

## Surrogacy in India: Legal, Ethical, and Social Dimensions

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### ABSTRACT

The concept of family has played a significant role in shaping civilization, with marriage and procreation being at the core of social structures. However, infertility has become a growing concern, affecting individuals across different demographics. Advances in assisted reproductive technologies (ARTs) have introduced surrogacy as a solution, yet it remains entangled in ethical, legal, and social debates. India, once a global hub for commercial surrogacy, has shifted towards strict regulation, banning commercial surrogacy while allowing altruistic surrogacy under specific conditions.

This paper critically examines the legal framework regulating surrogacy in India, including the Surrogacy (Regulation) Act, 2021, and its impact on intended parents, surrogate mothers, and marginalized groups. It also explores judicial interventions, the exclusion of LGBTQIA+ individuals and single parents, and the ethical concerns surrounding the ban on commercial surrogacy. The study further evaluates global surrogacy laws and suggests reforms for a more inclusive and ethical approach.

### 1. INTRODUCTION

Infertility is a major medical and social challenge, affecting both men and women due to lifestyle, genetic and environmental factors. The heightened incidence of infertility has led to a higher demand for alternative reproductive methods. Among them, surrogacy has emerged as a viable option, particularly for individuals unable to conceive naturally.

India has witnessed a significant shift in surrogacy laws, transitioning from a thriving commercial surrogacy industry to a strictly regulated system. The Surrogacy (Regulation) Act, 2021, restricts completely commercial surrogacy, allowing only altruistic surrogacy under strict guidelines. While the act seeks to prevent exploitation, it has also excluded many individuals from accessing surrogacy, including LGBTQIA+ individuals, single parents, and foreign nationals.

This paper delves into the historical development, legislative measures, judicial responses, and societal perspectives on surrogacy in India. It also highlights the challenges and ethical dilemmas that persist despite legal interventions.

#### *Types of Surrogacy*

##### *Altruistic Surrogacy*

Altruistic surrogacy comprises a non-commercial arrangement, where a surrogate mother agrees to carry the child without financial compensation, except for medical and pregnancy-related expenses. Such agreements are typically between close relatives or friends, emphasizing emotional rather than monetary incentives. The surrogate mother relinquishes all parental rights post-birth, making it a legally regulated process aimed at preventing the commercialization of surrogacy.

##### *Commercial Surrogacy*

Commercial surrogacy, legal in India from 2002 to 2015, involved financial compensation beyond medical costs. India became a global surrogacy destination, attracting couples from countries where surrogacy was banned or restricted.

However,



economic disparities led to concerns about exploitation,

### ***Legal Framework on Surrogacy in India***

The **Surrogacy (Regulation) Act, 2021**, imposes a complete ban on commercial surrogacy, with altruistic surrogacy being allowed, where the surrogate mother is not financially compensated beyond medical and insurance expenses. The primary objective of this ban is to avoid the exploitation of economically weaker and vulnerable women who might be coerced into surrogacy for financial gain. Commercial surrogacy, legal in India from 2002 to 2015, had turned the country into a global surrogacy hub, attracting foreign couples seeking affordable surrogacy options. However, reports of surrogates being underpaid, abandoned after childbirth, and subjected to poor medical care led to widespread criticism. Concerns were also raised about children being abandoned if they were born with disabilities or if commissioning parents changed their minds. Ethical debates emphasized that commercial surrogacy commodified women's reproductive capabilities, reducing them to mere "wombs for rent." By allowing only altruistic surrogacy, the law intends to ensure that surrogacy is performed for genuine reasons rather than financial transactions. However, this restriction has led to significant challenges, as many infertile couples struggle to find willing surrogates, given the lack of financial incentives. Additionally, this blanket ban may drive the practice underground, leading to illegal surrogacy markets where surrogate mothers have no legal protections.

To ensure that only genuinely infertile couples can opt for surrogacy, the law requires intended parents to obtain an **Essentiality Certificate** and a **Certificate of Entitlement**. The Essentiality Certificate, issued by the **District Medical Board**, serves as proof that the couple has a medical necessity for surrogacy, confirming that the woman is infertile and that other assisted reproductive techniques (ARTs) have failed or are medically unsuitable. This step prevents misuse, ensuring that surrogacy is not used for convenience. The Certificate of Entitlement, issued by the **appropriate government authority**, verifies that the intending couple meets all legal criteria for surrogacy.

### ***Judicial Response to Surrogacy in India***

Judicial decisions have been avant-garde in a crucial role of shaping the surrogacy debate in India. In **Baby Manji Yamada v. Union of India (2008)**, where a Japanese couple commissioned a surrogacy arrangement in India. However, due to marital conflicts, the wife refused to accept the child, creating a legal crisis concerning the child's citizenship and parental rights. This case highlighted the lack of a comprehensive and exhaustive legal framework for surrogacy at the time, prompting calls for regulation.

In **Jan Balaz v. Union of India (2010)**, the Gujarat High Court granted Indian citizenship to twins born via commercial surrogacy for a German national. This case underscored the legal complexities around cross-border surrogacy and emphasized that children's rights should take precedence over regulatory loopholes.

In **H. Siddaraju v. Union of India (2022)**, the Karnataka High Court introduced the **Triple Test** for surrogacy eligibility, assessing **genetic viability, physical capability, and financial stability**. This ruling provided flexibility in surrogacy laws, allowing older intended parents to prove their ability to care for a child.

### ***LGBTQIA+ Community and Surrogacy***

The **Surrogacy (Regulation) Act, 2021**, explicitly prohibits surrogacy for LGBTQIA+ individuals, reinforcing heteronormative family structures. This exclusion contradicts progressive legal rulings such as **Navtej Singh Johar v. Union of India (2018)**, which decriminalized homosexuality, and **B.K. Parthasarathi v. Govt. of Andhra Pradesh**, which recognized reproductive autonomy as a fundamental right. Despite these advancements, LGBTQIA+ individuals remain excluded from surrogacy access, raising concerns about **constitutional violations of equality and personal liberty**.

## **2. CONCLUSION**

While the **Surrogacy (Regulation) Act, 2021**, was enacted to **prevent exploitation and regulate surrogacy**, it has created **significant barriers** to access. The exclusion of **LGBTQIA+ individuals and single men** contradicts constitutional principles of **equality**, while the ban on **commercial surrogacy** has led to **underground and unregulated markets**. Additionally, **the bureaucratic hurdles** involved in obtaining certificates of eligibility make the process **complex and emotionally draining** for intended parents.

To establish a **balanced and ethical surrogacy framework**, future legal reforms should focus on **regulating commercial surrogacy** instead of banning it outright, allowing **ethical compensation** for surrogate mothers while ensuring **legal protection**. Additionally, surrogacy should be made accessible to **LGBTQIA+ individuals and single parents**, recognizing their equal rights to parenthood. Finally, **simplifying the certification process** would make surrogacy more accessible to couples who genuinely need it. By implementing these changes, India can ensure that **surrogacy remains an ethical, legally protected, and inclusive reproductive choice** for all.

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