

Surrogacy (Regulation) Act, 2021: Current issues and Way Forward

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Abstract

Surrogacy has emerged as a complex yet vital option for individuals and couples facing infertility or medical conditions preventing pregnancy. This paper delves into the multifaceted landscape of surrogacy, exploring its legal, ethical, and societal dimensions, with a particular focus on the Surrogacy (Regulation) Act, 2021 in India. The Act, which replaced outdated legislation, aims to regulate surrogacy practices, shifting from commercial to altruistic arrangements, and introducing eligibility criteria for intended parents and surrogate mothers. This study investigates the challenges and implications of the Surrogacy (Regulation) Act, 2021, analyzing its provisions, legal issues, and ethical considerations. It explores the Act's impact on surrogacy practices, including the banning of commercial surrogacy, establishment of the regulatory bodies, and its effects on stakeholders such as surrogates, intended parents, and children born through surrogacy. The research methodology for the study "Surrogacy (Regulation) Act, 2021: Current Issues and Way Forward" involves a comprehensive approach to studying the Surrogacy (Regulation) Act, 2021 and its implications. The research will involve a thorough review of existing literature, including academic papers, legal documents, and case studies related to surrogacy, reproductive rights and legal aspects etc. Finally, the study proposes a way forward, advocating for a balanced approach that prioritizes inclusivity, ethics, and medical advancements. It emphasizes the importance of establishing a robust legal framework that safeguards the rights and well-being of all parties involved in surrogacy arrangements while fostering a supportive environment for individuals and couples seeking to start families through assisted reproductive technologies.

Keywords: Surrogacy Regulation Act 2021, Surrogacy Challenges, Surrogacy Impact

Introduction

Surrogacy is when a woman agrees to labor or give birth for another person or couple so that they can become the child's parent(s). A formal contract is often used to back this up. Surrogacy can be used when a couple doesn't want to carry the pregnancy themselves, when it's physically impossible to get pregnant, when the intended mother is too young to handle the risks of pregnancy, or when a man or a couple of men of the same gender wants to have a child..

It's possible that surrogacy can help you make money. When you agree to be a parent, you get paid for it. It's hard for countries or states to make deals with each other because surrogacy laws and costs vary from country to country. Some people from places that don't allow surrogacy go to places that do. In certain nations, surrogacy is permissible only without money.

When commercial surrogacy is allowed, couples can hire a third-party company to help them find a surrogate and make a deal. As a safety measure, many groups check the mental and physical health of surrogates before they carry and give birth. They help with all intended parent and surrogate legal concerns.

Surrogacy is controversial in India due to morals and surrogate economics. The 2021 Indian Surrogacy Regulation Act makes it even more important. Legally, surrogacy is one woman bearing and delivering a child to another. Medical considerations motivate a "intending couple" to use gestational surrogacy. Why a surrogate

consents determines the kind of surrogacy. Altruistic Surrogacy states that the surrogate mother gets no compensation other than medical and other costs and insurance. The second is commercial surrogacy. Human embryos, gametes, and surrogacy may be exchanged for money or goods. Surrogacy stakeholders include surrogates, single parents, infertile couples, and biologically competent couples who want to use surrogacy. LGBT+ people, due to a growing feeling of family and foreigners who travel to India for surrogacy since it's 5 times cheaper may be included. Like heterosexual couples, the Supreme Court gave same-sex and single parents family rights. India legalized commercial surrogacy in 2002 and implemented ICMR clinic-based Assisted Reproduction guidelines in 2005. Finally, the government banned commercial surrogacy in 2015. Since 2013, overseas homosexual couples and solo parents have been banned. After this, in 2021, the government restricted altruistic pregnancy to married heterosexual couples over a certain age with a biological condition requiring gestational surrogacy. India allows 35-45-year-old widows and divorcees to surrogate. Only 5-year-married cisgender heterosexual couples may surrogate.

Surrogacy couples and companies damaged many women, forcing this law. They handed women less money and higher health risks. Discrimination occurs when poor women act as surrogates for low payments. Illegal commercial surrogacy brings a fine and 10 years in prison. protects women against reproductive tourism and exploitation, but has downsides. It helps many surrogate moms financially. Patriarchal practices force kinship-based women to work for free. Another violation of women's rights is that unmarried or childless women can't become surrogates.

Objectives

- To study the Surrogacy (Regulation) Act, 2021
- To investigate the issues and impact of the new Surrogacy (Regulation) Act, 2021.

Statement of problem

The Surrogacy (Regulation) Act, 2021 presents a multifaceted challenge, marked by ethical, legal, and societal complexities. This study aims to delve into the intricate issues emerging ,complex issues and challenges arising from the implementation of the Act., addressing concerns such as women's autonomy, exploitation, emotional implications, and the impact on diverse familial structures and reproductive rights.

Hypothesis

The hypothesis of the study "Surrogacy (Regulation) Act, 2021 Current Issues and Way Forward" revolves around the impact of the Surrogacy (Regulation) Act, 2021 on surrogacy practices in India, including its effectiveness in addressing ethical, legal, and societal concerns related to surrogacy. The hypothesis also explores the potential challenges and benefits of the Act, It is also important that surrogacy plans are fair and protect the rights of everyone concerned.

Research methodology

The research methodology for the study "Surrogacy (Regulation) Act, 2021: Current Issues and Way Forward" involves a comprehensive approach to studying the Surrogacy (Regulation) Act, 2021 and its implications. The research will involve a thorough review of existing literature, including academic papers, legal documents, and case studies related to surrogacy, reproductive rights, and the legal and ethical aspects of surrogacy in India. This review would have provided a foundational understanding of the historical, legal, and ethical dimensions of surrogacy in the Indian context. Overall, the research methodology for the document likely employed a multidisciplinary approach, integrating legal, ethical, and societal perspectives to comprehensively study the Surrogacy (Regulation) Act, 2021 and its implications for surrogacy in India.

Analysis

Surrogacy (Regulation) Act, 2021

The Surrogacy (Regulation) Act, 2021 allows widows, divorcees, and legally married couples to employ surrogacy for medical reasons.

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Both must be legally married Indians, with a man aged 26–55 and a lady aged 25–50 with no biological, adoptive, or surrogate children.

You could spend 10 years in jail and pay a \$10,000 fine if you copy something for money. These women can only be used for free if they are connected to the pair who wants to use them.

India's Parliament passed the Surrogacy (Regulation) Act, 2021 in August 2021. The law replaces India's 2002 surrogacy statute, which was obsolete and inadequate for business. Some have welcomed the new law as a step toward safe and ethical surrogacy in India, while others have raised concerns about its impact on reproductive rights and the surrogacy market.

India has widespread surrogacy, which is controversial. Indian surrogacy is popular because of its low costs, medical technology, educated doctors, and favorable laws and regulations. Surrogacy commercialization in India highlights concerns about child commodification, women's exploitation, ethics, and law. India proposed a surrogacy legislation in 2016 to solve these difficulties and protect all parties. After much discussion, the Indian Parliament approved the Surrogacy (Regulation) Act, 2021 to appropriately regulate surrogacy. This new law affects Indian surrogacy and is praised by women's and child welfare organizations. Commercial surrogacy is banned, intended parents and surrogate women must meet qualifying conditions, and a National Surrogacy Board is established.

Legal Issues

- Problems may also develop while attempting to comply with the laws governing foreign citizenship or Indian adoptions. When a woman grants her kid German citizenship, for instance, it becomes more difficult to determine the child's nationality.
- A Japanese couple in Gujarat began the process in 2008 with the help of a surrogate mother; however, the parents-to-be went their own ways before the child was born, and the child was not placed with a new family.
- In 2012, an Australian couple used a surrogate mother to bring twins into the world, and they choose one of the kids at random.

Ethical Issue

Surrogacy commercializes kids. Renting the womb harms nature and mother-child bonding. The issue of surrogacy has been a matter of great controversy in India for a considerable period

Indian surrogacy has always been contentious. This is largely due to surrogate exploitation concerns and absence of surrogate kid safeguards. Critics said surrogates were poor, defenceless women mistreated for procreation. The commercialization of surrogacy, with some couples paying large sums for a child, prompted concerns.

Unregulated Indian surrogacy trafficked women and children and exploited them economically. India prohibited offshore commercial surrogacy in 2015 to solve these challenges. Due to weak constraints, Indian surrogacy became unchecked. However, major Indian cases eased these issues.

In 2008, the case of *Baby Manji Yamada v. Union of India* included a surrogate kid who was born in India to a Japanese couple who had previously gone through a divorce. The case demonstrated the need for clear surrogacy legislation, particularly for overseas surrogacy. After the case, the Indian government published surrogacy guidelines to settle legal issues and provide a framework for agreements.

Other noteworthy cases include *Jan Balaz v. Union of India* (2014), which featured foreign surrogacy applicants in India. Indian women and children were protected from exploitation by banning offshore commercial surrogacy. The case demonstrated the need for surrogate and child rights laws.

Provisions of the Act

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- The Surrogacy (Regulation) Act, 2021 allows widows, divorcees, or lawfully married couples to apply for surrogacy if they have a medical condition that requires it.
- The prospective pair must be legally married Indians, with the guy aged 26-55 and the lady aged 25-50, and no prior biological, adoptive, or surrogate children.
- Commercial surrogacy is illegal and carries a 10-year prison sentence and a Rs 10-lakh fine.
- Current rules only permit surrogacy partnerships in which the surrogate mother has a familial tie with the intending parents and neither party gets financial remuneration.

Impact of New Surrogacy (Regulation) Act, 2021

This legislation aims to discourage only charitable surrogacy and outlaw commercial surrogacy, which is becoming more common as more and more people use it for financial benefit. So, this act enables surrogate mothers can only get the expenses related to the medical facility and the insurance coverage.

Children born via surrogacy have their rights protected by this law. This act also guarantees the protection of the surrogate mother. It prohibits the practice of commercialization of the child.

Challenges

- It excludes many people from accessing surrogacy services, such as single parents, unmarried couples, LGBTQ+ couples, and foreigners.
- It imposes strict conditions on the surrogate mother, such as being a close relative of the intended parents, having a child of her own, and not receiving any monetary compensation.
- It does not provide adequate safeguards for the rights and welfare of the children born through surrogacy, such as their citizenship, inheritance, adoption, and identity.

Recent Changes

- In October 2023, the Supreme Court rejected an amendment to the Surrogacy Rules, 2022, which prohibited intended couples from using donor eggs for gestational surrogacy. The court told fresh surrogacy applicants to apply to the jurisdictional high courts, not the Supreme Court.
- The government established the National and State Assisted Reproductive Technology and Surrogacy Boards in May 2023 to regulate surrogacy.
- In January 2022, the Surrogacy (Regulation) Act, 2021 banned commercial surrogacy and allowed altruistic surrogacy with licensed surrogate moms and intended parents.

Conclusion

In conclusion, India's Surrogacy (Regulation) Act, 2021 advances surrogacy regulation. The Act creates a nationwide surrogacy framework to address ethical, legal, and social issues. The Act forbids commercial surrogacy and requires altruistic agreements to protect surrogates and their children.

National and State Surrogacy Boards enforce Act compliance and encourage transparency. These boards signify a commitment to oversight and enforcement, ensuring compliance with the Act's provisions and promoting transparency and accountability in surrogacy practices.

Although progress has been achieved, issues remain. The Act has been criticized for supporting patriarchy and curtailing reproductive autonomy, particularly for impoverished women. Consider altruistic surrogacy's emotional and relationship challenges. Addressing these concerns requires debate, analysis, and policy reforms.

Way Forward and Recommendation

The way forward and recommendation of the Surrogacy (Regulation) Act, 2021 could be:

- To educate the public and medical community about surrogacy's ethical and legal concerns and surrogate mothers' and children's rights.
- To ensure effective implementation and enforcement of the Act and the rules and regulations made under it by the appropriate authorities and the boards at the national and state levels.
- To monitor and evaluate the impact of the Act on the surrogacy industry and the stakeholders involved and to review and amend the Act as per the changing needs and challenges.

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- To promote research and innovation in the field of assisted reproductive technology and surrogacy and to encourage the development of alternative and safer methods of achieving parenthood.
- Before surrogacy, get a National Assisted Reproductive Technology and Surrogacy Board recommendation.¹
- To follow the eligibility criteria, rights and duties of the surrogate mother, the intending couple and the child born through surrogacy as prescribed by the Act.

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