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### Full Length Research Paper

## Surrogacy in India: Socio-cultural and Legal Dilemmas and Feminist Perspectives

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#### ARTICLE DETAILS

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#### ABSTRACT

This article explores the complex dynamics of surrogacy in India, examining the intricate sociocultural and legal challenges surrounding surrogacy in India, offering a feminist perspective on its ethical implications. It delves into the emotional and social stigmas faced by surrogate mothers, whose reproductive labor is often misunderstood and marginalized. Addressing the dichotomy between financial empowerment and potential exploitation, the paper explores how patriarchal norms and societal expectations shape perceptions of surrogacy. It critically evaluates India's evolving legal landscape, including the Surrogacy (Regulation) Act, 2021, highlighting its restrictive nature and implications for surrogate mothers, intended parents, and marginalized groups. The article underscores the importance of an inclusive dialogue to mitigate stigma, ensure fair treatment, and uphold the dignity and autonomy of women within this rapidly evolving reproductive context. Recommendations for ethical reforms and societal awareness are proposed to foster a balanced approach to surrogacy that aligns with broader goals of gender equality and women's empowerment.

### 1. Introduction

Surrogacy has been a topic of intense debate and controversy, both globally and particularly in India, where the practice touches upon the delicate intersection of cultural values, economic inequality, reproductive rights, and legal regulations. India's emergence as a major hub for surrogacy over the past two decades has ignited fierce discussions regarding the ethics of commodifying reproductive labor and the exploitation of women from lower socio-economic backgrounds. At the heart of these debates are questions about the role of women's bodies in reproduction, how laws should regulate new reproductive technologies, and the impact of surrogacy on the socio-cultural fabric of Indian society. Feminist scholars, legal experts, and human rights activists have contributed diverse and sometimes conflicting viewpoints on surrogacy, offering a nuanced understanding of its implications for women's rights and health.

#### 1.1 Cultural Context: The Primacy of Motherhood in Indian Society

Motherhood occupies a central role in Indian culture, with deep-rooted social expectations around a woman's role in the family and society. Fertility and childbearing are often seen as fundamental aspects of womanhood. In this context, surrogacy—a practice in which a woman carries and delivers a baby for someone else—challenges these traditional conceptions of motherhood. The surrogate mother, though biologically connected to the child during gestation, is expected to relinquish all maternal rights and emotional bonds to the commissioning parents after birth. This contradiction between the traditional notion of motherhood and the commercial or altruistic arrangement of surrogacy introduces a range of psychosocial and emotional issues for surrogate mothers in India. In rural and conservative communities, infertility can be a source of significant social stigma for couples, particularly women. The inability to bear children may result in ostracization or emotional abuse, and women are often blamed for fertility issues, regardless of medical evidence to the contrary. Surrogacy, in these cases, can be seen as a potential solution, but it is also fraught with stigma of its own. Many people regard surrogacy with

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suspicion, associating it with moral transgressions or viewing it as a violation of the natural order of family life. The surrogate mother, therefore, occupies a liminal space where she fulfills a biological function while simultaneously being alienated from the very role of mothering.

The involvement of surrogates is often kept hidden due to societal perceptions of shame surrounding the practice. Many like Teman (2010) believe that even though surrogacy can provide a financial lifeline for women from economically disadvantaged backgrounds, they often face the dual burdens of social stigma and emotional distress. The emotional detachment required in the surrogacy process can leave surrogate mothers feeling isolated, torn between the biological bond they develop with the child and the legal or contractual obligations to the commissioning parents. High-profile cases involving Indian celebrities like Shah Rukh Khan and Karan Johar, who chose surrogacy to expand their families, have helped bring attention to this option, slowly shifting societal perceptions. Internationally, celebrities such as Kim Kardashian, Priyanka Chopra, and Elton John have also used surrogacy, further normalizing the practice and highlighting its growing acceptance across the globe. Films like *Chori Chori Chupke Chupke* in India and *The Back-Up Plan* like movies made internationally, explore the emotional complexities and social challenges associated with surrogacy, offering broader visibility to the practice, although stigma continues to exist

## 2. Stigma and Socio-Economic Dynamics

The stigma associated with surrogacy in India is deeply entrenched in broader societal attitudes towards women's reproductive choices and labor. Surrogate mothers are frequently perceived as engaging in a socially undesirable activity. Surrogacy is often associated with exploitation, with surrogates viewed as 'selling their bodies' much like sex workers. This association stems from patriarchal constructions of acceptable female behavior, where a woman's reproductive function is expected to remain within the bounds of family life. The report prepared by the organization SAMA–Resource Group for Women and Health (2012) reflects on women insecurity where women face stigma because of their deviance from traditional patriarchal roles and institutions wherein reproduction is seen to be carried out in private, familial space. Any deviation from this norm is seen as a moral violation, whether it involves surrogacy or other forms of reproductive labor like egg donation or commercial sex work.

These stigmatizing attitudes can lead to the marginalization of surrogate mothers. In many cases, surrogates are forced to conceal their participation in surrogacy arrangements from their neighbors, extended family, and community members. Even after the surrogacy is completed, many women face judgment and ostracization if their role becomes known. This stigma has been exacerbated by media portrayals of surrogacy as an exploitative practice, with sensationalized stories of surrogates being 'used' by wealthy foreigners or being forced into the industry by economic desperation. These could be the multiple reason that many people including celebrities who have child(ren) through surrogacy never share any information about its services. Yet, for many women, surrogacy offers a significant source of income, far exceeding what they could earn through traditional employment. In India, a surrogate mother can earn few lakhs for carrying a child to term—money that is often used to pay off debts, support children's education, or invest in a small business. However, this amount is often a small fraction of the substantial fees paid by the commissioning parents. The pressing need for financial security significantly influences surrogacy arrangements, which raises concerns about the informed consent process, as highlighted by Jackson (2001). Thus, consequently, women—particularly those from economically disadvantaged backgrounds—are often subtly coerced into becoming surrogate mothers, driven more by financial necessity than personal choice. This dynamic creates a critical tension between the potential for surrogacy to offer economic empowerment and the risk of exploitation, especially for marginalized women who may feel compelled to participate in surrogacy arrangements due to their economic circumstances rather than genuine voluntary choice.

## 3. Legal Landscape: Evolution of Surrogacy Laws in India

India's legal response to surrogacy has undergone significant changes over the last two decades, largely in response to concerns about the exploitation of women and the rapid growth of the country's commercial surrogacy industry. Before the introduction of specific legislation, surrogacy existed in a legal gray area, with ART (Assisted Reproductive Technology) clinics proliferating and offering services to both domestic and international clients.

The first major attempt to regulate the surrogacy industry came with the introduction of the National Guidelines for Accreditation, Supervision, and Regulation of ART Clinics in India in 2005. These guidelines, developed by the Indian Council of Medical Research (ICMR), established basic standards for ART clinics but did not provide a comprehensive legal framework for surrogacy. As a result, commercial surrogacy continued to grow, attracting international attention due to the relatively low cost of services in India compared to other countries. Between 2005 and 2015, India became one of the most popular destinations for surrogacy, with an estimated \$2 billion annual industry fueled by medical tourism. In the early 2000s, India's first legal cases related to surrogacy focused on children born through trans-national surrogacy as there were chances that these children would be stateless. Such arrangements have been effectively banned since 2016. The courts have also more recently grappled with matters such as the status of the woman who carries a child through surrogacy and is on leave for the maternity, and the parameters of both the intended parents and the surrogates. In the 2016 court case inclined as *Jayashree*

*Wad Versus Union of India*, the petitioner called for the abolition of commercial surrogacy, which, nevertheless, has been partially addressed by the Surrogacy Act. In this respect, its actual investigation or analysis has not been by far conducted, vis-a-vis the understanding of financial reimbursement to surrogates and their kind of work practice. This rapid expansion raised concerns about the lack of protections for surrogate mothers, many of whom were poor and lacked access to basic legal and medical safeguards. There were numerous reports of surrogate mothers being exploited by unscrupulous clinics or commissioning parents, with inadequate compensation, poor medical care, and a lack of post-natal support. These issues prompted the Indian government to begin drafting legislation that would more explicitly regulate the surrogacy industry.

The Assisted Reproductive Technology (Regulation) Bill was first introduced in 2008 and revised in 2010 and 2014. These bills sought to establish a legal framework for ART clinics and surrogacy arrangements, but they faced significant opposition and were never passed into law. The 2010 version of the bill, for example, sought to regulate surrogacy by establishing requirements for the contracting parties, such as ensuring that commissioning parents were legally bound to accept the child regardless of its health or disability status. However, the lack of clarity around the rights of surrogate mothers and concerns about the commercialization of reproduction led to the bill's failure.

### 3.1 *The Surrogacy (Regulation) Bill, 2016 and 2019*

In 2016, the Indian government introduced the Surrogacy (Regulation) Bill, 2016, which sought to ban commercial surrogacy entirely and permit only altruistic surrogacy arrangements. The bill defined altruistic surrogacy as a practice where a woman carries a child for a couple without receiving any financial compensation beyond medical expenses and insurance coverage. Only married couples who had been unable to conceive for at least five years were eligible to commission a surrogate, and the surrogate herself had to be a close relative of the commissioning parents. The 2016 bill faced criticism for its restrictive provisions, particularly the requirement that the surrogate be a close relative. Critics argued that this limited the ability of many couples to find surrogates and effectively excluded certain groups, such as same-sex couples, single individuals, and unmarried couples, from accessing surrogacy services. Moreover, the bill did not address the potential economic harm to women who relied on commercial surrogacy as a source of income. The bill was passed by the Lok Sabha (the lower house of India's parliament) but faced opposition in the Rajya Sabha (the upper house), and was ultimately reintroduced in 2019 with several amendments. The Surrogacy (Regulation) Bill, 2019 maintained many of the provisions of the 2016 bill but added some notable changes. The 2019 bill clarified that altruistic surrogacy could only be performed by a "willing" woman who had herself been a mother, and it increased the penalties for violating the surrogacy regulations. The bill also introduced the establishment of surrogacy boards at the national and state levels to oversee the implementation of the regulations and ensure compliance with the law. Despite these changes, the 2019 bill continued to face opposition, particularly from LGBTQ+ advocacy groups, women's rights organizations, and human rights activists. They argued that the ban on commercial surrogacy disproportionately harmed poor women, who were most likely to rely on surrogacy for financial support. Moreover, the exclusion of single parents and same-sex couples from accessing surrogacy was seen as discriminatory and regressive.

### 3.2 *Surrogacy (Regulation) Act and the Assisted Reproductive Technologies (Regulation) Act, 2021*

The Surrogacy (Regulation) Act and the Assisted Reproductive Technology (Regulation) Act, 2021, were introduced to regulate surrogacy and assisted reproductive technologies. These acts have been aimed at keeping exploitation out and standardizing the reproduction medicine industry. The current Surrogacy Act prohibits commercial surrogacy, and only altruistic surrogacy will be allowed, wherein the surrogate mother would be paid only her medical expenses. The eligibility will also be defined by this act for intending parents as well as for surrogates. It also structures regulatory bodies to oversee them. Similarly, the ART Act controls fertility clinics and ART services for ethical conduct and protection of rights of the donor, surrogate, and commissioning parents. Both of these enactments govern IVF clinics.

They condemn and disapprove commercial surrogacy, check and control ART clinics and banks, and attempt to put an end to misuse. There are some variations, though. The Surrogacy Act limits access to ARTs and surrogacy only to married infertile couples and some categories of women to avail themselves of ARTs and surrogacy services. Surrogacy clinics are only given registration for a period of three years, while clinics offering other ART services are given five years' registration. Under the ART Act, all types of advertisement are strictly prohibited and storage, sale, or importation of human embryos or gametes is also not permitted in surrogacy clinics. Since both acts came into force on January 25, 2022, together with an additional 10 months' transition period to safeguard the interests of already registered gestational carriers.

## 4. **Feminist Perspective on current surrogacy practice/**

Feminist perspectives highlight that surrogates often enter this domain due to financial pressures, such as constructing a home, funding a daughter's marriage, or addressing medical expenses. The advent of medical technologies like IVF and IUI has changed the traditional meaning of surrogacy, allowing conception without physical relationships. However, while technology has evolved, the stigma surrounding surrogacy remains. Surrogates often face disrespect and are ostracized, their work seen as deviant from traditional patriarchal norms that regard reproduction as a private, familial activity. The stigma is exacerbated

by its association with occupations like sex work, and surrogates must constantly reconcile their work with societal perceptions of morality, often questioning the class-based origins of these moral judgments.

Feminist scholars have debated the alienability of women's bodies in the context of surrogacy, with legal experts exploring contractual and jurisdictional concerns. Some argue that surrogacy can be equated with forms of exploitation akin to slavery, where women are commodified, and their labor—both physical and emotional—becomes a transactional service. Others, like Allen (1990), reject this comparison, arguing that surrogacy lacks the extreme control that defines slavery and should not be morally equated. Commercial surrogacy, particularly in India, has emerged as a new form of temporary labor for poor women, driven by globalization and the spread of reproductive technologies. Scholars like Pande (2010) emphasize the need to recognize surrogacy as labor, vulnerable to exploitation but also an avenue for women to exercise agency. The commercialization of surrogacy has transformed it into a booming industry in India, attracting international clients due to the lower costs. However, this has led to exploitative practices where husbands may coerce their wives into surrogacy for financial gain, further complicating the ethical landscape. On the other hand, some women enter surrogacy willingly, using modern technology to help infertile couples while feeling emotionally detached from the child, seeing it more as a service than a personal connection.

Feminists are divided on surrogacy, with some supporting it as a reproductive choice and a form of labor that women should be able to sell. They argue that surrogacy, like domestic labor, should be recognized as work that is often undervalued in traditional gender roles. However, anti-surrogacy feminists argue that pregnancy is more than a service; it is a physically and emotionally intense experience. They claim that surrogacy alienates women from their bodies and reinforces their objectification and subordination. Economic pressures may coerce women into surrogacy, casting doubt on the idea of full and informed consent.

### **5. The Ethical and Legal aspects of Altruistic Surrogacy**

The legal framework surrounding surrogacy in India has been evolving, with various bills introduced to regulate the practice. The 2016 Surrogacy (Regulation) Bill banned commercial surrogacy and introduced altruistic surrogacy, limiting it to "close relatives" of the intending parents. This shift disrupted the flourishing surrogacy market, excluding many who had relied on it for financial survival, and sparking a debate over whether the new regulations protect or harm women involved in surrogacy. While altruistic surrogacy is now the only legal option, critics argue that this restrictive model pushes the practice underground, increasing the risk of exploitation in unregulated, illegal surrogacy markets. It is grounded in the idea that reproductive labor should not be commodified and that surrogacy should be motivated by altruism rather than financial gain. In practice, however, altruistic surrogacy raises several ethical and practical concerns.

First, the requirement that surrogates be close relatives of the commissioning parents creates potential conflicts of interest and emotional pressure. Women may feel obligated to become surrogates for family members, even if they are not fully comfortable with the arrangement. This dynamic undermines the notion of informed and voluntary consent, as the decision to participate may be driven more by familial duty or emotional coercion rather than personal choice. In such situations, women may face immense pressure to prioritize family relationships over their own well-being or desires. This can lead to emotional distress, strained family dynamics, and even resentment, particularly if the surrogate experiences complications or negative feelings about the pregnancy. The lack of truly autonomous decision-making in these cases raises ethical concerns, as it compromises the surrogate's agency and ability to make choices free from undue influence. Globally, surrogacy remains a contentious issue, The stigma and taboo around the surrogacy practice is so much that Teman (2010) informs that moral and ethical ambiguity surrounding surrogacy has forced countries either to ban it completely, have regulated practice or allowed to have free practice.

The latest Indian regulations bar foreigners, live-in partners, homosexuals, and single individuals from opting for surrogacy, narrowing the scope for those wishing to become surrogates through this method. This has raised questions about whether the new laws will provide adequate protection for surrogates or merely push the practice into darker, more exploitative realms. Feminist insights into surrogacy highlight the tension between recognizing surrogacy as a form of labor and the emotional and physical demands it places on women. While some view surrogacy as empowering, others warn of the risks of commodification and exploitation. As India continues to grapple with its surrogacy regulations, the question remains whether the practice will be recognized as legitimate labor or remains a highly stigmatized, unregulated industry.

### **6. Suggestions for Improving the Surrogacy Market and Women's Role in Society**

Improving the surrogacy market and enhancing the role of women in society requires a multifaceted approach that addresses legal, economic, social, and ethical dimensions. India, as a major hub for surrogacy, faces the challenge of ensuring that the rights of surrogate mothers, commissioning parents, and the children born through surrogacy are fully protected. To create a more ethical and equitable surrogacy environment, reforms must go beyond current legislation, addressing the deeper structural issues that influence women's reproductive choices and economic vulnerability. These suggestions focus on creating

a more ethical, safe, and equitable environment for surrogate mothers while addressing the underlying social stigmas and economic inequalities that often drive women into surrogacy. Here are detailed suggestions:

### *6.1. Strengthening Legal Frameworks for Surrogacy*

Strengthening legal frameworks for surrogacy in India is essential to ensure the protection of all parties involved, including surrogate mothers, commissioning parents, and the children born through surrogacy. A comprehensive legal framework should be established, outlining clear guidelines for contract terms, medical procedures, compensation, and post-birth responsibilities. Additionally, India should collaborate internationally to develop global standards, preventing legal loopholes that may lead to exploitation or unregulated surrogacy practices. Pre-birth legal agreements must be implemented to clearly define the rights of both surrogate mothers and commissioning parents, ensuring legal clarity and minimizing challenges after childbirth. Surrogate mothers should have the right to withdraw their consent before the embryo is implanted, as specified in the 2019 surrogacy bill, with clearly defined terms to prevent conflicts. Furthermore, the government must ensure that surrogate mothers receive comprehensive healthcare coverage, including both prenatal and postpartum care, as well as financial support for any complications that may arise during or after pregnancy.

The challenges for surrogate mothers are magnified by India's evolving surrogacy laws, including the Surrogacy (Regulation) Act, 2021, which strictly regulates surrogacy to prevent exploitation and marginalization. Recent amendments to these regulations have sparked debate. For instance, a 2023 ruling allowed a woman with Mayer-Rokitansky-Küster-Hauser syndrome to undergo surrogacy with donor eggs, demonstrating a shift towards accommodating certain medical needs. However, critics argue that these laws, while well-intentioned, may inadvertently marginalize economically disadvantaged women, who often enter surrogacy arrangements as a means of financial empowerment (e.g., paying debts or funding education). The Delhi High Court emphasized the importance of balancing surrogacy laws to prevent India from becoming an unregulated "rent-a-womb" hub, highlighting the complexity of ensuring fairness while preventing exploitation.

### *6.2. Economic Empowerment of Surrogate Mothers*

Fair compensation for surrogate mothers should be a priority, rather than banning commercial surrogacy outright. The state could regulate surrogacy to ensure that surrogate mothers receive fair and substantial payment for their labor, protecting them from exploitation by intermediaries. Recognizing surrogacy as labor would entitle surrogate mothers to basic labor rights, including medical leave, maternity benefits, and adequate compensation. Additionally, post-surrogacy financial support should be provided, such as access to vocational training, financial literacy programs, and opportunities for sustainable income, helping surrogate mothers reduce their reliance on surrogacy as their primary livelihood. Offering tax incentives or subsidies for commissioning parents could further encourage fair compensation for surrogates while promoting an ethical and regulated surrogacy market.

### *6.3. Destigmatizing Surrogacy and Women's Reproductive Choices*

Public awareness campaigns should be launched at national and regional levels to educate society about surrogacy as a legitimate and legal reproductive choice, aiming to reduce the social stigma often faced by surrogate mothers. Positive portrayals of surrogate mothers in popular media can help highlight their agency, contribution, and decision-making power, challenging the misconceptions that link surrogacy to exploitation or sex work. Educational programs for healthcare workers, legal professionals, and the general public are also essential to foster a more inclusive and ethical understanding of surrogacy and reproductive rights. In regions where surrogacy is particularly stigmatized, collaborating with local leaders and NGOs on cultural sensitization initiatives can further reinforce that surrogacy is a valid form of work and should not result in social ostracism or moral condemnation.

### *6.4. Empowering Women in Society*

Supporting alternative livelihoods is key to empowering women, particularly in marginalized communities, by creating diverse employment opportunities and access to microfinance programs. This reduces the economic pressure that often forces women into surrogacy out of financial desperation. Additionally, enhancing education and awareness efforts for girls and women through quality education, healthcare, and vocational skills will further strengthen their economic independence and decrease their vulnerability to exploitation. Advancing broader gender equality is crucial, as it encourages women's participation across all sectors—economic, political, and social—shifting societal perceptions away from viewing women primarily as reproductive agents. Furthermore, supporting reproductive autonomy by ensuring access to contraception, abortion services, and comprehensive reproductive healthcare promotes the idea that surrogacy is just one reproductive choice among many, rather than a desperate measure for financial survival.

### *6.5. Reforms to Altruistic Surrogacy Laws*

Incentivizing altruistic surrogacy can be improved by reforming current laws to offer non-financial benefits for surrogate mothers, such as educational grants, access to healthcare for their families, and long-term social security benefits. These incentives would recognize the surrogate's contribution without relying solely on financial compensation. Additionally,

expanding the pool of surrogates beyond the restrictive "close relative" requirement would allow more women who are willing to engage in altruistic surrogacy, while still ensuring ethical guidelines are followed. This broader definition would make surrogacy more accessible while maintaining ethical safeguards.

#### 6.6. Addressing Feminist Concerns and Ethical Issues

Balancing autonomy and protection in surrogacy requires addressing feminist critiques about the commodification of the female body and the lack of autonomy for surrogate mothers. To achieve this, the state should implement a system that ensures surrogate mothers have full control over their reproductive choices while simultaneously offering safeguards against exploitation. Independent ethical oversight bodies, composed of feminist scholars, legal experts, healthcare professionals, and representatives from surrogate communities, should be created to monitor and uphold ethical standards in surrogacy practices. Additionally, supporting feminist movements that advocate for women's reproductive choices is crucial in ensuring that surrogacy is recognized as a legitimate form of reproductive autonomy rather than merely a form of labor exploitation.

#### 6.7. International Surrogacy Regulations

Developing global standards for surrogacy practices is essential to protecting women's rights and ensuring ethical practices in reproductive services. Collaboration with international organizations can help establish these standards, promoting fairness and consistency worldwide. Legalizing and regulating cross-border surrogacy is also crucial to prevent the exploitation of Indian surrogates by wealthy foreigners or international intermediaries. By enforcing contracts and protections across borders, both surrogate mothers and commissioning parents can be safeguarded from potential abuses, creating a more ethical and transparent surrogacy system.

### 7. Conclusion

Surrogacy in India exists at the intersection of reproductive rights, societal stigma, legal frameworks, and feminist theory. The introduction of the Surrogacy (Regulation) Act and the Assisted Reproductive Technology (Regulation) Act, 2021, marks a significant shift in the Indian government's approach to regulating this industry. While these laws aim to protect surrogate mothers from exploitation, they have also created barriers for many intended parents and may drive surrogacy underground. By addressing these key issues, India can not only create a safer and more ethical surrogacy market but also contribute to the broader goal of women's empowerment. The economic empowerment of surrogate mothers through fair compensation and alternative livelihood programs will reduce their vulnerability to exploitation. Legal reforms, including comprehensive regulation, pre-birth agreements, and insurance protections, will ensure that surrogacy is conducted ethically and transparently. Efforts to destigmatize surrogacy and promote reproductive autonomy will empower women to make informed choices about their bodies and reproductive labor without societal judgment. Additionally, broader reforms advancing gender equality, education, and economic independence for women will enhance their roles in society, moving beyond the limitations imposed by traditional gender norms. Surrogacy should be seen as one option among many for women to exert their reproductive autonomy. By supporting these reforms, India can lead the way in establishing a more just, equitable, and inclusive surrogacy market, while also improving the broader role of women in society. This comprehensive approach not only aligns with the protection of women's rights but also promotes their full participation in the economic and social life of the country, advancing gender equality, and ensuring that surrogacy becomes a safer, more ethical practice grounded in respect and autonomy.

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