploiting their bodies for financial gain. Social isolation may result in heightened feelings of guilt, shame, and reduced self-esteem.¹⁰ In many cases, surrogate mothers may hide their surrogacy status from neighbours and extended family members, which can further contribute to emotional distress.

Financial pressures also contribute to the psychological burden. Many women in India turn to surrogacy as a means of escaping poverty, but the financial compensation often does not alleviate long-term economic hardships. The focus on monetary gain can sometimes overshadow the emotional consequences of surrogacy. Once the financial compensation is exhausted, the emotional toll of the experience may persist, with feelings of exploitation or regret surfacing. Additionally, there is frequently a deficiency in psychological assistance for surrogate mothers throughout and following the pregnancy.¹¹ Mental health services are not always accessible or prioritized, leaving many women to navigate their emotional challenges alone. The absence of counselling and emotional support exacerbates feelings of vulnerability, leading to potential long-term psychological effects such as depression or anxiety.

GRAY ZONES FOR SURROGACY:

In India, while surrogacy has been regulated through laws such as the Surrogacy (Regulation) Act of 2021, there remain several areas where legal protection for surrogate mothers is weak, leaving them vulnerable to exploitation and abuse.

1. **Compensation and Financial Security:** One of the key issues is the prohibition of commercial surrogacy under the Surrogacy (Regulation) Act, 2021. The law mandates only altruistic surrogacy, where surrogate mothers can receive no more than medical expenses and insurance coverage. This limits their financial compensation and may deter women from fully understanding or appreciating the financial risks and burdens associated with pregnancy. Without adequate compensation, many women who rely on surrogacy for economic reasons are left financially insecure.
2. **Health and Medical Support:** The Act fails to guarantee comprehensive postnatal medical care for surrogate mothers. While it requires medical coverage for a period after childbirth, there is no clear enforcement mechanism to ensure long-term health monitoring, especially considering the physical toll pregnancy can take on a woman's body. Moreover, mental health care is scarcely mentioned, despite the significant psychological impacts associated with surrogacy.
3. **Informed Consent and Autonomy:** Informed consent, though required, is not always rigorously enforced or fully understood by surrogate mothers, particularly in rural or economically disadvantaged areas. Many women may not be fully aware of the health risks, legal implications, or emotional consequences of the surrogacy process. Their autonomy is often compromised, with some women pressured into surrogacy by family members due to economic necessity.
4. **Social Protection:** Surrogate mothers face social stigma and ostracism, but there is no legal protection to guard against discrimination. The law is silent on the social rights of surrogate mothers, leaving

¹⁰ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10769096>

¹¹ <https://scholarworks.lib.csusb.edu/cgi/viewcontent.cgi?article=3126>

them vulnerable to isolation and marginalization, without mechanisms to address or mitigate these social consequences.

SUPPORT SYSTEMS FOR SURROGATE MOTHERS:

There are few support systems available to surrogate mothers to overcome their difficulties, obstacles and trauma during their surrogate journey.

Support systems available for surrogate mothers include:

1. Counselling: Emotional support and guidance from mental health professionals.
2. Support groups: Connecting with other surrogate mothers for shared experiences and advice.
3. Online communities: Online forums and social media groups for connection and support.
1. 4. Medical support: Access to medical care and professionals for physical and emotional well-being.
4. Legal support: Guidance on legal aspects and contracts from experienced attorneys.
2. 6. Intended parent support: Building a relationship with intended parents for mutual support. It is a very important aspect
8. Family and friend support: Emotional support from loved ones makes them to feel comfortable and satisfied
3. 8 Mental health resources: Access to mental health professionals and resources for emotional well-being.
9. Surrogacy advocacy organizations: Organizations promoting surrogate mothers' rights and interests.
4. 10. Peer support: Getting connected with surrogate mothers. Knowing their experience and suggestions to be followed

These support systems can help surrogate mothers eradicate the emotional, physical, and legal difficulties¹².

CALL FOR UNIVERSAL SURROGACY ETHICS:

The need for global standards to ensure the well-being of surrogate mothers is increasingly recognized, especially in countries like India, where ethical, legal, and healthcare disparities can leave surrogate mothers vulnerable to exploitation and harm. Establishing uniform global standards would address these disparities and offer comprehensive protections, ensuring that surrogate mothers are treated with dignity, respect, and care.

1. Ethical Standards

Ethical considerations in surrogacy practices vary widely between countries, creating an uneven playing field. In India, many surrogate mothers come from disadvantaged socio-economic backgrounds, raising ethical concerns about coercion and exploitation. Global standards could enforce a uniform ethical framework, ensuring that women are fully informed, able to make autonomous decisions, and not coerced into surrogacy due to financial desperation. These standards could mandate psychological counselling and ensure that surrogacy is entered into with full knowledge of the physical and emotional risks. They would also promote transparency in relationships between surrogates and intended parents, ensuring fairness in contracts and preventing exploitation by third parties such as surrogacy agencies.

2. Legal Protections

The legal landscape for surrogacy in India remains inconsistent and weak in several areas, despite the

¹² <https://academic.oup.com/humrep/article/29/1/90/630815>

introduction of the Surrogacy (Regulation) Act, 2021. The law restricts surrogacy to altruistic arrangements, which limits compensation to medical expenses and does not address the surrogate's broader financial needs. Moreover, enforcement of existing laws is often inadequate, leaving surrogate mothers without sufficient legal recourse in cases of abuse or exploitation. A global standard could help create universal legal protections, ensuring that surrogate mothers are adequately compensated, protected from legal loopholes, and granted rights to healthcare, privacy, and informed consent. It would also help harmonize surrogacy laws across borders, avoiding legal complications when surrogacy involves international intended parents.

3. Healthcare and Medical Disparities

The healthcare available to surrogate mothers in India often lacks the comprehensive care required before, during, and after pregnancy. Many surrogates have limited access to quality medical care, especially post-birth. Global standards could ensure that surrogate mothers are provided with consistent, high-quality medical care, including pre-natal and post-natal services. These standards would also require surrogate mothers to have access to mental health support, recognizing the psychological toll surrogacy can take. Universal healthcare standards would ensure that medical professionals are held accountable for the surrogate's well-being, and surrogates are not treated as mere vessels for childbirth but as patients with holistic healthcare needs.

CASE LAWS BINDING SURROGACY:

Baby Manjhi Yamada v. Union of India: This landmark case highlighted the need for regulated surrogacy laws in India. A Japanese couple's divorce led to a custody battle, and the Supreme Court granted custodial rights to the child's grandmother.

Jan Balaz v. Anand Municipality: A German couple hired an Indian surrogate mother, but citizenship issues arose. The Supreme Court granted an exit permit, allowing the German couple to adopt the twins.

Suchita Srivastava v. Chandigarh Administration: The court ruled that women have the right to make reproductive choices, including carrying a pregnancy to full term and giving birth, as part of their right to privacy, dignity, and bodily integrity.

Justice K.S. Puttaswamy and Anr v. Union of India: The court held that obtaining and showing a certificate of infertility violates the right to privacy and is morally and ethically questionable.

CONCLUSION:

Surrogate motherhood has a profound impact on the lives of surrogate mothers, intended parents, and the children born through surrogacy. The experience can be emotionally, physically, and psychologically complex, with both positive and challenging aspects.

Legal Reforms need to be brought up such as

1. Establish clear and consistent surrogacy laws.
2. Provide legal protections for surrogate mothers' rights.
3. Regulate surrogacy agencies and professionals.
4. Ensure access to healthcare and insurance for surrogate mothers.
5. Develop international treaties governing cross-border surrogacy.

Surrogate mothers needed to be treated well and social taboo need to be thrown away from the society. Their rights need to be protected and state need to focus more on their welfare and betterment of their future. Mental and physical health of surrogate mothers need to be focused more. Surrogate motherhood

raises important questions about family, identity, reproductive autonomy, and legal rights. By acknowledging the complexities and challenges, we can work towards creating a more supportive, inclusive, and legally sound environment for all parties involved.

"Surrogacy is not Just about

Carrying a baby it's about carrying

hope and dreams for a family".