Balancing Acts: Navigating Ethical, Legal and Social Labyrinth of Surrogacy in India

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Abstract- surrogacy in India has developed over the years and how it continues to raise many ethical, legal, and social questions. The study explains how India moved from being a major hub of commercial surrogacy to enforcing strict regulations through the Surrogacy (Regulation) Act, 2021 and later amendments. By examining important cases like *Baby Manji Yamada* and *Jan Balaz*, the paper shows how issues of citizenship, parental rights, and cross-border legal conflicts often leave children and parents in complicated situations. The paper also looks at concerns such as exploitation of surrogate mothers, lack of informed consent, and the emotional and economic pressures women may face. While the law tries to protect women, it also creates limitations for many intended parents and leads to new challenges, including the possibility of underground practices. Overall, the paper suggests that India needs a more balanced legal approach that protects surrogate mothers but also respects the reproductive choices and diverse family situations of people seeking surrogacy.

Key words: Surrogacy, Surrogacy Regulation Act, Reproductive Rights, Social Impact.

I. INTRODUCTION

In India, surrogacy can be quite a complex process, it involves making various decisions and facing various difficulties. Each step involved in building a family is closely connected to important ethical considerations, strict legal regulations, and the intricate web of societal expectations. Surrogacy is an intriguing combination of science, ethics, and human emotion that offers hope to individuals who aspire to become parents but encounter biological challenges. This reproductive strategy entails a surrogate mother who consents to carry and deliver a child on behalf of another individual or couple, who will subsequently become the child's parents. Surrogacy can be categorised into two main forms: traditional surrogacy and gestational surrogacy. In traditional surrogacy, the surrogate mother utilises her own egg, which is usually fertilised through artificial insemination. This process ensures that she becomes the biological mother of the child she carries. The genetic bond between the surrogate and the baby often leads to intense ethical debates and emotional challenges in this form of surrogacy. However, gestational surrogacy is a process where an embryo obtained through in vitro fertilisation (IVF) is implanted. This can be done using either the eggs and sperm of the intended parents or those from donors. In this situation, it is important to note that the surrogate does not have any genetic ties to the child. This fact can help address certain ethical concerns and emotional challenges, but it also brings about additional levels of legal and ethical examination.

Significance of Surrogacy in India

Surrogacy became a popular and lucrative industry in India starting in the early 2000s, with India becoming known as the "World Capital of Surrogacy[1]". This was due to the availability of affordable surrogacy services, lax regulations, and a large pool of economically disadvantaged women willing to become surrogates. However, this commercialisation of surrogacy led to concerns about the exploitation of surrogate mothers, who were often from lower socioeconomic backgrounds. There were reports of surrogates not being fully informed of the risks, having limited decision-making power, and facing health complications without adequate support. The significance of surrogacy in India can be deeply appreciated by examining both its social-cultural context and its economic impact.

[1] Amrita Pande, India's Booming Surrogacy Industry, The New York Times (2012)

Social and Cultural Context: In India, the concept of family and the legacy of parenthood are deeply entrenched in the social fabric, carrying immense personal and communal significance. Infertility can often lead to social ostracism or psychological distress due to prevailing cultural norms that place a high value on biological lineage. Surrogacy emerges as a crucial option for many couples, providing a means to fulfill deeply held desires for biological children and ensuring their acceptance and integration within their communities and families. This option not only mitigates the social stigma associated with infertility but also reinforces the cultural importance of continuity and biological heritage.

Economic Impact: Economically, surrogacy has represented a transformative opportunity for many women, especially those from economically disadvantaged backgrounds. The financial compensation for being a surrogate is typically substantial compared to the limited income opportunities otherwise available to them. This influx of income can dramatically improve the economic status of their families, providing better educational opportunities for children, improved housing conditions, and a more stable financial future. This aspect of surrogacy not only supports the surrogates and their families but also contributes to the broader economic dynamics within their communities, helping to lift entire families out of poverty. All of these factors show how surrogacy is deeply ingrained in Indian society along cultural, ethical, and economic lines, and how complex it is as a whole.

II. LEGAL FRAMEWORK

Surrogacy in India began to gain attention in the late 20th century, emerging as an option for couples struggling with infertility. Initially, there were no specific laws governing surrogacy, and it operated in a legal grey area. The first well-documented case of surrogacy in India was in 1994, marking the beginning of surrogacy as a commercial practice. This period saw India slowly becoming a favorable destination for surrogacy due to the lower costs and availability of surrogates. The early 2000s witnessed a significant boom in India's surrogacy market, attracting intended parents from around the world. The lack of stringent regulations made India a popular destination for international surrogacy arrangements. Numerous fertility clinics specializing in surrogacy services sprung up across the country, further facilitating the growth of surrogacy tourism.

The 2008 Guidelines: Responding to the need for regulation, the Indian Council of Medical Research (ICMR) issued guidelines in 2005, which were implemented in 2008. These guidelines attempted to regulate surrogacy by establishing ethical norms and protecting the rights of surrogate mothers. However, these guidelines were not legally binding.

The Assisted Reproductive Technologies (ART) Bill: Various versions of the ART Bill were drafted and discussed over the years, aiming to establish a legal framework for surrogacy and other assisted reproductive technologies. However, the bill faced numerous delays and revisions, and was never passed into law.

The Surrogacy (Regulation) Bill: In response to growing concerns about the exploitation of surrogate mothers and ethical issues, the Indian government proposed the Surrogacy (Regulation) Bill in 2016. The bill aimed to ban commercial surrogacy, allowing only altruistic surrogacy for needy, infertile Indian couples.

Passage of the Surrogacy (Regulation) Act, 2021: After several years of debate and amendments, the Surrogacy (Regulation) Act was finally passed in 2021. The act prohibits commercial surrogacy, restricts altruistic surrogacy to Indian married couples, and sets strict eligibility criteria for surrogate mothers and intending parents. It represents a significant shift in India's surrogacy practices, aiming to protect surrogate mothers from exploitation and ensuring the ethical practice of surrogacy.

Current Landscape: With the enactment of the Surrogacy (Regulation) Act, 2021, India's surrogacy landscape has undergone a dramatic transformation. The focus has shifted towards protecting the rights and welfare of surrogate mothers and children born through surrogacy.

The Surrogacy Regulation Act, 2021

The Act allows only altruistic surrogacy, which means that the surrogate mother cannot receive any compensation apart from the medical expenses incurred during pregnancy including insurance

coverage. Commercial surrogacy, where the surrogate is paid in cash or kind, is banned. Before the intended couple can proceed with the surrogacy, they need to obtain two certificates – a certificate of essentiality and a certificate of eligibility – from a competent authority. To obtain a certificate of essentiality, certain conditions must be met. The couple must provide a certificate of infertility from a District Medical Board confirming that they are unable to conceive. The Magistrate Court must also pass an order regarding custody of the child. Additionally, insurance for the surrogate mother must be provided to cover postpartum complications for 16 months after delivery.

The Surrogacy Regulation Rules, 2022

The Surrogacy Regulation Rules, 2022 were notified by the central government to set forth the necessary criteria and regulations applicable to registered surrogacy clinics. These clinics are required to have a minimum staff composition consisting of at least one gynecologist, anesthetist, embryologist and counselor. Additional personnel may be employed from ART Level 2 clinics. The gynecologist must hold a post-graduate degree in gynecology and obstetrics, and possess experience in performing ART procedures. Surrogacy clinics must undergo registration with the appropriate authority and pay the prescribed fees. Upon approval, a certificate of registration is granted, which must be prominently displayed within the clinic premises. In the event of application rejection, cancellation or suspension, the applicant has the right to appeal within a 30-day timeframe using the designated appeal form. Authorized entities are empowered to conduct unannounced inspections of surrogacy clinics, including their facilities, equipment, and records, with the caveat that such inspections do not endanger stored gametes or embryos. The surrogate mother's voluntary consent, as specified in the guidelines, is mandatory for the surrogacy procedure. The number of attempts for surrogacy is capped at a maximum of three. Normally, the gynecologist is expected to implant only one embryo, but in exceptional cases, up to three embryos may be allowed. If the surrogate mother wishes to terminate the pregnancy, the process must adhere to the guidelines outlined in the Medical Termination of Pregnancy Act, 1971. Additionally, it is mandatory for the intending couple or woman to procure health insurance covering a duration of 36 months for the surrogate mother's protection.

Recent Amendments and Development

The first amendment to the Rules, which was notified on 10 October 2022, modified Rule 5(2) regarding insurance coverage for surrogacy. According to the revised rule, the intending couple must purchase insurance coverage for 36 months and guarantee it by signing an affidavit. Previously, the affidavit had to be sworn before the Metropolitan or the Judicial Magistrate of the First Class. The 2022 Amendment introduced flexibility in this process by allowing the affidavit to be sworn before either of two additional classes of authorities, namely an Executive Magistrate or a Notary Public. This change is expected to streamline the process and make it easier for intending couples to apply for surrogacy. By expanding the list of authorized authorities who can swear the affidavit, the amendment provides more options for the intending couple to comply with the insurance coverage requirement. This is likely to result in a quicker and smoother surrogacy application process.

The second amendment to the Rules, which was announced in March 2023, disallows intending couples from using donor gametes for surrogacy. Earlier, the rule stated that surrogacy treatment could include fertilization of donor oocyte by the husband's sperm, which was interpreted by some to mean that using donor gametes was allowed. However, the 2023 Amendment replaces this provision with a new one that explicitly prohibits the use of donor gametes, whether for couples or single women (widows or divorcees). The amendment also clarifies that surrogate mothers cannot provide their gametes. Thus, intending parents who have medical issues with their gametes and need donor gametes to conceive a child may face difficulties in opting for surrogacy in India. The amendment restricts the pool of eligible persons who can commission surrogacy, along with other restrictions based on age, marital status, and medical requirements.

III. CASE STUDIES

Baby Manji Yamada v. Union of India (2008)

In this case, a Japanese couple had engaged an Indian surrogate mother to carry their child. The surrogate mother gave birth to Baby Manji in Gujarat, India.

However, during the surrogacy process, the couple divorced. The biological father wanted custody of the child, but Indian law complicated this desire as it doesn't easily allow a single father to adopt a female child. The legal dilemma intensified because Baby Manji, being born from a surrogate mother in India, did not automatically receive Japanese citizenship and was essentially stateless upon birth.

Legal Challenges

i. Citizenship and Nationality Issues: Baby Manji was not recognized as a citizen of Japan because she was born in India through surrogacy, which led to issues with her nationality status.
ii. Custody Issues: After the couple's divorce, the question of custody became complex due to the father's marital status and the child's nationality.
iii. Legal Status of Surrogacy: The lack of clear laws regarding surrogacy in India at the time created ambiguities about the rights of the child, the surrogate, and the biological parents.

Supreme Court's Intervention

The Supreme Court of India intervened to resolve the impasse by allowing Baby Manji to leave the country with her grandmother. This decision was crucial as it ensured the child's well-being amidst the legal chaos and highlighted the urgency for clear regulations on surrogacy.

Implications for Surrogacy Laws

The case of Baby Manji Yamada v. Union of India underscored several critical points. It highlighted the gaps in the Indian legal framework concerning surrogacy, especially in the areas of citizenship, parental rights, and the legal status of children born through surrogacy. The case brought to light the need for protecting the rights of all parties involved in surrogacy— the surrogate mother, the intended parents, and the child. It pointed out the complications that can arise from differing international laws on surrogacy and citizenship, suggesting that global cooperation might be necessary. This case was a catalyst for change, prompting the Indian government to consider more stringent regulations on surrogacy. It illustrated the complex interplay between national and international laws and the human impact of the inadequacies in legal frameworks.

Jan Balaz v. Anand Municipality

Jan Balaz, a German national, and his wife engaged a surrogate mother in Gujarat, India, which resulted in the birth of twins. Post-birth, the couple faced significant legal hurdles in obtaining Indian passports for the twins due to the lack of clear legal status for children born through international surrogacy arrangements. The case primarily revolved around the citizenship and passport issuance for the children born through surrogacy to foreign nationals in India.

Legal Challenges:

Citizenship and Passport Issuance: The central issue in this case was the Indian authorities' reluctance to issue passports to the twins. Since the twins were genetically related to the German parents but born in India through a surrogate, their citizenship status was ambiguous under existing laws.

Legal Recognition of Surrogacy:

At the time, Indian law did not have clear provisions for the recognition of surrogacy agreements especially those involving foreign nationals. This led to complexities in recognizing the parentage and citizenship of children born from such arrangements.

Supreme Court's Intervention:

The Supreme Court's intervention was crucial in this case. Recognizing the legal and humanitarian issues at stake, the Court did not grant Indian passports to the twins but instead provided an exit permit. This permit allowed the twins to leave India and enter Germany where the German authorities could handle their citizenship status according to their national laws.

Implications and Broader Impact:

Highlighting Legal Gaps: The case underscored significant gaps in Indian surrogacy law, particularly in handling cases that involved foreign nationals. It highlighted the need for comprehensive legal frameworks that could accommodate the growing trend of international surrogacy.

International Legal Coordination:

The case showed the challenges and the necessity for coordination between legal systems of different countries in handling the complexities of surrogacy, which often involves multiple national jurisdictions. The Jan Balaz case was instrumental in drawing

attention to the intricate legal, ethical, and humanitarian issues involved in international surrogacy. It paved the way for discussions on improving legal frameworks to better support the rights of children born through surrogacy, the surrogate mothers, and the intended parents across borders. The intervention by the Supreme Court highlighted the judiciary's role in addressing gaps in existing laws and the need for legislative action to protect the interests of all parties involved in surrogacy arrangements.

IV. ETHICAL CONSIDERATIONS

Surrogacy, as an intersection of medical advancement and societal need, is fraught with profound ethical considerations. Central to these concerns is the potential exploitation of surrogate mothers, an issue that has been profoundly explored by feminist authors like Janice Raymond and Sandra Harding. These authors critically analyze the commodification of women's bodies, arguing that surrogacy can perpetuate harmful patriarchal and commercial practices.

Janice Raymond, in her seminal work from 1993[2], articulates concerns about the "perpetuation of objectification and commodification of women's bodies to fulfill patriarchal and commercial ends." She highlights how surrogacy can reduce human relationships and life itself to mere transactions, raising significant ethical dilemmas about how society values women and motherhood. Similarly, Sandra Harding's analysis in 1991[3] expands on these themes by examining the social and medical scrutiny of women's bodies in the context of solving infertility issues. Harding frames this scrutiny as an ethical issue concerning autonomy and consent, questioning whether women are truly free to make choices or are instead coerced by societal and economic pressures.

Hence, these perspectives underscore the need for a critical review of surrogacy practices. Both authors advocate for a surrogacy model that respects the surrogate's autonomy and safeguards their well-being. Such a model should recognize the intricate human values at stake and ensure that the surrogate mothers are not merely seen as vessels[4], but as individuals with rights and dignity. This discussion calls for a balanced approach that considers the desires of those wishing to become parents through surrogacy while rigorously protecting the rights of surrogate mothers. It suggests the necessity for legal frameworks that are sensitive to the ethical complexities involved and which promote fair and humane practices in surrogacy agreements[5]. This involves not only recognizing but actively enforcing the rights of surrogates to make informed decisions, receive adequate medical care, and maintain their autonomy throughout the process.

Surrogacy in India brings to the forefront a range of ethical issues that span the well-being and rights of surrogate mothers to the intentions and responsibilities of those commissioning the surrogacy. One of the primary ethical concerns involves the potential exploitation of surrogate mothers, many of whom come from economically disadvantaged backgrounds.

Exploitation of Surrogate Mothers: There is a significant concern about the potential for exploitation, especially of women from economically disadvantaged backgrounds. Anderson, E. (1990) in her work,[6] philosophically challenges the notion of surrogacy contracts, questioning whether they truly respect the autonomy and intrinsic value of women or treat them merely as carriers or tools for others 'ends. Anderson argues that surrogacy contracts can commodify reproductive labor, reducing a deeply personal and emotional experience to a financial transaction. Anderson also discusses the broader ethical and social implications of surrogacy contracts.

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[2] Raymond, J. (1993). The New Trafficking in Women: Abolitionism, Human Rights, and the Sexual Exploitation of Women and Girls

[3] Harding, S. (1991). Whose Science? Whose Knowledge? Thinking from Women's Lives. Cornell University Press.

[4] Söderström-Anttila, Viveca; Wennerholm, Ulla-Britt; Loft, Anne; Pinborg, Anja; Aittomäki, Kristiina; Romundstad, Liv Bente; Bergh, Christina (March 2016). "Surrogacy: outcomes for surrogate mothers, children and the resulting families-a systematic review

[5] Imrie, Susan; Jadva, Vasanti , "The long-term experiences of surrogates: relationships and contact with surrogacy families in genetic and gestational surrogacy arrangements". Reproductive BioMedicine Online. **29** (4): 424–435. doi:10.1016/j.rbmo.2014.06.004. PMID 2513155

[6] Anderson, Elizabeth. (1990). "Is Women's Labor a Commodity?"

She suggests that by commodifying reproductive labor, society may further entrench gendered views of women's roles as primarily reproductive and caretaking. This could reinforce existing gender inequalities and perpetuate traditional roles that feminist movements have long challenged. Furthermore, Anderson touches upon the potential for exploitation inherent in surrogacy contracts. Women, particularly those from economically disadvantaged backgrounds, may enter into surrogacy not as a fully autonomous choice but as a "choice" coerced by financial necessity. This exploitation is exacerbated by global inequalities, where women in poorer countries might be seen as cheap sources of reproductive labor by wealthier individuals or couples from developed countries.

Informed Consent: The issue of informed consent is critical. It is essential to ensure that surrogate mothers fully understand the medical procedures they will undergo, the potential risks involved, and the emotional and physical demands of surrogacy. Informed consent is not merely a formal procedure but a fundamental ethical principle that respects the autonomy and dignity of surrogate mothers. Surrogacy involves various medical procedures, including hormone treatments, in vitro fertilization (IVF), and potentially high-risk pregnancies and deliveries. As Schenker and Carmi[7] (1999) discuss in their study, the provision of clear, comprehensive information about these procedures and associated risks is crucial. This includes explaining the possibility of multiple pregnancies, miscarriage, and the long-term health implications of hormonal treatments.

The physical and emotional toll of surrogacy can be significant. Teman highlights [8]the emotional labor involved in carrying and giving up a baby. Surrogate mothers need to understand the potential for emotional attachment and the psychological challenges of relinquishing the child post-birth.

Legal and Financial Understanding: It's also vital that surrogates fully understand the legal and financial terms of the surrogacy agreement. As Ciccarelli and Beckman (2005) note in "Navigating Rough Waters: An Overview of Psychological Aspects of Surrogacy," surrogates must be aware of their rights and obligations, the compensation involved, and any possible legal conflicts, such as custody disputes or what happens if the intended parents separate or refuse the child.

Commercial vs. Altruistic Surrogacy: India has shifted from allowing commercial surrogacy to only permitting altruistic surrogacy, where no monetary compensation is given beyond medical expenses and insurance. This raises ethical questions about the autonomy of surrogate mothers and the commercialization of reproductive services. The shift from commercial to altruistic surrogacy in India has sparked debates about the commodification of the body and the ethical implications of paid surrogacy. The Indian government has introduced regulations to limit surrogacy to altruistic motives within certain familial relationships to combat commercial exploitation. However, this raises questions about the potential for subtle coercion and pressure within family dynamics.

Rights of the Child: Ethical considerations in surrogacy extend beyond the rights and well-being of the surrogate mother to encompass the rights of the children born through such arrangements. These ethical considerations focus on treating these children with the same dignity and rights as those born through traditional means, particularly regarding their knowledge of their origins and their status under the law.

1. Right to Know Biological Origins:

Transparency and Access to Genetic Information: Children born through surrogacy often have a complex genetic and gestational background. Ethical considerations argue that these children have a right to know their biological origins. This includes access to information about the surrogate mother and the egg or sperm donors if different from the commissioning parents. Legislation in countries like Sweden and the Netherlands provides frameworks where children can access their biological information once they reach a

[7] Schenker and Carmi (1999) discuss in their study "Informed Consent in Human Experimentation Before the Nuremberg Code,"

[8] Teman (2010), in "Birthing a Mother: The Surrogate Body and the Pregnant Self,"

certain age, fostering transparency and acknowledging their rights to personal identity.
Psychological Well-being: Understanding their origins can be crucial for the psychological development and identity formation of these children. Studies, such as those reviewed by the American Psychological Association, suggest that children who have access to their biological information tend to fare better in terms of psychological well-being.

2. Ensuring Children Are Not Seen as Products of Contracts:
Legal Status and Protection: It's essential that children born via surrogacy are recognized as full persons under the law, with all rights and protections accorded to any child. This means ensuring they are not treated as commodities or the mere products of a financial or contractual arrangement. Countries like Canada and the UK have specific clauses in their surrogacy laws ensuring that the child's welfare is paramount in any surrogacy agreement, akin to adoption laws.
Parental Rights and Responsibilities: Ethical guidelines must also ensure that the commissioning parents assume full parental rights and responsibilities from birth. This responsibility underlines that the child is not merely a product of a contract but a person whose interests and rights must be safeguarded. This includes provisions for the continued support and care of the child, regardless of any change in circumstances of the commissioning parents or any defects or disabilities discovered in the child.

3. Preventing Statelessness and Legal Limbo:
Citizenship and Nationality Issues: Surrogacy arrangements, especially international ones, can create complicated situations regarding the child's citizenship and legal status. Without clear legal provisions, children can end up stateless or stuck in a legal limbo. Countries like Israel have specific guidelines to prevent such situations, requiring legal parenthood and citizenship issues to be resolved before the surrogacy process begins. Addressing these issues requires careful legal and ethical considerations to balance the rights and needs of all parties involved in surrogacy—ensuring that children born from these arrangements are respected as individuals with rights, not merely as outcomes of a contractual agreement. These considerations are essential for creating a compassionate and just approach to surrogacy that respects the dignity of all human beings involved.

IV. LEGAL CONSIDERATIONS

The Surrogacy (Regulation) Act, 2021, in India represents a significant legal effort to regulate and manage the complexities of surrogacy while addressing ethical concerns and exploitation risks. However, this legislation has been met with both support and criticism from various stakeholders including legal experts, activists, and the general public.

Pros of the Surrogacy (Regulation) Act, 2021
Prevents Exploitation: By banning commercial surrogacy, the law aims to prevent the exploitation of vulnerable women who might be coerced into surrogacy for financial gain.
Protects the Child's Rights: The law ensures that children born through surrogacy are entitled to all rights and privileges that are naturally available to biological children of the intended parents.
Regulatory Oversight: The establishment of National and State Surrogacy Boards provides a regulatory framework that oversees surrogacy clinics and ensures that surrogacy practices adhere to ethical and legal standards.

Cons of the Surrogacy (Regulation) Act, 2021
Restrictive Nature: The law restricts surrogacy to married Indian couples, thereby excluding single individuals, LGBTQ+ individuals, and those in live-in relationships, which many see as discriminatory and a violation of individual rights to reproductive choices.
Lack of Clarity and Ambiguity: Some critics argue that the terms like "close relative" are ambiguous and can lead to interpretative challenges and potential misuse. The term "close relative" as used in India's Surrogacy (Regulation) Act, 2021, has indeed been a point of ambiguity and potential interpretative challenges. The Act restricts altruistic surrogacy to a surrogate who must be a "close relative" of the intending couple, but it does not specify what relationships qualify as "close relative." This lack of specificity can lead to several practical and ethical issues.

Varying Definitions: The definition of a "close relative" can vary widely among different cultures and individual family dynamics within India. For some, this may strictly mean first-degree relatives like sisters or cousins, while others might consider a broader range of kinship ties.
The restriction to altruistic surrogacy also raises questions about equity in access to reproductive technologies. Those without suitable relatives are unduly disadvantaged, effectively denying them the opportunity to pursue parenthood through surrogacy. This could be viewed as an infringement on the fundamental right to family life, as recognized under various human rights frameworks. It places a particular burden on certain segments of the population, including single individuals, LGBTQ+ couples, and others who may find it challenging to meet the strict criteria set forth by the Act.

Legal and Ethical Dilemmas: Without a clear definition, there can be legal and ethical dilemmas about who can legitimately act as a surrogate. For example, if a family considers a distant relative or an in-law as a close relative, it may technically meet the personal understanding but not align with broader legal or ethical expectations.

Potential for Coercion: The ambiguity could lead to situations where family members are coerced into becoming surrogates due to familial pressure, under the guise of being a "close relative." This can be particularly problematic in patriarchal or economically disadvantaged contexts where women may feel obligated to comply with family decisions.

Judicial Interpretation: Cases may arise where courts need to intervene to determine whether a surrogate fulfills the criteria of being a "close relative," leading to inconsistent rulings and further complicating the legal landscape surrounding surrogacy.

Misuse in Contractual Agreements: Intending parents and surrogates might manipulate the vague terminology to fit their specific situations, potentially leading to contracts that might not fully align with the spirit of the law intended to protect surrogates and ensure ethical practices.

Potential Underground Market: The ban on commercial surrogacy might lead to the rise of an underground black market, where the law cannot reach and where exploitation may be even more rampant. In an underground market, surrogacy agreements would likely occur without any legal or medical oversight. This lack of regulation can lead to poor health care for surrogate mothers, inadequate prenatal care, and increased medical risks for both the surrogate and the child. Without legal protections, surrogate mothers in an underground market could be more vulnerable to exploitation. This might include inadequate compensation, coercion into becoming surrogates, or being forced into multiple surrogacies without proper medical and psychological support. Both surrogate mothers and intended parents face increased legal risks in an underground market. Surrogate mothers may not have the legal recourse to claim their rights, and intended parents might face challenges related to the custody and nationality of the child born through surrogacy. Operating outside of regulated medical facilities, underground surrogacy arrangements might not adhere to the safety standards necessary to ensure the health of the surrogate and the baby. This can include subpar medical practices, inadequate screening of participants for infectious diseases, and improper handling of complications. The stigma associated with surrogacy could be exacerbated if the practice is pushed underground. Surrogate mothers might face social ostracization, and children born from surrogacy might face challenges related to their identity and recognition. The potential rise of an underground market for surrogacy in India highlights the need for a balanced approach in regulation.

Economic Impact on Surrogate Mothers: By eliminating the possibility of being compensated beyond medical expenses, the law may reduce the economic empowerment that surrogacy can offer to surrogate mothers. Reduced Financial Incentives: Previously, commercial surrogacy allowed surrogate mothers to receive significant compensation that often far exceeded their typical earning potential. This compensation could fundamentally change the economic condition of a surrogate and her family, offering a route out of poverty or financial instability. Many women who chose to become surrogate mothers come from lower socio-economic backgrounds and view surrogacy as an opportunity to provide better

education for their children, improve their living conditions, and secure a more stable financial future. By limiting compensation to only medical expenses and insurance, the law significantly reduces the financial benefits that might otherwise be available to these women. With the official channels for commercial surrogacy closed, there is a risk that women could be coerced into underground surrogacy arrangements that may offer financial incentives but lack the legal protections and regulations needed to ensure their safety and well-being. The lack of substantial financial compensation could deter many potential surrogate mothers, impacting the availability of surrogates for those who cannot conceive naturally. This shift could also have broader social implications, such as increased financial distress among women who might have considered surrogacy as a viable economic option.

The economic impact on surrogate mothers due to the ban on commercial surrogacy is profound, affecting not only individual surrogate mothers but also the broader dynamics of surrogacy in India. While the intent behind the law is to protect surrogate mothers from exploitation, it also inadvertently reduces the economic opportunities that surrogacy can provide, thus necessitating a balanced approach that protects surrogate mothers while also considering their economic realities and aspirations. These examples underscore the need for clearer regulations and definitions within the Surrogacy (Regulation) Act. Clarifying what constitutes a "close relative" would help mitigate risks of exploitation and coercion, ensure ethical practices, and provide better legal protections for all parties involved in surrogacy arrangements. Addressing this ambiguity would also facilitate smoother implementation of the law and reduce the burden on judicial systems by preventing a plethora of cases seeking interpretation.

V. SOCIAL IMPLICATIONS

The Surrogacy (Regulation) Act, 2021, also brings up profound social and ethical implications. It reflects the tension between traditional Indian values and modern reproductive technologies. While aiming to protect all parties involved, it also imposes a state-centric view of morality and ethics on the highly personal decisions related to reproduction and family planning.

Cultural Reflection and Resistance: In India, traditional values often emphasize biological parenthood within the bounds of marriage. The restriction of surrogacy to married heterosexual couples under the Act aligns with these cultural norms, implicitly resisting the changing global attitudes towards family structures, which include acceptance of LGBTQ+ parents and single parents by choice. This alignment[9] with traditional norms can be seen as reinforcing the cultural ethos that values certain family structures over others, potentially marginalizing non-traditional families.

State-Centric Moral Impositions: By legislating the conditions under which individuals can access reproductive technologies, the state imposes a specific moral and ethical framework on personal decisions. Such state-centric impositions raise concerns about autonomy and the right to privacy in reproductive choices, reflecting a broader tension between individual rights and societal values.[10]

Protection vs. Autonomy: The Act aims to protect surrogate mothers from exploitation and commercial pressures. However, by doing so, it also limits the autonomy of all parties involved—surrogate mothers, intended parents, and potential surrogates who might see surrogacy as a mutually beneficial economic opportunity. Critics argue that while the intent to protect is commendable, the Act may paternalistically limit personal choices under the guise of protection[11]. While the overarching goal of protecting individuals involved in surrogacy arrangements is noble and well-intentioned, the implementation of certain regulations may inadvertently lead to paternalistic outcomes, wherein the state or governing bodies impose their

[9] Kristin Bumiller in "The Civil Rights Society"

[10] Saxena, Pikee; Mishra, Archana; Malik, Sonia (2012). "Surrogacy: Ethical and Legal Issues". *Indian Journal of Community Medicine*. **37** (4): 211–213. doi:10.4103/0970-0218.103466. ISSN 0970-0218. PMC 3531011. PMID 23293432.

[11] Spar, D. L. (2006). Protection vs. Autonomy The New England Journal of Medicine, 354(13), 1349-1351.

values and judgments on individuals, overriding their own autonomy and decision-making capacity.

One of the primary concern is that restrictive surrogacy laws may undermine individuals' agency by limiting their freedom to make personal choices regarding their reproductive options. For example, laws that only permit altruistic surrogacy arrangements or restrict eligibility criteria based on marital status, age, or sexual orientation may effectively deny certain individuals the opportunity to pursue surrogacy as a means to realize their dreams of parenthood or to help others in need of a surrogate. Moreover, paternalistic surrogacy laws may perpetuate social inequalities by disproportionately affecting marginalized or economically disadvantaged individuals. For instance, restrictions on compensation for surrogate mothers may disproportionately impact women from lower socioeconomic backgrounds who may rely on surrogacy as a source of income or financial stability. By limiting their ability to negotiate fair compensation, the present law may exacerbate existing disparities and restrict economic opportunities for vulnerable populations.

Furthermore, that paternalistic surrogacy laws may fail to recognize the diverse motivations and preferences of individuals involved in surrogacy arrangements. While some individuals may choose surrogacy for altruistic reasons or as a means of helping others, others may view it as a legitimate economic opportunity or a way to exercise reproductive autonomy. By imposing rigid regulations that prioritize certain values or motivations over others, the present laws may disregard the complexities of individuals' lived experiences and perspectives.

Ethical Dilemmas in Family Planning: The Act's restrictive nature also brings up ethical dilemmas about the right to family planning. By limiting surrogacy to only altruistic motives and to close relatives, the law restricts individuals' choices on how to create families, especially affecting those who cannot conceive naturally and do not have willing close relatives[12]. (Sharma & De Sousa, 2016). These ethical considerations suggest a need for a more inclusive approach to surrogacy legislation that carefully balances the protection of surrogates against the reproductive rights of all individuals. Such an approach would require revisiting the current restrictions to accommodate a broader spectrum of family planning needs[13].

CONCLUSION

The Surrogacy (Regulation) Act, 2021, by restricting surrogacy to altruistic motives and to close relatives, introduces several ethical dilemmas in the realm of family planning. This legislative framework limits individuals' autonomy over their reproductive choices, particularly impacting those who cannot conceive naturally and lack willing close relatives to act as surrogates. Such restrictions not only limit the biological desire to parent but also raise significant ethical questions about the role of the state in personal reproductive decisions. In imposing these restrictions, the law prioritizes a certain ethical viewpoint that values the prevention of commercial exploitation over individual reproductive autonomy. While the intention to protect surrogate mothers from potential commercial exploitation is ethically commendable, it may also inadvertently restrict the rights of individuals seeking alternative reproductive avenues. The ethical dilemma arises in balancing these competing interests—protecting vulnerable surrogates while also respecting the reproductive rights of individuals. Moreover, the requirement that surrogates be close relatives can complicate family dynamics and potentially place undue emotional and psychological pressures on family members. This can lead to situations where individuals feel coerced into surrogacy due to familial obligations, rather than a genuinely altruistic desire to help. Such scenarios further complicate the ethical landscape surrounding surrogacy, as they might blur the lines between altruism and implicit coercion within familial relationships.

[12] Sharma, V., & De Sousa, A. (2016). Ethical Dilemmas in Family Planning, Journal of Medical Ethics, 42(8), 511-513.

[13] "Using a Surrogate Mother: What You Need to Know". *WebMD*. Retrieved April 6, 2024.