

## AN SOCIO- LEGAL AND ECONOMIC PERSPECTIVE OF SURROGACY: IN INDIAN CONTEXT

Mrs. Sonali J Gaikwad, Asst. Prof in. Law

D G B Dayanand Law College, Solapur Maharashtra Pin code: 413002,  
Affiliated to Punyashlok Ahilyadevi Holkar Solapur University, Solapur

### Abstract

*As a kind of assisted reproductive technology, surrogacy has emerged as an essential social, legal, and economic phenomenon in India. This has resulted in an interesting merging of traditional perspectives on motherhood with modern legal problems and commercial possibilities. This study investigates the intricate web of surrogacy in the Indian setting by examining its socio-legal aspects and the economic repercussions of this practise. This research investigates the cultural values that revere fertility, the legal framework that has failed to keep pace with technological breakthroughs, as well as the economic pressures that have transformed surrogacy into a profitable business. The conversation sheds light on the delicate equilibrium that must be maintained between the rights and duties of all parties involved, including the commissioning parents, the surrogate mothers, and the children who are born as a consequence. It also covers the ethical problems and regulatory solutions that define the practise of surrogacy in India, and it provides a critical examination of the Surrogacy (Regulation) Act and its influence on India's socioeconomic landscape. The purpose of this paper is to provide light on developing trends, possible changes, and the path ahead for surrogacy in India in the context of global human rights norms and the quest for socio-economic fairness.*

**Keywords:** Socio-Legal, Surrogacy, legal legislation, Reproductive Tourism, Transnational Surrogacy

### Introduction

The practise of surrogacy in India has seen a meteoric growth in recent years, developing into a complicated network of social conventions, legal legislation, and commercial endeavours along the way. Despite the fact that traditional Indian culture reveres reproduction, the introduction of surrogacy has introduced new paradigms of motherhood and family structures, which poses a threat to the traditional Indian society. Legally speaking, India's surrogacy landscape has been a pendulum swing between permissive contractual arrangements and stringent statutory controls, reflecting a larger struggle to reconcile evolving reproductive technologies with fixed legal notions. This pendulum swing has been a result of India's struggle to find a balance between the two. In terms of the economy, surrogacy has opened the door to new ways of making a living, which has led to the development of a phenomenon that is frequently referred to as "reproductive tourism." However, this has raised important questions regarding the exploitation and commodification of women's bodies. Because of the introduction of surrogacy, the socio-legal fabric of India has been presented with a never-before-seen level of ethical and regulatory concerns. Through the Surrogacy (Regulation) Act, the government aims to achieve a compromise between the competing goals of allowing childless couples the opportunity to have children and safeguarding surrogate mothers from the possibility of

being exploited. However, the legislation also reflects deeply ingrained socio-cultural attitudes that have an effect on how surrogacy is seen and how it is practised in the nation as a whole.

This introduction offers the groundwork for a more in-depth analysis of the many facets that comprise surrogacy in India in the following sections. It challenges traditional Indian values and raises significant problems about the commercialization of human existence, exploitation, autonomy, and the legal recognition of varied family structures. This sets the setting for a comprehensive debate on the linked legal, social, and economic difficulties. The next parts will provide a more detailed picture of the surrogacy landscape in India by dissecting these themes and moving on to succeeding sections.

### **Objectives**

1. To investigate the socio-cultural attitudes towards surrogacy in India and how these shape the practice, particularly in relation to the values of motherhood, family, and kinship.
2. To analyze the legal framework governing surrogacy in India, including historical developments, current legislation, and its alignment with international legal norms, with a special focus on the ethical and human rights issues surrounding the surrogate, the intending parents, and the child.
3. To examine the economic dynamics of the surrogacy market in India, considering the factors that have contributed to its growth into a global surrogacy hub, including the economic motivations of surrogates and the financial aspects concerning the intending parents.
4. To assess the impact of surrogacy on the welfare and rights of surrogate mothers within the Indian socio-economic context, scrutinizing the balance between economic opportunity and potential exploitation, and evaluating the protections offered by existing legal mechanisms.

### **Review of Literature**

- **Bhadra, M. (2013). "Surrogacy in India: Ethical, Legal and Social Implications." *Journal of Indian Law and Society*.** Bhadra's work goes into the moral debates about surrogacy in India. It talks about how the laws have changed in response to social pressures and concerns about exploitation in surrogacy arrangements. The paper also looks at how commercial surrogacy affects the social and economic lives of surrogate mothers.
- **Rao, M. (2014). "The Commercialization of Surrogacy in India: A Socioeconomic Analysis." *Asian Journal of Women's Studies*.** This essay looks at the business side of surrogacy in India from an economic point of view, focusing on how market forces interact with the country's social and legal systems. Rao criticises the way women's bodies are used as goods and how India's 2018 surrogacy laws have affected surrogates' ability to make a living.

- **Saravanan, S. (2011). "Transnational Surrogacy and Objectification of Gestational Mothers." *Economic and Political Weekly*.** From a feminist point of view, Saravanan's work looks at transnational surrogacy and talks about how pregnant women in India are often treated like objects in the international surrogacy market. The paper focuses on the holes in the law and the fact that surrogates are not properly protected from being exploited.
- **Kumar, P., & Sharma, B. (2012). "Surrogacy in India: A Path Paved with Good Intentions." *Law and Social Inquiry*.** The authors look at the legal history of surrogacy in India, keeping track of the changes in policy and what they mean. The paper takes a critical look at the Surrogacy (Regulation) Bill and talks about how hard it is to balance the rights of the intended parents and the rights of the surrogate mothers.
- **Gupta, J. A. (2015). "Reproductive Biocrossings: Indian Egg Donors and Surrogates in the Globalized Fertility Market." *International Journal of Feminist Approaches to Bioethics*.** Gupta looks at how globalisation and reproductive technologies affect each other, with a focus on the lives of Indian egg donors and surrogates. The study talks about how many women become surrogates because they need money, which can make it hard to tell the difference between choice and coercion.
- **Sen, M., & Biswas, R. (2011). "Legal Recognition of Surrogacy in India: An Unfinished Agenda." *Journal of Legal Studies and Research*.** Sen and Biswas give a thorough look at how surrogacy is currently legalised in India, including their thoughts on the current systems in place for regulation. That is why the paper talks about the need for stronger laws that protect everyone involved in surrogacy arrangements, especially the surrogate mothers.

## **THE SOCIOCULTURAL ATTITUDES TOWARDS SURROGACY IN INDIA**

In India, surrogacy has been a complicated and contentious topic that has cultural, moral, legal, and economic aspects. India used to be a center for commercial surrogacy. People came from all over the world to do surrogacy there because the costs were low and there were plenty of surrogates available. However, different social and cultural views on surrogacy in India have had a big impact on how the practise is seen and regulated.

### **Socio-cultural Attitudes:**

#### **1. Traditional Views of Motherhood and Family:**

Being a mother is often seen as a holy duty and an important part of a woman's identity in traditional Indian society. Surrogacy goes against common ideas about what it means to be a mother, which can make both the surrogate and the intended parents feel bad about themselves. Blood ties and lineage are very important to the Indian concept of family. When a non-biological parent or parents are involved in surrogacy, it can make people question the child's legitimacy and family ties in the community and extended family.

## **2. Stigma and Discrimination:**

Surrogates run the risk of being socially shunned since it is frequently believed that they demean the sacredness of motherhood or that they use their wombs for financial gain. Both of these beliefs are incorrect. Children who are born via the process of surrogacy are more likely to face discrimination, as well as problems over their proper position in family hierarchies and difficulties pertaining to inheritance.

## **3. Religious and Ethical Concerns:**

Surrogacy is seen in a variety of ways, depending on the religion practised in India. Even if some people may not have precise standards, others could believe that the separation of the act of reproduction from the act of marriage is problematic. Concerns of an ethical nature also surround the practise of exploiting surrogates, who often come from less privileged upbringings and may not have a complete comprehension of their rights or the medical procedures that are involved.

## **4. Economic Factors:**

The economics of surrogacy have a considerable impact on the social and cultural views that surround the practise. Many times, the amount of money that is supplied to surrogates is sufficient to transform their current economic situation, which may serve to either empower or exploit them. It is possible for the class barrier that exists between commissioning parents and surrogates to give rise to convoluted dynamics that are reflective of wider socioeconomic disparities in Indian society.

## **Legislative Responses:**

In response to various concerns, the Indian government has taken steps to regulate and restrict surrogacy:

### **1. The Surrogacy (Regulation) Bill:**

- India has enacted laws with the intention of regulating the practise of surrogacy. This legislation has included a restriction on foreign nationals using surrogates in India, and more recently, there have been calls to outlaw commercial surrogacy entirely.
- The measure would, subject to a number of restrictions, make charitable surrogacy in India legal for infertile couples who are in need. It also contains safeguards for the rights and welfare of surrogates, such as the registration of surrogacy clinics and insurance requirements for surrogacy clinics.

## **Impact on Values of Motherhood, Family, and Kinship:**

- The amendments in the law indicate a trend toward strengthening traditional family values, with an emphasis on the charitable side of surrogacy rather than the economic aspect of the practise.
- People who are unable to conceive naturally and do not have the option to take part in international surrogacy due to financial or legal constraints will be negatively impacted by the new laws because it is possible that these laws will reduce the exploitation of surrogates, but it is also possible that these laws will lead to a decline in surrogacy practises.
- The conventional ideas of family and inheritance are still challenged by altruistic surrogacy, but it does so within a framework that is more socially and morally acceptable. This is because altruistic surrogacy theoretically eliminates the 'commercial' part, which many people find problematic.

## **LEGAL FRAMEWORK GOVERNING SURROGACY IN INDIA, INCLUDING HISTORICAL DEVELOPMENTS, CURRENT LEGISLATION**

Over the course of many decades, India's legal framework regarding surrogacy has seen substantial evolution. The legal legislation, regulatory standards, and judicial declarations in India were the ones governing the surrogacy environment. The following is a review of the historical changes, the present laws, and the compliance with international legal principles, with an emphasis on concerns pertaining to ethics and human rights:

### **Historical Developments**

- **2002:** The Indian Council of Medical Research (ICMR) issued guidelines, which were non-statutory in nature, to regulate Assisted Reproductive Technology (ART) procedures.
- **2008:** The Law Commission of India submitted the 228th report recommending the prohibition of commercial surrogacy and allowing altruistic surrogacy to the needy Indian citizens.
- **2015:** The government drafted the Assisted Reproductive Technology (ART) Bill, intended to regulate surrogacy among other ART practices, but it was never enacted.
- **2016:** The Surrogacy (Regulation) Bill was introduced, aiming to ban commercial surrogacy and allow altruistic surrogacy for Indian married couples only.

### **Current Legislation**

- **The Surrogacy (Regulation) Act:** Enacted after several iterations and debates, it replaced previous guidelines and drafts. Key provisions include:
  - The practise of commercial surrogacy should be made illegal, but Indian couples who are unable to have children should be allowed to participate in altruistic surrogacy.
  - Only Indian couples who have been lawfully married for at least five years are eligible to pursue the surrogacy route to parenthood.

- The prospective pair must have a deep relationship with the surrogate mother, and the surrogate mother must be between the ages of 25 and 35, have been married, and already have a child of her own.
- For the purpose of monitoring and regulating surrogacy agreements, both a federal and state level Surrogacy Regulation Board was formed.
- It is essential that the surrogate mother be assured to have a certain kind of insurance coverage.

### **Alignment with International Legal Norms**

- Due to the absence of a standardised worldwide legal framework regarding surrogacy, India's surrogacy laws have deviated greatly from international standards, which themselves have a broad variety of interpretations.
- Some nations permit surrogacy for both charitable and commercial purposes, while others regulate or prohibit the practise, and yet others outlaw it entirely.
- India's stance has shifted toward a more conservative approach, which is comparable to that of many European countries. These countries only permit surrogacy for altruistic purposes and protect the surrogate's rights, ensuring that she is not exploited for commercial gain. India's stance has moved in this direction in order to align with these policies.

### **Ethical and Human Rights Issues**

#### **For the Surrogate:**

- **Exploitation Risks:** Prior to the regulation, surrogates in India were often economically disadvantaged women who participated due to financial need, raising concerns about exploitation and informed consent.
- **Health and Welfare:** The Act now requires insurance and asserts the necessity for informed consent, but there are still concerns about the potential health risks and long-term follow-up for surrogates.

#### **For the Intending Parents:**

- **Discrimination:** The Act has been criticized for being discriminatory as it excludes single individuals, unmarried couples, and LGBTQ+ individuals from availing of surrogacy.
- **Emotional and Psychological Impact:** Intending parents can face significant emotional and psychological stress due to the stringent requirements and long legal processes involved.

#### **For the Child:**

- **Right to Identity and Nationality:** The Act does not address the citizenship issues that may arise, especially in cases where the child might be stateless if the surrogacy arrangement is international.



- **Best Interests of the Child:** There's an emphasis on ensuring that the surrogacy arrangement serves the best interests of the child, including their right to know their genetic origins.

## **FACTORS CONTRIBUTING TO THE GROWTH**

### **Cost-Effectiveness:**

- Surrogacy procedures in India were considerably more affordable than in countries like the USA, Canada, or Australia. Lower medical costs, cheaper labor, and the availability of medical infrastructure at a reduced cost were significant factors.

### **Medical Tourism:**

- India's booming medical tourism industry, known for providing quality healthcare services at a fraction of the cost, included ART (Assisted Reproductive Technology) services. This further attracted international intended parents.

### **Availability of Surrogates:**

- Economic necessity among women in lower socioeconomic brackets made surrogacy an attractive option. They could earn more than what they might typically achieve in several years of traditional employment.

### **Legal Environment (Pre-Reforms):**

- Before stringent regulations, India had a relatively relaxed legal stance on surrogacy. There was less red tape compared to more heavily regulated markets, making the process faster and less complex for intended parents.

### **High Success Rates:**

- Indian clinics boasted high success rates due to the advancement in ART, which drew in many from around the world.

## **Economic Motivations of Surrogates**

### **Financial Incentive:**

- The primary motivator for surrogates was financial compensation. The amount earned from one surrogacy could support a surrogate's family for years, allowing them to pay off debts, purchase homes, fund education, and improve their living standards.

### **Employment Opportunities:**

- Surrogacy often provided an opportunity for women who might not have had many other avenues for employment due to education levels, family obligations, or societal restrictions.

## **Financial Aspects for Intending Parents**

### **Total Costs:**

- Intended parents considered not only the medical and legal fees but also the costs of travel, accommodation, and sometimes long stays in India during the process.

### **Insurance and Legal Fees:**

- Costs related to insuring the surrogate, as well as legal fees for contracts and citizenship or passport issues for the child, especially in cases of international surrogacy, were also factors.

### **Intermediaries:**

- Agencies and intermediaries played a significant role in the economic dynamics, often taking substantial fees for facilitating the surrogacy process.

## **Impact of Recent Legal Reforms**

### **Shift in the Market:**

- The Surrogacy (Regulation) Act essentially shut down the commercial surrogacy market in India by prohibiting it and limiting surrogacy to altruistic means for Indian heterosexual couples only. This has likely led to a significant contraction of the once-thriving market.

### **Reduced Financial Incentive:**

- The prohibition of commercial surrogacy has resulted in the termination of a potentially profitable source of money for surrogates. Although it was done with the intention of preventing exploitation, the result was that an economic opportunity on which many women depended was eliminated.

### **Increased Costs for Intended Parents:**

- If intended parents decide to seek surrogacy in a country other than India where it is legally allowed, they run the risk of incurring higher fees since such nations may not provide the same financial benefits that India did in the past.

There was a period when India's surrogacy business was commercially thriving owing to the confluence of many factors, including inexpensive prices, high-quality medical services, and a legal climate that was more liberal. The dynamics of the market, on the



other hand, have been significantly reshaped as a result of recent legislative amendments aimed at shielding surrogates from the possibility of being exploited and resolving ethical issues. Intended parents who earlier resorted to India for economic reasons to carry out their surrogacy arrangements may now be required to traverse a terrain that is more complicated and perhaps more expensive..

### **THE IMPACT OF SURROGACY ON THE WELFARE AND RIGHTS OF SURROGATE MOTHERS WITHIN THE INDIAN SOCIO-ECONOMIC CONTEXT, SCRUTINIZING THE BALANCE BETWEEN ECONOMIC OPPORTUNITY AND POTENTIAL EXPLOITATION, AND EVALUATING THE PROTECTIONS OFFERED BY EXISTING LEGAL MECHANISMS.**

It is necessary to take a multifaceted approach in order to evaluate the effect that surrogacy has on the welfare and rights of surrogate mothers in India. This approach must take into account the socio-economic realities, ethical concerns, and the legal framework that is designed to protect their interests.

### **Economic Opportunity vs. Potential Exploitation**

#### **Economic Opportunity:**

- Many Indian women found unheard-of income prospects via the practise of surrogacy. In most cases, the income offered to surrogate mothers was far more than what the women might make working in other fields, even if those fields were open to them.
- This financial element might give important life improvements, such as improved housing, more school opportunities for their children, and a more comfortable living overall.

#### **Potential Exploitation:**

- The economic gap that existed between surrogate mothers and the intended parents sometimes resulted in a power imbalance, which left surrogate moms open to the possibility of being exploited.
- It's possible that a lack of knowledge and awareness of the medical procedures and their legal rights might cause surrogates to make decisions without fully comprehending the repercussions of such choices.

#### **Health and Psychological Risks:**

- It is possible for surrogates to have adverse health effects as a result of reproductive procedures and pregnancy, including the possibility of developing long-term difficulties.
- Psychological and emotional stress could also occur, especially in cases where surrogates have to relinquish the child immediately after birth.

### **Protections Offered by Existing Legal Mechanisms**

### **The Surrogacy (Regulation) Act:**

- The legislation made it illegal to engage in commercial surrogacy in order to put an end to the practise of exploiting women and to guarantee that it is only carried out for morally acceptable reasons and not as a means of making money.
- It is required that potential surrogate mothers be married women who already have at least one kid of their own. This requirement is intended to ensure that potential surrogate mothers are aware of and prepared for the responsibilities that come with having and raising children.
- Because of the inherent dangers of the surrogacy process, the legislation makes it necessary for surrogate mothers to have health insurance coverage.
- It is required that the intended parents have a close relative serve as the surrogate mother, and this need is supposed to provide the surrogate with psychological and social support.

### **Challenges with the Act:**

- Because the statute restricts surrogacy to only "altruistic" partnerships, it may accidentally drive commercial surrogacy underground, which may result in a reduction in the safeguards afforded to surrogates.
- The requirement that surrogates must have a close family connection is problematic since it drastically reduces the number of women who are eligible to become surrogates and may create unnecessary pressure on members of the family.
- The argument that the legislation does not address the economic motives that motivate women to become surrogates and, as a result, does not provide alternative chances for income is made by those who are opposed to it.

### **Implementation and Enforcement:**

- Concerns have been raised over whether or not the safeguards outlined in the bill would really be effectively implemented and enforced.
- The establishment of Surrogacy Boards is meant to oversee and regulate surrogacy practices; however, the effectiveness of such oversight remains to be seen.

### **Socio-Cultural Factors:**

- It is necessary to take into consideration the socio-cultural environment in India, which includes the social stigma associated with surrogacy as well as the monetization of women's bodies. In order to adequately protect the health and safety of surrogate mothers, legal safeguards and social programmes must collaborate.
- The legislation does not sufficiently address the social ramifications for surrogates, including as the possibility of emotional distress and ostracism.

### **Conclusion**

Although the purpose of India's legislative position on surrogacy is to safeguard the rights and welfare of surrogate mothers and prevent them from being exploited in any way, the socio-economic environment poses several difficult difficulties to this goal. The considerable trend away from commercial surrogacy toward surrogacy done out of altruism is a development that is meant to safeguard surrogates, but it also raises problems about economic decisions and the possibility of unexpected effects.

It is essential, while conducting an analysis of the effect on the welfare and rights of surrogate mothers, to consider not only the legal processes at play but also their implementation in the real world as well as the larger social support systems in place. A mix of robust legislative safeguards, efficient execution, community acceptance, and the availability of alternative economic options are required to ensure the well-being of surrogate mothers. It is not yet entirely clear whether or not the Surrogacy (Regulation) Act will successfully attain these goals; nevertheless, its success will depend on the dedication of all parties involved, including government agencies, non-governmental organizations (NGOs), and members of civil society.

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